

THE ITALIAN JUDICIAL OFFICES PRODUCTIVITY IN ALMOST 130 YEARS OF COGNITION CIVIL PROCEDURES

Carlo CUSATELLI¹

PhD, University Researcher in Statistics,
Department of Statistical Sciences "Carlo Cecchi",
University of Bari "Aldo Moro"



E-mail: carlo.cusatelli@dss.uniba.it

Abstract: *In Italy, one of the hinge points on which the concept of State leans - the Justice - has slipped in a deep crisis more and more since remarkable difficulties in its internal reorganization are accompanied to the natural process of review in the civil society in evolution. The more evident external aspects of such crisis are translated in the slowness of the judicial mechanism, in the high cost of its antiquated procedures and in the difference of the sentences for degrees of judgment.*

To comfort or to contradict this or that thesis, also, sometimes statistic data are brought in contrast from each other, because of what they define is not well specified. Wanting to give clarity, it is first of all necessary to delimit this analysis to the procedure of cognition, essential unit of the civil trial activity, for an objective knowledge of the phenomenon from the quantitative point of view, to be able to supply stable terms of reference for a better interpretation of the facts and a more serious search of the causes and the effects, reaching a suitable territorial distribution of the enquirer personnel, judging or not.

The analysis of some statistic indicators (i.e., the procedures duration, the index of disposal, the percentage variation of pending) derived by the data related to supervened, exhaustions and pending allows to estimate the productivity of the judicial offices in comparison to the justice demand. In the centennial oscillation of the civil procedures of cognition (and particularly of the relative quotients for 100.000 inhabitants), both in first degree and appeals, a growth is established, especially in the last twenty-thirty years, of supervened and exhausted procedures, and still more of those leaning that among the 1991/2000 decade and the average value of the last seven years go over the doubling. The average life of the civil procedures in every degree of judgment that on the contrary has gone growing since 1881 to today, even though with occasional lowering events. The civil procedures of cognition have reached by now the average duration of 3.000 days, and this means around eight years of waiting for the definitive sentence.

Key words: *judicial offices productivity, cognition civil procedures, procedures duration, index of disposal, variation of pending.*

1. Introduction

On the occasion of 150th Anniversary of the Unification of Italy and in 65th year of the Republic, with this analysis I wanted to follow on the work done by the late Professor Carlo Cecchi (Professor of Statistics at the University of Bari and former dean of the local First School of Economics) in his elaborate statistical analysis of cognition civil procedures in Italy (*Analisi statistica dei procedimenti civili di cognizione in Italia*, Laterza ed., Bari, 1975)

which was of extraordinary originality and also of great historical interest both in terms of severity level now achieved by the slow pace of Italian justice, both for the trend, at that time almost secular, some tables, since the 80s of XIX century. The data for the last few years of that research (the early 70s) have been updated because, at that time, provisional.

The civil proceeding of cognition is the means by which one of three forms of judicial protection is given in the Italian system: i.e. the establishment of the relationship in dispute (the other two forms are the executive and the precautionary). In the process of cognition the judge is called to ascertain the factual situation existing between the parties in dispute, to determine what legal rule should be applied and to sentence, as regulated in Book II of the Italian Code of Civil Procedure. This procedure is celebrated today in the first degree, depending on the jurisdiction, by a peace judge, tribunals, and in a few cases, appeals courts; in the second degree the tribunal is the appeals judge of the peace magistrate, while the appeals court is to appeal the rulings by the tribunal; the cassation court should, then, merely ensure the not material wrongness, the exact observance of the law, its uniform interpretation, the respect of the different jurisdictions' limits and, of course, the national unity of the objective law.

Coming to the source of the data used in this analysis, when you consider the process at the beginning of its path, with the entry in the register, the statistical unit is the so-called "supervened case"; it becomes, instead, "exhausted case" when closing procedure results in the removal from the register, even for conciliation or inactivity of the parties. Therefore, the examination of the occurring and exhausted processes is measurable in an interval of time in which they assume the configuration of flow phenomenon. It is useful, then, to consider the process at any given time, through the analysis of "pending proceedings" at the end of year, so configuring a state phenomenon.

