THE QUESTION OF THE CIRCULATION OF AGENCY IN TWO JUDICIAL INFORMATION INFRASTRUCTURES

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THE QUESTION OF THE CIRCULATION OF AGENCY IN TWO JUDICIAL INFORMATION INFRASTRUCTURES

Research paper

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Abstract

The longitudinal study of two judicial information infrastructures offers the opportunity to investigate the factors at the basis of their development. Specifically, in the public sector, it is not sufficient to follow design principles and implementation strategies proposed by the current literature. On the contrary, these principles and strategies can represent an obstacle to the circulation of agency or the capacity to produce legal effects to the electronic transmission of digital documents and information.

Keywords: judicial information infrastructure, design principles, implementation strategies, circulation of agency, stakeholder mobilization

1 Introduction

In Italy, investments in ICT have been considered the only way out (and also the “one best way”) to take out the justice system from a never-ending crisis (Brescia, 2004; Contini & Lanzara, 2009; Jacchia, 2000). Online trial – Processo Civile Telematico (PCT) is an example in this respect. It is a traditional top-down government project that started at the beginning of the last decade to introduce a large-scale nation-wide information system to digitally manage, in a comprehensive way, documents and communications of any civil trial proceeding. The PCT was a system envisaged for the first trial level and not for the appeal level. It is in this context that another project took place: the Online Records Office – Cancelleria Telematica (ROO). This regional project has been promoted by the Court of Appeal of Florence and the Tuscany Region with substantially the same objective of the PCT, even though it was designed specifically for the appeal level. Eventually, the ROO evolved to serve the first trial level system as well and has been adopted by the courts of the Tuscany district.

In 2005, it was expected that one third of courts would have taken advantage of the PCT’s applications. Indeed, at the end of 2006 only one application (payment order decree) was available and only in one court, the Tribunal of Milan. At the end of 2011, things changed significantly and applications such as the payment order and the real estate execution started to spread all over the country and, in these days, a large part of the PCT applications are online. The rate of adoption of the ROO differentiated significantly and it has been progressively deployed to its full capacity. However, online judicial civil trials run by the ROO had no legal validity, and at a certain point of the process, it was necessary to switch to paper documents to have trials finalized. As a regional system, the ROO did not adhered to the norms that regulate the PCT online judicial civil trials: the national standard.

In a context such as the judiciary, it is not sufficient that a specific system provides a service like the exchange of documents and data. This process must also determine legal effects (Lanzara 2013). This means that online judicial civil trials are necessarily built according to the normative standards so that they acquire legal validity and then circulation of agency is supported. Agency is here intended as the capacity of a proceeding to produce effects upon a state of affairs and its circulation represents the possibility “for such capacity to be transmitted across multiple media, national borders, and functional domains (Lanzara, 2013 p. 5). The exchange of documents and information in the business environment is not subject to the same rules. Norms regulating economic transactions tend not to control in detail aspects related to online procedures established between economic actors. A mutual agreement
between parties is sufficient to obtain the validity of documents and information exchanged. This is not the case for the public administration environment where is the legislation that provides rules for the establishment of online proceedings.

The literature on information infrastructures (Ciborra 2000; Ciborra 2002; O. Hanseth et al. 1996) - and both the PCT and ROO can be considered information infrastructures - has elaborated a series of principles to be followed for their construction. Specifically, Hanseth and Lyytinen (2010), studying the evolution of the internet, maintain that the development of these systems is subject to two types of problem: the “bootstrap problem” and the “adaptability problem”. As it will be demonstrated below, the ROO project has succeeded to face successfully both of the problems, unlike the PCT. But according to Aanestad and Jensen (2011), the study of the internet at the basis of Hanseth and Lyytinen design principles does not stress sufficiently the role of involved stakeholders, specifically in the projects like those ones considered in this essay. Therefore, the focus, here, is not only to investigate the “bootstrap problem” and the “adaptability problem” but also to the level of mobilization and coordination of the stakeholders required both by the PCT project and the ROO project. Also in the considered case, the ROO succeeded to mobilize and coordinate the stakeholders necessary for its evolution and spread to the courts of the Tuscany Region. Again, the PCT succeeded in this intent only with difficulty and after a long time.

