Priorities for Backlog of Criminal Cases Pending in Courts: A Computational Agent-based Model

LUIGI BONAVENTURA, ANDREA CONSOLI


1. INTRODUCTION

The practice of establishing criteria of priority for reducing the backlog of trial procedures has been widespread for some time, although not always made clear. In both investigating and judging departments, the limited resources available have made organizational decisions necessary in order to answer the need to improve the justice system.

With reference to the Public Prosecutor’s office, this subject has often led in Italy to animated discussions on the consistency of such criteria with the principle of compulsoriness of penal action, since the decision regarding which cases to bring before the court, whether made by those responsible for the offices or by the single Public Prosecutor, represents in any case a concession to discretionary power. Moving from the nineties, in any case, public and previous priorities stand out in investigation and prosecution, as in the US experience of guidelines: at first, with local ventures of chief prosecutors; later, with court sentences (see Disciplinary decision No. 105/97 of Consiglio Superiore della Magistratura - the Italian Council of Judiciary).

In spite of mandatory prosecution the budget constraint of investigation has necessarily led to the use of guidelines connected to the seriousness of the crime and concrete injury resulting from behaviour.

Possibly less at the centre of the Italian political debate, but equally important for its consequences, is the definition of criteria of priority operated by the judging offices. Increasing the immediacy of a judicial reaction to crime constitutes an important instrument, adding to the deterrent effect and the social value of repression. A series of guidelines exists in these offices (since it is communicated to the Ministry of Justice) containing the criteria of assignment among the different sections according to the topic

* L. Bonaventura is assistant professor and A. Consoli is post-doc researcher at the University of Catania (Italy), Department of Economics and business.
and a criterion for the internal assignment of cases among the different magistrates in each section. It is simply left to the discretion of the individual judge to organize his own order of hearings; only in certain circumstances is this shared by means of protocols established together with the Councils of the Order of Attorneys and with the legal associations.

A recent investigation carried out by Eurispes\(^1\), in agreement with the Union of Criminal Chambers, represents the first study of an organic nature on how criminal hearings are organized, contributing to a clearer definition of the reasons why a criminal case appears to be paralyzed by bureaucracy and formalities which offer no guarantee of a high standard of efficiency. This investigation brought to light that the average duration of proceedings is 226 days, while the average time spent in court hearing is only 18 minutes for a trial celebrated before a monocratic judge (i.e., single judge) and 52 minutes for one celebrated with a panel of judges. A little over two-thirds of the cases (69.3%) each brief considered is remanded for a further hearing for physiological reasons (prosecution of the debate inquiry, deferment for discussion, etc.) or pathological ones (logistic problems, absence of the judge, impediment of the parties, absence of a summons or failure to appear of witnesses, etc.). The average length of deferment is 139 days for trials taking place in a monocratic court and 117 days for a panel of judges. The percentage of full hearing trials celebrated in ordinary proceeding is 90.6% while 9.4% are celebrated in alternative proceeding (5.4% in abbreviated form, 4% by settlement)\(^2\).

In the light of these data, it is easy to understand the need to introduce criteria of priority in organizing the hearing sessions. An important step in this direction was taken by the so-called “security package”\(^3\), whose effectiveness however has never yet been tested by the competent authorities. With the explicit aim of speeding up the reply of the court system to the request for penal justice, the measure in fact establishes that in the drawing up of schedules for the hearing and debate of cases, absolute priority must

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\(^2\) Monitoring in the Court of Catania has revealed that the average duration of a hearing and debate trial is only ten minutes before a monocratic judge, while with a collegiate panel of judges the time dedicated to the investigative debate is 21 minutes. In 93.9% of the cases an ordinary trial procedure is adopted, in 2.9% an abbreviated procedure and in 3.2% a settlement. Delays and postponements represent the typical outcome of hearings with average delays of 149 days for a monocratic judge and 113 days for a panel of judges.

\(^3\) Law No. 125 of 2008, in Art. 2-bis regarding some modifications of the enacting, coordinating and transitory rules of the code of criminal procedure.