With the examination of such flow and state indexes, the analysis of the judiciary functioning in civil matters will be done here by assessing the activity as a whole, in particular deducing the rate of depletion of processes and their average duration. All this to provide an image of the civil judicial efficiency at national level.

2. The productivity of the courts in Italy by grade

From reading the first two tables (Appendix) one can easily deduce that in the over centennial oscillation of the civil cognition proceedings (and particularly of the relative quotients for 100.000 inhabitants), both in first instance, appeals and supreme court, a growth is established, especially in the last twenty-thirty years, of supervened and exhausted procedures, and even more of those pending, doubling of also absolute numbers nowadays very significant (rate of growth, particularly for pendants in first degree, which is always registered about every 20 years).

The procedural reforms approved during the last two decades, from the institution of the single judge of first instance to those of peace and aggregated honorary magistrates, to dispose of any proceedings already pending, nevertheless did not reduce the average duration of the civil proceedings of every court, that on the contrary has been growing since 1881 to today, even though with occasional ups and downs of contraction events. A cursory glance at Tab. 3 and its graphical representation (Fig. 1) shows that the civil proceedings of cognition for all three degrees of courts have now reached the level of an average duration of 1,000 days for each grade, and this means more than 8 years of waiting for the definitive sentence, using the index expressed in days by

$$D_i = [(P_i + P_{i01}) / (S_i + E_i)] \times 365$$

where P is the pending cases, respectively, at the end of years t and $t-1$, S those supervised and E those exhausted during the year t .