The study of the PCT and ROO development according to the perspective proposed by the literature on information infrastructures considering also the role of involved stakeholders, suggests that the question related to the capacity of online proceedings to acquire legal validity is not considered. Therefore, the intent is to enrich this interpretative framework considering the fact that in specific contexts such as the judiciary, it is not sufficient to build flexible and generative information infrastructures (Zittrain, 2006) limiting stakeholders’ mobilization and coordination. The circulation of agency (Lanzara 2013) needs to be guaranteed.

2 Research strategy

The Italian judicial system is subdivided into ordinary courts of general jurisdiction and specialised courts (Administrative Courts, Court of Accounts, Provincial and Regional Tax Commissions). Judges are in charge both of criminal and civil matters. While the Superior Council of the Magistracy (Consiglio Superiore della Magistratura) as the self-government organization that monitors judges’ activities is in charge of the management of the gowned personnel, the Ministry of Justice is entrusted with the organization and the functioning of judicial offices (procurement, information technology, administrative personnel, budgeting etc.).

The courts of first instance with general jurisdiction are the Tribunals (Tribunali) and the related Public Prosecutors’ Office (Procure della Repubblica) for criminal cases. Other than criminal cases, Tribunals deal with civil cases (including commercial and labour cases) and the PCT was developed for the civil section of the Tribunal. There are 165 courts all over the country, plus 222 detached offices. They are subdivided into 26 districts in which the respective Courts of Appeals are in charge of appeal processes of the tribunals.

The research question of this paper concerns the factors to consider when building a judicial information infrastructure. Specifically, the central question is whether it is sufficient to limit the investigation to the evolution of judicial information systems according to specific design principles and specific levels of stakeholder mobilization and coordination. The circulation of agency or the possibility to guarantee the legal certainty of digital information and documents crossing infrastructural components is also considered determinant.

PCT and ROO are information infrastructures for supporting the judiciary (i.e. judges, clerks, lawyers, technical advisors etc.) in online judicial civil trials. As information infrastructures, they are the result
of a several years nation-wide project, in the first case, and region-wide project in the second case following two different itineraries of development.

Following Yin (2009), the present research can be classified as an embedded case study as it is characterised by multiple units of analysis (PCT and ROO) and it is the comparison of longitudinal development of these two units that emphasized the circulation of agency issue.

In summary, for answering the question of how and why the PCT and ROO are two inherently distinct configurations we turn to three theoretical approaches. The first approach focuses on principles at the basis of the development of information infrastructures (Hanseth and Lytyinen, 2010) for investigating the strategic choices made. Second, the stakeholder mobilization throws light on the nature of the several actors that contributed to the development of the infrastructure (Aanestad and Jensen, 2011) and, finally, we propose the concept of the circulation of agency for integrating the theoretical framework already developed by Aanestad and Jensen (2011) as it stresses the conditions that lead to online proceedings to have legal effects (Lanzara 2013).

This study is a result of the research project funded by EU, hence the possibility to have access to the documents processed through the PCT and ROO. Further, during a visit to the Tribunal of Milan, interviews were conducted with the members of the administrative staff, the “innovation office” and the IT Department. The Tuscany Region was visited twice for interviews, in some cases repeated, with the members of the Information Systems Departments and of the Records Office at the Court of Appeal of Florence. Software houses were another source of information as well as a member of the IT Department at the Ministry of Justice in Rome. To participate to a project funded by EU means to elaborate a series of project documents that have constituted the backbone of this research study evidence.

3 Theoretical framework

The notion of information infrastructure imposed in the IS discipline since a couple of decades ago (Ciborra, 2000; Hanseth and E. Monteiro, 1997; Hanseth and Aanestad 2003; Hanseth and Lytyinen 2004). An information infrastructure (II) is identified as “a shared, open (and unbounded), heterogeneous and evolving socio-technical system (which we called installed base) consisting of a set of IT capabilities and their user, operations and design communities” (Hanseth and Lytyinen, 2010 p. 14).

