

The digitisation of justice risks blurring the lines between public and private actors

*Justice systems across Europe are increasingly becoming 'digitised', with greater use of technology in the administration of the law. But does this process have a downside? Drawing on experiences in Italy and the UK, **Giulia Gentile** and **Giovanni De Gregorio** argue that over-reliance on private technology companies risks undermining the 'publicness' of justice systems.*

Digitising justice is a complex process due to the fundamental role that courts carry out in our societies. Judges are public impartial actors entrusted with the duty to solve disputes and ensure that justice is seen to be done. As guardians of our legal orders and individuals' rights, they possess public authority linked to their legitimacy as constitutional actors.

The increasing reliance on technology provided by private entities to digitise justice also calls into question the public nature of the values guiding the functioning of courts and, more broadly, justice systems. But how can the publicness of judiciaries be preserved in light of the increasing synergies between states and private entities in digitising courts? This post draws on recent judicial digitisation trends in Italy and the UK to assess the transformation of justice driven by private digital systems.

The digitisation of Italian courts

In 2021, [Italy's recovery and resilience plan](#) led to the adoption of the country's 2022-2026 National Plan for Justice. Based on a fund of 133 billion euros, Italy has planned to invest in the digital transformation of its justice system. This programme aims in particular to digitise the judicial archives of the last ten years, primarily focusing on civil justice; to establish a data lake with the support of universities for the anonymisation of civil and criminal decisions; to create a public repository for the decisions of civil courts; and to introduce advanced systems to collect information about the performances of

courts and other data. The Italian Ministry of Justice has also set up a new department for the transition to digital justice.

This intervention has been primarily justified by the limited application of digital technologies in the Italian justice system. The only exception is the digitalisation of some processes in the field of civil justice, such as dematerialisation and digital signatures, which have been consolidated in the last ten years, thus becoming a mandatory standard for Italian civil justice.

This approach has recently been expanded in other areas of justice such as criminal and administrative justice. Both systems have now opened their doors to forms of digitisation, but it is the civil justice system that is the main driver of the digitisation of the public sector in Italy. The relevance of this model in the Italian justice system is also underlined by the adoption of similar standards in the civil justice infrastructure in the case of tax commissions and constitutional justice. Even sport justice, which has traditionally been governed by private rules, has implemented a similar system supported by a FIFA grant.

When looking at the courts, these systems are primarily public and managed by the Ministry of Justice, which is responsible for different tasks ranging from oversight to providing technical standards. The Telematic Services Portal provides access to the use of services in the civil and criminal fields aimed at professional users (such as lawyers, accountants and expert witnesses) and non-professional users (such as citizens and associations).

However, some of the services associated with the infrastructure of digital justice are provided by the private sector. Digital signatures and certified e-mails are two examples of how private actors participate in this system. The development and maintenance of the infrastructure of digital justice has also been entrusted to private actors. For instance, Netservice developed the first digital infrastructure for civil justice and has also won a tender of 21 million euros from the Ministry of Justice for the maintenance of this system. This is partly financed under the National Operational Programme Governance and Institutional Capacity ESF-ERDF 2014-2020.

The role of private actors in the field of justice is also predominant when looking at the tools that courts use in their workflow. Notably, Italian courts rely on Microsoft software such as Word and Teams. The pandemic saw the further expansion of private systems in

the field of justice, as underlined in the case of digital hearings. While these systems were introduced to address the challenges of the pandemic, they have become the rule in some areas of justice, primarily in tax commissions.

Furthermore, the role of public-private collaboration has the potential to grow further in the future. The Agency for Digital Italy and the Ministry of Justice have signed a memorandum that aims to support the Directorate General for Automated Information Systems of the Department of Judicial Organisation to use procurement to meet its innovation needs. This process is based on the latest [three-year plan for information technology](#).

Digitisation in the UK

In the aftermath of Brexit, the British government has sought to enhance the status of the UK as a technology hub, including in the public sector. Yet, even before the Brexit referendum in 2016, plans had already been put in place to digitise the country's public administration, especially in relation to the justice system.