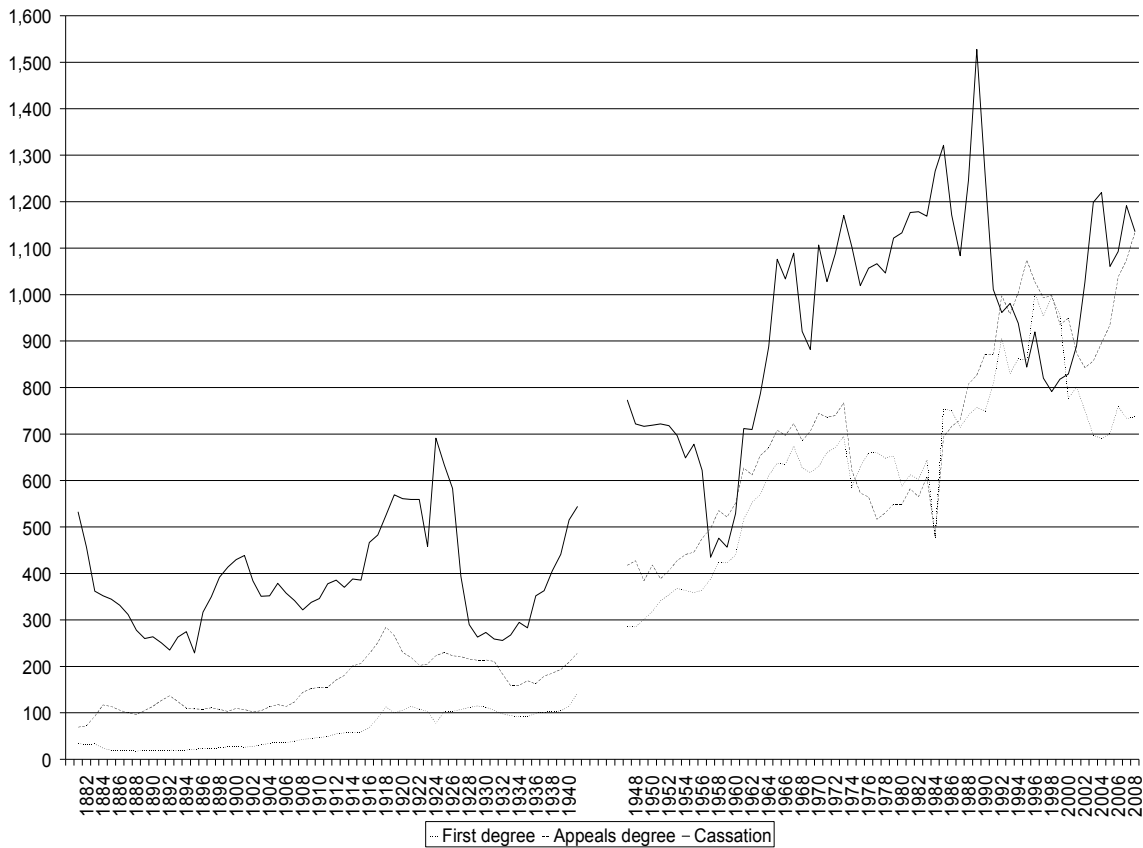


Figure 1. Average duration, in days, of civil cognition proceedings in Italy, by instance degree, from 1881 to 2008

The durations of the various degrees of process are closely linked with each other along time, where the Pearson correlation coefficient about durations shows a value of 0.972 between the first and second grade, 0.875 between first grade and Cassation and 0.840 between Appeal and Cassation.

Noting the propensity of citizens to assert their rights in front of the ordinary courts, given the absolute marginality of the use of tools provided for conciliation (mandatory only since March 20, 2011), to achieve the goal of efficiency is necessary not only to relieve the flow of civil cases, insisting on the use of alternative models; but also reducing the downtime accumulated between successive hearings, as many referrals produce hearings very spaced out, even up to not discharge the knowledge acquired on the facts of the case by judges and lawyers (not infrequently replaced during the pending); reduce the too long terms of appeal; overcome delays in the judiciary proceedings and deposit them in; reducing the laziness of technical consultants in the filing of reports.

However, these dysfunctions are often originated from the sharp increase in the workload at the court offices located in provincial capitals that clashes with the limited use of offices operating in small towns, for which it is hoped the merger offices with greater load. In fact, the inefficiency of the judicial system as a whole depends certainly on backwardness of cumbersome rules and on lack of human resources and means. However, the average duration in Italy for all the civil proceedings of cognition, both for the first and the appeal

level, reached the absolute maximum in recent years, namely the mid-nineties, overcoming 1,000 days in both grades. For appeals in cassation the average exceeds 1,000 days for most years since the 70s, with a relevant decline in the 90s.

On May 31, 2011 the Governor of the Bank of Italy, Mario Draghi, has announced that, according to the World Bank, Italy is at 156th rank of 181 according to the speed of the civil proceedings; ultimately, October 12, 2010, during the "First International Forum for the Development of e-Justice" organized by the Italian Banking Association (ABI), the President of the Republic, Giorgio Napolitano, has intervened in the debate on justice with such a message: we need a shot of efficiency and courageous choices that will reduce costs and simplify management of the justice process with input from all stakeholders, including the business; and that for giving full effect to the principles of due process and shorten the duration processes that undermines public confidence in the service of justice and also affects the competitive ability of our country.

How Alessandro Penati (Professor of Corporate Finance at the Catholic University of Milan) teaches, the law is perceived in Italy as a gamble with an uncertain outcome, on which it is worthwhile to wager: the main problem is the high rate of litigation (i.e. the ratio of occurring proceedings already examined).

Therefore, the challenge that the legislature sought to collect, in recent years, has focused the numerical limitation in addition to the length of civil proceedings. It is intended to follow this pattern with the Law of June 18, 2009, no. 69 and, later, with the Legislative Decree no. 28 of 2010 (entered into force March 20, 2011) which introduced into our law the mediation process aimed at extrajudicial conciliation, a prior attempt to resolve the dispute, a preliminary degree.

Since over ten years ago (Constitutional Law November 23, 1999 no. 2 – published on OJ No 300 of December 23, 1999) the principle of reasonable duration of the process is written in art. 111 of Italian Constitution. But the term implies, however, a reasonable balance between the hurry and do well and then the prospect of further reform should be reversed: that is, in a context of recovered operating speed, a system of lapsed time commensurate with a reasonable time definition of the investigation in each phase.