Both the PCT and the ROO are shared systems coordinating the activities of different actors (judges, clerks, lawyers etc.). They are open, having supported the integration of new components, heterogeneous and evolving, being made up of legal, technological and organisational components. Finally, judges, court administrative staff, lawyers, technical advisors and citizens as users’ community, courts IT units and the bar association IT units as operation community, and the IT department of the Ministry of Justice, the IT department of the Tuscany Region and software houses as design community have outlined these infrastructures.

Hanseth and Lytyinen’s work (2010) proposes also a series of principles for designing IIs. Three principles (“design initially for direct usefulness”; “building upon existing installed base”; “expanding the installed base by persuasive tactics to gain momentum”) address the “bootstrap problem” or how to build a user community from scratch, and one principle (“modularize the II”) addresses the “adaptability problem” or the capability to deal with unforeseen demands, opportunities and barriers (See table 1).
<table>
<thead>
<tr>
<th>Design problem</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bootstrap problem</td>
<td>The solution must persuade the initial users through targeting their needs and solving their problems; easy to use and implement; useful without a larger user base</td>
</tr>
<tr>
<td>Build upon existing installed base</td>
<td>Exploit existing infrastructures, platforms or communication formats already in use; no need for new support infrastructures</td>
</tr>
<tr>
<td>Expand installed base by persuasive tactics to gain momentum</td>
<td>Generate positive network effects from extending the user base; before adding new technology, ensure that the user base has grown to sustain the added cost of development and learning</td>
</tr>
<tr>
<td>Seek appropriate modularity to ensure easy stakeholder mobilization</td>
<td>Modular solutions lead to modular implementation strategies that limit stakeholder wide-spread and long term commitment</td>
</tr>
<tr>
<td>Adaptability problem</td>
<td>Make the IT capability as simple as possible (both technically and socially); promote overlapping IT capabilities</td>
</tr>
<tr>
<td>Modularize the information infrastructure</td>
<td>Separate the layers of infrastructures from each other and exploit gateways to connect different lawyers</td>
</tr>
</tbody>
</table>

Table 1. Design problems and principles (Source: Hanseth and Lyytinen, 2010; Aanestad and Jensen, 2011).

To identify design principles of an II is not considered sufficient in order to actually build it (Aanestad & Jensen 2011). These principles do not take into consideration what takes place with IIs implementation as far as organizing, mobilizing and coordinating stakeholders are concerned. Aanestad and Jensen (2011), emphasize the role of modular solutions in the implementation strategy as it circumscribes stakeholders’ participation and commitment, creating a context in which their coordination is favoured. Specifically, a forth principle has been added: “seek appropriate modularity to ensure easy stakeholder mobilization” (see table 1). The modular implementation strategy conditions the realization of IIs in the beginning as a prerequisite for reducing challenges of stakeholder mobilization and then supporting the bootstrapping phenomenon.

The question of the environment in which IIs operate is important. For example, what is necessary in a large company is a system able to provide support to the exchange of information or the carrying out of a specific function. In the judiciary and also in other domains of the public administration, this is not sufficient. All these procedures must abide by specific regulations in order to acquire legal validity. The concept of the circulation of agency is of some help in this respect (Lanzara, 2013). Online judicial proceedings must provide the circulation of agency so that “actions initiated in a specific place, time, functional domain are carried across a sequence of multiple enchainment without that agency losing its effectiveness, its meaning and its capability to produce effects in a different place, time and functional domain” (Lanzara, 2013, p. 5). In this understanding, agency is not only an attribution of humans but of any entity (actor, object, document, system, code, device, tool) that changes a state of affairs (Introna, 2007, Introna, 2009). The term ‘actant’ (Callon, 1992; Latour, 1992) contributes to clarify the concept of agency as it represents a change in the state of things and also in the production of new realities attributed both to human and non-human components (Lanzara, Forthcoming). The question, now, is to see how the “bootstrap problem”, the “adaptability problem”, the modular implementation strategy, and the circulation of agency characterise both the PCT and ROO.
4 The development of online civil proceedings in the Processo Civile Telematico (PCT) (1999-2011)

The PCT’s focus is a comprehensive management of documents and communications of any civil trial proceeding through digital solutions (Comitato di Progetto di “Assistenza alla realizzazione del Processo Civile Telematico”, 2004). In other words, it makes possible to:

• manage digitally the large part of information related to civil trial proceedings (from arraignment to sentencing);
• manage electronically all the communications and information exchanges among the different actors involved in a civil trial proceeding (judges, lawyers, clerks, bailiffs, other advisors etc.);
• simplify activities related to paper handling due to the dematerialization of proceedings;
• promote transparency of proceedings and speed up their timeline.