Interestingly, the push to digitise the work of the UK's courts began following the adoption of the [Legal Aid, Sentencing and Punishment of Offenders Act](#) (LASPO) in 2012. This framework received [substantial criticism](#) as it effectively introduced funding cuts to legal aid, meaning fewer people were able to access legal advice following its implementation. Several concerns were raised about the impact of the act on citizens' access to justice.

In March 2014, the Lord Chancellor, the Lord Chief Justice of England and Wales and the Senior President of Tribunals announced details of a programme of reform for courts and tribunals. At the heart of the programme was the use of technology and the principle of proportionality. According to this digital strategy, transactional matters (such as the administration of probate or pleading guilty to a minor offence and paying a fine) would be dealt with using digital technology to make the processes straightforward.

The digital transformation of the UK justice system has since relied on consultations involving both private and public stakeholders, and on close cooperation with private providers through public procurement. According to a [report published](#) in 2018, the main stakeholders working with HM Courts and Tribunals Services (HMCTS) include, among

others, Citizens Advice, the Bar Council, the Law Society and the London School of Economics, as well as private contractors such as Atos, G4S and Mitie.

One of the most advanced systems in the UK judicial digitisation strategy is [Money Claim Online](#). An [online civil money claims pilot](#) has also been established which will operate from August 2017 until the end of November 2023. The pilot was created via public-private cooperation through public procurement. In October 2017, Kainos, a software development company listed with the London Stock Exchange, was awarded a contract worth [£4.8 million](#) to launch the pilot.

The purpose of the pilot is to test an online claims process that provides a quicker, more user-friendly way to start an action in the County Court for amounts up to £25,000 (£10,000 for unrepresented parties). A beta version of the online portal for the pilot is [now available](#). Users engaging with the platform have reported [confusion and numerous technical issues](#). This has required further resources to be invested by HM Courts and Tribunals to improve customer experience.

Despite increasing the court digitisation programme's budget by around 10% in 2021 (from £1.2 billion to £1.3 billion) to reduce [delivery risk](#), HM Courts and Tribunals does not expect to be able to deliver the entire programme to its current timetable and full scope. It attributed around two-thirds of the total increase to cost underestimates in previous business cases, and 3% to the pandemic. Moreover, the expected savings from the programme have decreased according to a 2021 report by the [National Audit Office](#). This raises questions about the effectiveness and the financial viability of the UK's judicial digitisation strategy.

Emerging questions

The digitisation of justice in Italy and the UK are following different trajectories and rationales, but both feature significant interplay between public and private entities. Public-private cooperation in this space brings to the fore challenges concerning the protection of public values in the delivery of justice.

For instance, considering the dependency of the public sector vis-à-vis private providers and the significant investment of public resources to digitise public services, the motives and objectives of digitisation programmes should be carefully scrutinised and subject to

public debate. The *publicness* of state functions such as the administration of justice should be preserved and not made subject to private economic interests without in-depth and careful consideration. This is especially so for fields that are crucial to democracy and the protection of citizens' rights, such as the delivery of justice.

A related issue is what rules should govern the synergies between private and public entities in the digitisation of core state functions. As observed in the Italian and British case studies, public procurement rules have been central to this. But is the public procurement framework suitable to protect public values when digitising courts?

While these rules allow for a degree of transparency on the award procedures and contracts, they also focus on monetary efficiency while only protecting public values indirectly. Moreover, the contracts stipulated with private digital providers may deliver the digital transition after several years (often with delays). In the meantime, the technology for which public money was invested may have already become obsolete, with no effective gain for the public. These tangible risks relate to the *proportionality* and *accountability* of justice digitisation programmes.

Additionally, in both Italy and the UK the user experience has not played any significant role in shaping judicial digitisation strategies. This is problematic as the digitisation of justice should address how individuals interact with the technology, which ultimately shapes the ability of citizens to access justice and obtain protection of their legal entitlements. Enhanced *participation* from the public in the digitisation of the justice sector, including from stakeholders and users, would ensure that digital justice remains human-centric and as accessible as possible for all users.



This article is the first in a series of blog pieces drawing on research from the [DigiPublicValues: Preserving Public Values in Privatised Digital Systems](#) project – a joint CIVICA research project by the London School of Economics and Political Science (LSE), Università Bocconi, European University Institute and the Hertie School's Centre for Digital

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