In this regard, the index of disposal of cases

$$ID_t = [E_t / (P_{t01} + S_t)] \times 100$$

measures the ability in exhausting the proceedings.

As regards the first degree (Tab. 4), until the second half of the Nineties the index has shown a dangerous spin having regard to its gradual decline to about 25% in 1995 (that has so involved the progressive increase in the duration of the proceedings recorded up to then). From that year you can see a chink in the potential court productivity improvement, given the current levels of the indicator in question bringing themselves to the best years here analyzed (since 1970, first year of new data relative to those presented by Professor Carlo Cecchi in his already cited Analysis): not far from 35%. Assuming a linear trend, the regression coefficient for the index in question during the 39 years considered here is, though slightly, negative and equal to -0.102%, which means that on average, each year, for every thousand cases occurring between pending and supervened, one less has been exhausted over the previous year.

Turning to appeals degree, the indicator is currently at the minimum, preventing the continuation of the virtuous momentum started in the Nineties hindering, in that decade, the previously noted increase in speed closure of proceedings. The coefficient of linear regression is more severely negative compared to the previous, being equal to -0.379%,

dying on average every year about 4 proceedings in less each 1.000 encumbering on appeal. The data is also aggravated by the fact that in the second degree only 30.3% of the existing procedures become extinct each year on average, compared with 32.3% in the first one.

The Court of Cassation shows no symptomatic changes in the disposal of existing procedures, since the leap recorded in the Nineties (with halving of length), revival of the Sixties, has ended his parable by reference to present just a little better than values recorded in the Seventies and Eighties: 20-25%. Therefore, the coefficient of linear regression is positive in this case, although of only 0.077% relative to a disposal index of only 23.5% on average.

The percentage variation of pending

$$V_t = [(P_t - P_{t-1}) / P_{t-1}] \times 100$$

allows, finally, to examine the course of unanswered justice.

In this regard, since 1970 the first degree shows the persistent rise of pending (except for very minor and sporadic cases in 1974, 1979 and 1985) until 1996 (year of growth close to zero), and reversal of the trend in parallel with the already noted continuous fall in the disposal recorded until the second half of the Nineties (note the almost null decrease in 2004). Therefore, still assuming a linear trend, the regression coefficient of the index is quite negative and equal to -0.218%: throughout the past four decades, the judiciary system has been able to react somehow to the strong increase in demand for justice in the first degree.

Also in the appeals level, pending are assiduously on the rise, unless the years 1974, 1976 and 1977, and at the turn of 2000, thanks to the previously mentioned percentage increase in discharge occurred only towards the end of the Nineties which has encouraged, in that time, the reduction of the pending proceedings. The past six-seven years surveyed are unfortunately returned to the dangerous values of incremental peak recorded around 1990. In second degree, the regression coefficient is therefore slightly positive, being equal to 0.048%, which is of particular importance given the highest average level of the index in question (+4.9%) than that seen for the first degree (+3.0%) during the four decades considered.

From reading the last column of Tab. 4, it can be seen as in the court of cassation pending are, in the period here considered, always increased with the exception of the first half of the Nineties (also here for faster disposal of cases underway at that time) and the last year considered. However, the coefficient of linear regression is negative in this case, although of only -0.017% and relative to a mean variation of pending equal to a high +5.8%.

3. Conclusions

The continuity in the Italian justice system could be registered by the fact that the judicial districts are the same since 1881, when to travel from one court to another was necessary to move by horse. Since then, however, the perception was missing that the duration affects the effectiveness of the protection of individual rights, and also the reasonable duration of trials is a condition that contributes to the development of the country, whereas reasonable times would be able to establish a lawfulness control and an effective dispute settlement.

Moreover, the current economic situation, which has already forced the adoption of

strict financial measures, can no longer be postponed significant reversal of the trend of the length of civil proceedings within a time much lower than those obtained with the ordinary legislative initiatives. The reasons for the collapse certainly reside in procedural delays, distortions in the ancient and recent installation of our procedural law, perhaps even in the laziness of the judges, as some say, and lawyers cunningness, as others say; but also structural causes: our courts work often only in the morning and this is because there isn't the possibility to pay the administrative staff in the afternoon thus the causes are postponed due to a lack of courtrooms for celebrating them in suitable spaces. Offices are now solely on the shoulders of the many officials and clerks and secretaries who deserve recognition for the important work carried out in difficult conditions, which often lack the tools to work.