PCT deployment will be beneficial to judges (streamlining of documents and information management, easier hearing supervision etc.), administrative staff (no more necessary to handle paper files), and lawyers (no more necessary to commute to courts). Preliminary inquiries, notices, document repository and related communications will be carried out online facilitating layers’ activities.

The online document exchange between courts and layers required a so-called points of access (PoA). Regulations stated that PoAs are run by the Bar Associations and not by individual lawyers as they were entitled to supervise the legitimacy of their members to practice law. The PCT project foresaw the construction of an application dedicated to lawyers and other advisors for interacting with courts. Nonetheless, this technical system was not adopted and the consequences of this decision were relevant as a full deployment of the access to courts required the setup of a PoA application by any of the 165 Bar Associations present in the country.

In order to achieve these results, at the beginning of last decade the PCT project was inaugurated providing: i) a reengineering and an evolution both of the POLIS system and of automated registries (the case management systems) already in operation, to allow the filing of main information related to the status of a trial; ii) an application for lawyers and technical advisors deposit legal documents online to courts; iii) hardware and software systems for pilot projects (56 courts); iii) a help desk service and training for the 56 courts involved in the pilot projects.

In 2004, it was expected that hardware and software components would have been completed and, at first, deployed in six courts and then in further 50 courts in 2005. However, only in 2006, the PCT managed the first payment order at the Tribunal of Milan. This court acquired a particular importance in the following development of the project as it became the point of reference for the spread of the PCT at the national level.

The proactive role of the Tribunal's Innovation Office was decisive for the adoption of the PCT at the Tribunal of Milan. The office was composed of representatives of the local bar association, of judges, of the administrative staff, and of the local office of the ICT. The latter is the detached office of the IT Department of the Italian Ministry of Justice (MJ). Despite being an informal entity, the Innovation Office gained legitimacy and its decisions were accepted by judges, staff, and lawyers. Both the Court and the Bar delegated to the Innovation Office the management and implementation of the PCT.

The role of the Office was to introduce the several software applications to court users acting also as an information centre for other courts, due to the competences acquired in the development of the PCT. The Milan Bar Association was another engine driving the introduction of the PCT. It relied on the Lombardy Union of Bar Associations, which regrouped all the bar associations of the Lombardy Region. Lobbying activity, mainly in the Tribunal of Milan, created a fruitful environment for the adoption of innovations, such as the PCT. Further, the Bar Association itself has made much effort...
disseminating information about the PCT among its members, including large-scale training programs to recruit users. The so-called Unified Front Office contributed to the spread of the PCT. Placed in the Tribunal of Milan, it provided two main services: a help desk so that lawyers without PoA access, concerning documents and information; a help desk to provide information to layers about the PCT. The former was run by the court and the latter by the Milan Bar Association. The intention was to provide a service while also promoting the PCT.

Table 2 summarizes the expected and the actual developmental steps of the PCT project

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>Exploratory study on the conditions for the development of the PCT promoted by the Bologna Bar Association and assigned to a consultancy firm.</td>
</tr>
<tr>
<td>2000</td>
<td>A 10 months PCT feasibility study promoted by the Ministry of Justice and assigned to a consultancy firm</td>
</tr>
<tr>
<td>2002</td>
<td>Organizational support contract, supervision of PCT project in 7 pilot courts (PCT Labs) selected jointly with the Minister of Justice assigned to a consultancy firm in consequence of a competitive tender.</td>
</tr>
<tr>
<td>2003</td>
<td>Hardware and software development related to the PCT project assigned to a software house in consequence of a competitive tender.</td>
</tr>
<tr>
<td>2004</td>
<td>Hardware and software to be completed and tested in the 6 pilot courts (PCT Labs)</td>
</tr>
<tr>
<td>2005</td>
<td>PCT to be introduced in 50 further courts (unrealized).</td>
</tr>
<tr>
<td>2006</td>
<td>The first payment order online is issued</td>
</tr>
<tr>
<td>2011</td>
<td>The payment order application is used in 32 courts, the real estate execution in 12 courts, and the contributory procedures in 5 courts. The exchange of deeds and documents between parties and judges is limited to 4 courts</td>
</tr>
<tr>
<td>2016</td>
<td>Large part of PCT applications are spread in all 165 courts</td>
</tr>
</tbody>
</table>