References

1. Cecchi, C. **Analisi statistica dei procedimenti civili di cognizione in Italia**, Bari: Laterza, 1975
2. Corrado, S. **Statistica giudiziaria**, Rimini: Maggioli, 1993)
3. Delvecchio, F. **Statistica per la ricerca sociale**, Bari: Cacucci, 2006
4. Giacalone, M. **Manuale di statistica giudiziaria**, Roma: Bel-Ami edizioni, 2009
5. Istat, **Yearbooks of judicial statistics**, Roma: C.S.R., 1959/2008
6. Istat, **Annuario statistico italiano**, Roma: C.S.R., 2010
7. Istat, **Durata e funzionalità del processo civile dopo la riforma del giudice unico di primo grado**, Informazioni n. 32, Roma: C.S.R., 2004
8. Istat, **La giustizia civile in Italia: funzionalità e processo di riforma**, Informazioni n. 3, Roma: C.S.R., 2001
9. * * * **Report on the Administration of Justice by the President of Appeals Court in Bari**, July 1, 2007 - June 30, 2008
10. * * * **Report on the Administration of Justice by the President of the Cassation Court**, Roma, 2008

Appendix

Table 1. Annual averages number of civil cognition proceedings occurring, exhausted and pendants, by instance degree (in thousands), in Italy

Years	First degree			Appeals degree			Cassation		
	Supervened	Exhaustions	Pending	Supervened	Exhaustions	Pending	Supervened	Exhaustions	Pending
1881-1890	1,567.8	1,570.3	95.6	34.4	33.3	12.0	2.8	3.1	2.7
1891-1900	2,258.8	2,252.5	144.6	28.8	36.5	14.1	3.1	2.8	2.7
1901-1910	1,842.9	1,838.1	182.7	38.1	37.5	16.0	3.0	3.3	3.0
1911-1920	1,206.8	1,206.5	223.1	37.1	36.4	25.0	2.8	2.7	3.4
1921-1930	1,204.2	1,182.2	362.0	52.5	51.5	35.4	3.3	3.3	4.1
1931-1940	1,213.8	1,237.7	322.1	46.7	48.4	26.2	4.0	3.8	3.7
1947-1950	408.2	347.0	340.9	30.7	26.7	41.8	3.7	3.1	7.1
1951-1960	508.9	492.4	532.4	39.6	38.2	58.0	4.6	4.8	7.6
1961-1970	464.4	435.7	758.5	34.1	31.9	73.3	4.3	3.7	10.3
1971-1980	646.0	605.7	1,122.3	53.9	51.3	87.3	6.8	5.5	18.9
1981-1990	857.6	765.2	1,597.2	68.7	59.3	129.5	9.9	8.4	31.8
1991-2000	1,173.1	1,122.2	2,858.7	94.1	88.9	248.6	16.5	15.2	38.9
2001-2008	1,395.7	1,446.9	2,826.2	133.9	110.7	335.8	30.9	25.6	88.3

Table 2. Annual average quotients of civil cognition proceedings occurring, exhausted and

pendants, by instance degree (per 100,000 inhabitants), in Italy

Years	First degree			Appeals degree			Cassation		
	Supervened	Exhaustions	Pending	Supervened	Exhaustions	Pending	Supervened	Exhaustions	Pending
1881-1890	5.125,0	5.133,2	312,5	112,4	108,9	39,2	9,2	10,1	8,8
1891-1900	6.912,9	6.893,6	442,6	111,7	111,7	43,1	9,5	8,6	8,3
1901-1910	5.258,1	5.244,4	521,2	108,7	107,0	45,6	8,6	9,4	8,5
1911-1920	3.221,8	3.221,0	595,6	99,1	97,2	66,7	7,4	7,2	9,1
1921-1930	3.064,5	3.008,5	921,2	133,6	131,1	90,0	8,4	8,4	10,4
1931-1940	2.863,9	2.920,3	760,0	110,2	114,2	61,8	9,4	9,0	8,7
1947-1950	881,2	749,0	735,8	66,3	57,7	90,3	8,1	6,6	15,4
1951-1960	1.042,6	1.008,7	1.090,6	81,2	78,3	118,9	9,4	9,8	15,6
1961-1970	892,0	836,9	1.456,9	65,5	61,2	140,8	8,3	7,1	19,9
1971-1980	1.159,4	1.087,1	2.014,3	96,6	92,0	156,7	12,1	9,9	33,9
1981-1990	1.499,5	1.338,0	2.792,6	120,1	103,7	226,4	17,3	14,7	55,6
1991-2000	2.042,5	1.953,9	4.977,3	163,8	154,8	432,9	28,7	26,4	67,7
2001-2008	2.398,8	2.486,8	4.857,4	230,1	190,3	577,1	53,1	44,0	151,8

Table 3. Average duration, in days, of civil cognition proceedings in Italy, by instance degree, from 1881 to 2008

Years	First degree	Appeals degree	Cassation	Years	First degree	Appeals degree	Cassation	Years	First degree	Appeals degree	Cassation
1881	34	69	532	1922	108	202	559	1968	627	685	921
1882	32	72	457	1923	103	205	458	1969	617	705	882
1883	33	92	362	1924	77	223	691	1970	630	744	1,107
1884	24	117	352	1925	103	230	633	1971	660	736	1,028
1885	19	113	345	1926	103	223	583	1972	671	740	1,088
1886	19	106	332	1927	107	221	394	1973	694	767	1,171
1887	19	100	312	1928	112	215	290	1974	585	621	1,102
1888	18	96	278	1929	115	213	263	1975	630	573	1,020
1889	19	105	260	1930	112	214	273	1976	659	564	1,057
1890	19	114	264	1931	106	211	259	1977	660	516	1,066
1891	20	127	251	1932	98	183	256	1978	648	530	1,047
1892	20	137	235	1933	94	158	268	1979	653	549	1,122
1893	19	124	263	1934	92	159	295	1980	587	549	1,133
1894	20	110	275	1935	92	169	283	1981	612	582	1,177
1895	22	109	229	1936	99	162	352	1982	603	565	1,179
1896	23	108	317	1937	102	179	363	1983	644	608	1,169
1897	24	111	350	1938	103	186	406	1984	477	477	1,266
1898	25	107	392	1939	104	193	441	1985	754	693	1,321
1899	27	103	414	1940	114	209	515	1986	750	716	1,171
1900	27	110	430	1941	143	228	544	1987	714	730	1,084
1901	26	107	439	1947	287	418	773	1988	741	807	1,246
1902	28	102	384	1948	285	427	722	1989	757	826	1,528
1903	31	105	351	1949	301	384	717	1990	749	871	1,259
1904	35	113	352	1950	318	418	719	1991	808	872	1,011
1905	36	118	379	1951	341	388	722	1992	906	997	961
1906	36	114	358	1952	354	406	718	1993	830	958	981
1907	39	123	342	1953	368	427	697	1994	862	1,005	938
1908	43	144	322	1954	363	441	649	1995	859	1,075	844
1909	45	153	338	1955	359	446	678	1996	1,002	1,027	920
1910	47	155	346	1956	364	475	622	1997	953	993	820
1911	49	155	378	1957	388	496	435	1998	995	998	791
1912	55	171	386	1958	424	535	476	1999	955	936	818
1913	57	180	370	1959	423	521	457	2000	776	949	829
1914	58	201	388	1960	439	551	529	2001	801	874	890
1915	59	206	386	1961	516	627	712	2002	750	843	1,026
1916	68	227	467	1962	553	612	710	2003	697	857	1,199
1917	89	251	483	1963	569	654	787	2004	690	896	1,220
1918	113	284	525	1964	610	670	888	2005	700	934	1,061
1919	100	266	569	1965	637	708	1,076	2006	760	1,037	1,093
1920	106	231	561	1966	635	697	1,034	2007	733	1,074	1,191
1921	114	219	559	1967	674	722	1,089	2008	737	1,134	1,136