Table 2. The development of PCT project

5 Civil proceedings online at the Tuscany Region: the Records Office Online (1999 – 2011)

At the origin of the Records Office Online (ROO) there was the collaboration between the Court of Appeal of Florence and the Tuscany Region, which dates back to end of the ’90. This collaboration was formalised in 2001, when a team between the two parties was established, the engine behind the ROO.

The introduction of the IT in the courts of appeal follows a different path in comparison with other courts. The PCT was thought and designed mainly for the first trial level rather than for the appeal level. Inevitably, this level has been less influenced by the innovation wave fostered by the PCT project. It is in a context, in which the role of the Ministry of Justice was marginal, that a collaboration between the Tuscany Region and the Court of Appeal was established as the former was interested in streamlining judiciary activities for providing better services to citizens and companies through the regional information infrastructure.

At the basis of this infrastructure, there was the so-called “cooperative application of the Region of Tuscany” (CART). CART supports interoperability both among information systems of the regional
network and among external systems (ministries, institutes etc.). In order to ensure interoperability, three main elements were required:

- a shared infrastructure for transmitting information and documents electronically;
- a common definition of a “language” that establishes which information has to be exchanged and which meaning it acquires;
- the guarantee that actors abide by the transmission specifications of document and information.

The first point represented the CART infrastructure: an environment in which actors are both providers and users of documents and information due to the adoption of specific standards. CART was also compatible with the national information infrastructure of the Public Administration (SPC). eToscana Compliance enabled the second point. The objective of this body was to evaluate the capacity of a specific information system to co-operate with other systems according to established formats, procedures and through CART. Finally, a specific register was introduced for certifying that software applications of this infrastructure have been validated and interoperable.

CART is widespread in the Tuscany Region and is based on 125 nodes called Local Applicative Node (LAN). For instance, the Tuscany Region has 3 LANs, local health agencies have 12 LANs, municipalities have 64 LANs etc. A LAN is a hardware system installed in a specific public body, and, via a specific interface, communicates with another LAN and then with another public body. The Tuscany Region provides also shared LANs. The Court of Appeal of Florence, for instance, was a part of one of these LANs. The advantages to be included in this infrastructure were clear. Interactions were eased not only with other courts, but also with any other public and, eventually, private bodies present in the Tuscany Region and participating in the CART.

The evolution of the ROO occurred independently of what was taking place in the rest of Italy. However, at a certain point, a new case management system was introduced in the courts of the Tuscany Region. The new system became part of the CART as well. This registry was subject to the process outlined above, in order to render it interoperable with the incumbent information systems.

The ROO has developed step by step. At first, the most pivotal functions were introduced at the Court of Appeal of Florence and once they were considered sufficiently established less relevant followed as the spread to other courts of the Tuscany District.

The ROO enables: i) judges to post sentences and other documents, to manage files of the parties and have access to sentences issued by courts; ii) lawyers to search the files under their jurisdiction, to post briefs and pleadings, to read those of the opposing party, and to be informed about judges’ activity and acquire related documents; iii) technical advisors to electronically submit reports and attachments; iii) the administrative staff of the court to send notifications and summons according to the Code of Civil Procedure.

The ROO worked also as a Point of Access (PoA) differently from the PCT case in which they were run by Bar Associations. The identification and authorization system was accessible not only through a smart card technology but also through user name and password provided by the ROO. Users welcomed this solution.