Table 4. Indexes of disposal and percentage variation of pending of cognition civil proceedings by grade from 1970 to 2008

Years	Index of disposal			Percentage variation of pending		
	First degree	Appeals degree	Cassation	First degree	Appeals degree	Cassation
1970	34,3	32,0	20,1	7,6	2,9	13,2
1971	33,6	31,1	24,7	6,3	6,8	4,1
1972	33,0	30,6	23,1	7,6	8,5	5,6
1973	32,1	29,4	20,4	9,9	9,6	9,2
1974	38,6	38,2	23,9	-1,7	-2,8	2,7
1975	34,2	38,5	22,4	7,2	1,2	11,3
1976	34,5	40,0	21,5	4,6	-2,7	12,0
1977	34,8	41,5	22,8	2,0	-0,2	7,6
1978	34,6	39,3	23,0	3,0	5,1	7,9
1979	36,0	38,7	22,9	-0,1	4,4	4,6
1980	37,6	39,4	22,4	1,5	2,4	5,2
1981	36,3	37,1	21,2	2,9	5,0	6,7
1982	36,4	38,5	22,8	5,0	2,8	2,1
1983	34,2	36,5	23,7	7,4	1,4	0,2
1984	33,7	33,3	21,0	5,1	8,3	3,7
1985	32,8	32,4	19,8	-0,5	6,4	4,9
1986	31,9	31,6	21,8	3,2	7,3	5,3
1987	31,9	30,2	25,0	8,0	10,8	0,5
1988	30,0	28,1	19,5	8,5	8,4	8,5
1989	29,8	26,6	13,1	9,9	13,7	16,5
1990	29,0	25,8	21,9	9,8	9,8	1,5
1991	28,7	25,8	29,2	7,6	11,4	-7,0
1992	25,8	23,2	29,0	9,1	10,0	-4,0
1993	28,6	26,6	30,1	4,4	2,5	-7,8
1994	28,1	26,1	27,1	5,1	1,7	2,6
1995	25,6	23,8	30,5	12,7	4,3	-1,0
1996	26,7	24,6	27,5	0,1	4,2	2,5
1997	28,9	26,1	30,0	-3,1	2,5	2,4
1998	27,7	26,9	25,8	-2,3	-0,3	18,3
1999	28,2	29,7	26,5	-1,6	-4,7	13,5
2000	32,8	29,9	26,4	-7,0	-5,7	12,7
2001	32,7	29,7	21,7	-3,8	-1,0	23,3
2002	35,3	29,0	19,6	-7,3	3,4	19,7
2003	34,6	26,4	19,3	-1,1	9,9	11,1
2004	34,4	25,2	22,3	0,7	11,1	1,9
2005	35,0	24,9	25,1	-2,3	9,2	1,3
2006	32,4	22,2	22,8	-0,1	10,7	6,1
2007	33,4	21,8	22,3	-0,5	9,9	2,9
2008	32,7	22,6	25,6	-0,3	3,8	-4,2

¹University researcher in Statistics, graduate in Economics and Commerce, PhD in Applied Statistics, Post-doctoral in Statistics applied to the territory, research fellow in Social Statistics. Various positions in both public and private structures: University aggregated professor of Statistics, Calculus of Probability, Statistical inference, Social Research Methodology and Statistics for the Planning, Medical Statistics; local component of the research groups funded by the University of Bari and the relevant Ministry, senior researcher in the European Social Fund; component groups inter-university research co-financed by the relevant Ministry; technologist at the Italian National Statistics Institute for the conduct of the last past economic and demographic Census. In addition to participation in numerous conferences organized by various institutions, some of which were presented in the published scientific literature



related Acts, were designed, developed and edited works printed on quality of life (urban, student, work), education, migration, tourism, job market, often with multivariate statistics, combining qualitative assessments (acquired in direct, postal and telephone surveys), quantitative indicators and models for data analysis.