The ROO case represented an autonomous system that was developed independently from the PCT project even though its functions were rather similar. The Tribunal of Milan and the Court of Appeal of Florence shared only the case management system and in one case information and documents were managed by the PCT and by the ROO in the other case. However, the PCT adhered to the regulations of the Ministry of Justice and the ROO did not. Therefore, the legal validity of online judicial civil trials in Tuscany was questionable and even though the ROO was largely used, at the end, only paper based proceedings were legal. This means that a parallel path had to be followed.
were run online and all actors involved based their activity on the electronic platform. However, at a certain point, paper emerged again to meet the regulations.

As a result, in the last years, the ROO transformed into a district PoA. To say it differently, the ROO was used as a gateway to enter into the PCT delineating a new scenario of development.

6 The evolution of two information infrastructures: PCT and ROO.

6.1 The development principles followed by PCT and ROO

The design principle n.1 ("design initially for direct usefulness") has not been followed in the PCT development. The aim was to provide a whole system able to automate a large part of civil proceedings. An obstacle for the PCT adoption came from the decision not to provide a ministerial PoA leaving the establishment of PoAs to the 165 Bar Associations. This meant the impossibility of taking advantage of the PCT solutions if implemented only at the court level. Things changed from 2006 when in the Tribunal of Milan an incremental strategy for PCT’s development was pursued.

ROO’s evolution has been significantly different. Step by step, a series of online proceedings have been deployed starting from those considered more important for the functioning of the Court of Appeal of Florence. The experience and the solutions acquired in this court have been then transmitted to the Tuscany courts of the first trial level.

With respect to design principle n.2 ("building upon existing installed base"), the PCT was conceived as something completely new, with no relation with what was built before. An environment that can be defined as “installed base hostile” (Aanestad and Jensen, 2011) prevailed as the appropriate context for the introduction of a ministerial solution such as the PCT. This position was legitimised, considering that, at the time, only local and independent applications were available and only a simple access to the case management systems was available.

In the ROO case, the scenario was completely different. The II of the Tuscany Region represented the installed base on which this system has been built. The ROO was a simple component of a large infrastructure on which, in an interoperable way, a relevant number of systems operate.

In terms of persuasive tactics (principle n.3), the PCT initiative obtained a strong support from the ministerial level and a lot of financial resources have been allocated to the project. However, results were obtained only starting from 2006 in the Tribunal of Milan with the introduction of the payment order online as a fundamental solution for a financial centre such as Milan. In this way, a critical mass of users joined the PoA promoting the development of the entire PCT.

To set up online proceedings according to the relevance was the norm followed by the Court of Appeal of Florence in the case for the ROO. Then, also new courts have joined the project.

Turning to the adaptability problem, the design principles n.4 and n.5 are represented by simple and modular solutions that allow for IIs to grow flexibly. Originally, the PCT project envisaged a comprehensive solution addressing multiple goals rather than minimal and simple solutions. As far as the modularity concerns go, the PCT was composed of several modules following the principle n.5. Yet, the accomplishment of online proceedings requires a close integration of the several PCT components bringing about rigidity rather than flexibility.

The ROO was also the result of the experience already acquired in health service system and in the labour market system of the Tuscany Region. Components, already tested in other contexts, have been adapted for the judiciary facilitating the use. Further, the ROO is nothing more than a layer of a far
larger infrastructure ready to be interconnected. Table 2 and table 3 summarise the design principle followed by the PCT and the ROO.

<table>
<thead>
<tr>
<th>Design problem</th>
<th>Explanation</th>
</tr>
</thead>
</table>
| Bootstrap problem      | **Design initially for direct usefulness** The PCT project, at least in the first part of its implementation, did not provide immediate usefulness  
Build upon existing installed base  
Expand installed base by persuasive tactics to gain momentum  
Seek appropriate modularity to ensure easy stakeholder mobilization                                                                 |
| Adaptability problem   | **Make the IT capability as simple as possible** At least originally, the objective was to envisage a comprehensive solution that reformulated completely court activities  
Modularize the information infrastructure The fact that PCT modules are strictly interconnected prevents the flexibility of the entire system                                                                |

*Table 3. The PCT development principles.*

<table>
<thead>
<tr>
<th>Design problem</th>
<th>Explanation</th>
</tr>
</thead>
</table>
| Bootstrap problem      | **Design initially for direct usefulness** The ROO project tried, immediately, to provide immediate usefulness to users of the Court of Appeal of Florence  
Build upon existing installed base  
Expand installed base by persuasive tactics to gain momentum  
Seek appropriate modularity to ensure easy stakeholder mobilization                                                                 |
| Adaptability problem   | **Make the IT capability as simple as possible** The ROO has taken advantage of the experience acquired in the implementation of similar solutions in other areas of the public administration  
Modularize the information infrastructure The ROO is a layer of a larger infrastructure ready to be interconnected with all other systems present in it |

*Table 4. The ROO development principles*

### 6.2 Modular implementation strategies in PCT and ROO

The PCT project did not require the mobilization of a large number of stakeholders as it was a traditional top-down government project. Its main components were decided in the two competitive ten-
ders, which led to the development of hardware, software and organisation support. At the end of 2004, from a technical point of view, the project was officially ready. Therefore, at first, involved stakeholders could be relatively circumscribed: the Ministry of Justice, courts, the actors recruited through the tenders and users (layers and technical advisors). Things changed due to the decision not to go ahead with the ministerial PoA. This could have represented an alternative solution to lawyers, if their Bar Associations were unable to establish their own PoA. However, in this way, all the 165 Bar Associations needed to be involved.

The nature of the ROO project was completely different. It can be considered a bottom-up project realized by the Court of Appeal of Florence of the Tuscany judicial district in collaboration with the Region. The Information Systems Department of the Region and the Record Office are the main stakeholders involved. In this case, the involvement of the Bar Associations has been far less relevant as they did not need to run the PoA as the Tuscany Region provided it. As far as software vendors were concerned, the Region followed a mixed policy. Specifically, it used to commission software development to particular companies until several actors could compete in tenders.

Besides, the management of PoAs, in the PCT case, has been particularly critical due to the fact that its characteristics changed three times in a few years, requiring, of course, a further mobilization of the Legislative (this matter is subject to a specific ordinance), of the Ministry of Justice, of the Bar Associations, of software vendors, etc. None of this took place in the ROO case.

The “innovation office” at the Tribunal of Milan was a significant example of the level of stakeholder mobilization that a project such as PCT requires at a local level. In this case, not only traditional actors of the world of justice but also universities and consultant companies were involved. At this point, the question is how many courts at the national level have the mobilization capacity of the Tribunal and of the Bar Association of Milan, considering also that activities in the courts have to continue independently from the PCT project.

The team established between the Tuscany Region and the Court of Appeal of Florence shares a lot of characteristics with the “innovation office”. However, in this case, instead of universities and consultant companies, sectors such as the health service or the labour market service have contributed to the ROO development.

The implementation strategy followed by PCT was characterized by a wide and long-term commitment of the stakeholders. This is not an easy task when only a part of the expected benefits have been achieved and with the cooperation of several stakeholders. Besides, the different technological solutions at the basis of PCT are in the circle of closely integrated functional modules. These solutions, leading to a temporal asymmetry between investment and benefits, inevitably require a significant stakeholder mobilization.

Even though in the ROO case a stakeholders’ wide and long-term commitment has been necessary too, the differences are more significant. Fewer stakeholders have been involved and tangible benefits have been achieved in a shorter span of time. Moreover, the fact that it is a part of a large infrastructure, such as that of the Tuscany Region, renders ROO just a component and, as such, limits the mobilization of stakeholders for its development.

In conclusion, the ROO adopted a modular implementation strategy, in contrast to the PCT. The ROO was a part of a wider II in which stakeholders were mobilized according to the different stages substantially autonomous from each other preventing a scheduled and coordinated process that inevitably required a larger mobilization. In contrast, in the PCT case, at least before 2006, the aim to address several problems and many stakeholders’ needs through a comprehensive solution prevailed (see table 3 and 4).
6.3 The circulation of agency in the PCT and ROO

The legal validity of online proceedings dates back to the end of 2006 when the first payment order was issued by the Tribunal of Milan. A long journey has been made since the end of 2004 when the PCT was first tested. This means that the circulation of agency was not possible. The main issue was related to the establishment of PoAs. The characteristics of the Milan judicial system introduced above suggest why it was just in the Tribunal of Milan that the PCT was launched. However, this was only a first step as in 2010 documents exchanged by parties also acquired legal validity, and so did the communications of the court. This process has gone on at the Tribunal of Milan as in all other courts of Italy. There has been a temporary period in which not all lawyers had access to the PoA. Therefore, some proceedings have to be managed both online and offline, which has suggested a cautious approach to going live with further online proceedings.

The PCT is a ministerial solution. Its development has been associated with a series of norms that have defined in detail its characteristics and the way of functioning. Once online proceedings are conformed to the norms and lawyers and other users are registered to the PoA automatically they acquired legal validity by a decree of the Ministry of Justice. This was not the case for the ROO. Its development was completely different, as it had not adhered to norms regulating the PCT online proceedings. Therefore, the circulation of agency was enabled only following the norms that regulate paper-based proceedings. In this way, at a certain point what has been managed electronically has to be printed to acquire legal validity. A regulation issued in 2010 that allowed also to local governments and then to Regions to establish a PoA made possible the conformity of the ROO online proceedings. However, a court not only interacts with lawyers or technical advisors but also with other public administrations, such as Municipalities and the Tax Agency. Due to the fact that these public bodies are part of the Regional II, online proceedings between courts and these administrations with legal validity have been established. The PCT has not covered these proceedings yet and as such they are not subject to specific regulations.

7 Conclusion

Considering the evolution of the PCT and of the ROO according to the “bootstrap problem” and the “adaptability problem” two different path have been followed. The PCT provided value to users with difficulty, it was not built upon the existing installed base, and only from 2006 pervasive tactics to expand the installed base have been adopted. On the contrary, the ROO succeeded in a relatively short time to provide proper services to users, it is a part of a large II upon which it has developed, and an incremental policy has been followed in order to extend the ROO’s user base. As far as the “adaptability problem” is concerned, the PCT, at first, envisaged a comprehensive solution that attempted to reformulate court activities completely, falling short to provide simple solutions. While modularity characterises the PCT system architecture, its components tended to be strictly interconnected, interfering with the flexibility of the entire system. In contrast, the ROO had the possibility to take advantage of the experience acquired in similar contexts, such as the health service, and introduced reliable solutions. Again, by virtue of being a part of a large II, such as that one of the Tuscany Region, the ROO had the possibility to develop autonomously and, at the same time, to pursue integration with the Regional II.

In the case of the stakeholder mobilization issue, the PCT and ROO are in stark contrast as well. With the PCT, assigning to the 165 Bar Associations the task of establishing the PoA meant involving and then coordinating a large number of stakeholders. Besides, as the case of the “innovation office” at the Tribunal of Milan suggests, to have online proceedings in use implicates a relevant level of mobilization and coordination. The ROO scenario is completely different. The PoA is managed directly by the Tuscany Region and not by the Bar Associations. The PCT is moving in the same direction, with the
introduction of the e-Service Portal at ministerial level. The team between the Information System Department at the Tuscany Region and the Records Office at the Court of Appeal of Florence has succeeded to support both the ROO’s technological development and its spread to other courts.

So far, the ROO, in contrast to the PCT, seems a sort of an ideal case. It has managed both the “bootstrap problem” and the “adaptability problem” without mobilizing and coordinating a large number of stakeholders, as was necessary in the case of the PCT. However, in a context of the judiciary, none of this is sufficient for building and then deploying appropriate systems. The capability to enable the circulation of legal agency is a further crucial factor in this respect and the ROO results are inadequate if we consider that the PCT has adhered to the norms that regulate the accomplishment of online proceedings. At a first look, a trade-off emerges between the modularity principle and the circulation of agency. Inevitably, the circulation of agency is supported if all the different components of a specific system are part of a unified design that creates conditions of compliance. Both modular solutions and modular implementation strategies go in the opposite direction emphasizing the self-subsistence of technological solutions and implementation strategies.

Finally, the analysis of the evolution of the PCT and ROO considering design principles adopted and the capacity to mobilize and coordinate stakeholder is incomplete if the circulation of agency is not enabled.
References


