

The AI Lawyer

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Over the last two decades, lawmakers have begun the digital transformation of the Italian civil proceeding, which impacts directly on the lawyers's legal activity. The lawyer has today the possibility of carrying out a professional activity outside of the legal office, since the legal practitioner can place its residence abroad, even if he/she works in Italy and he/she is registered to the Italian Bar Association. The legal activity so loses touch with the territory and it becomes harder to affirm where a certain activity has been conducted. This can have a great impact on tax matter.

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Introduction

Technological progress has a huge impact on the world we live in, as well as on the legal field. The experience of the pandemic crisis enhanced the transformation which tends towards a digital justice which on a national and supranational level demands the use of technology tools in the civil proceeding. The implementation of IT systems and the overcoming of the traditional way of working have directly affected individuals, in general, and more specifically, lawyers who became “digital lawyers”.

Over the last two decades, lawmakers have begun the digital transformation of the Italian civil proceeding, which impacts directly on the lawyers's legal activity. The telematic civil proceeding (so-called “Processo Civile Telematico”) so as the tax telematic proceeding was introduced, leading to the digitalization of the legal activity and encouraging its delocalization. According to the telematic proceedings, lawyers are able to interact virtually, to make or receive summons or communications and to pay judicial expenses digitally but it turns out that the lawyer cannot be considered fully digitalised because there are parts of the proceeding which are not fully digitalised yet. The bond between the legal practitioners and the analogic dimension takes place where the digitalization of the proceeding withdraws.

As a result, the legal activity loses touch with the territory and it becomes harder to affirm where a certain activity has been conducted. It is going to become a “non-territorial” system.

Consequently, the possibility of carrying out a professional activity outside of the legal office has also tax consequences since the legal practitioner can place its residence abroad, even if he/she works in Italy and he/she is registered to the Italian Bar Association. This new way of working guarantees more flexibility, a better time management—as there is no need to travel to the workplace—and it improves work-life balance, with benefits for the effectiveness of the activity but at the same time it becomes harder to communicate clearly and effectively

with clients and colleagues, leading to health issues including social isolation and chronic stress. Digital lawyers are flawed, that's where the research project reveals the need of defining their essential features either under a sociological and a financial perspective. In order to address the questions which arise daily from the activity of a digital lawyer, it is necessary to undertake an interdisciplinary survey that brings together a range of professionals.

The Impact of AI on the Role and the Operativeness of the Lawyer

Since the digitalization of the legal profession entails more than just the use of technology tools, the legal practitioner is built with unique features, gaining from the potential of the technology. The lawyer of the digital era can work without being necessarily tied to the legal office since he/she may visit his/her client at his/her place or elsewhere, either online or in physical location. Pursuant to Law No. 247/2012, the domicile where the lawyer practises, so called "domicilio professionale", may correspond to the lawyers' place of residence, as the place of receipt for all communications and legal deed's services.

The "domicilio professionale" is a fundamental requirement for the application at the Italian Bar Association but it plays a secondary role in the digital domicile. In fact, the digital domicile pairs with the "domicilio professionale" but prevails on the latter, as established by the Italian Supreme Court (Decision No. 39970/2021).

As a result, the legal practitioner's activity faces delocalization and dematerialization.

Firstly, due to the implementation of the telematic civil proceeding, the lawyer can work in Italy even if his/her residence is outside of Italy. This is possible even if the civil proceeding maintains connections with the analogic dimension. Secondly, thanks to the opportunities offered by technology, the legal practitioner can conclude contracts (so called "smart contracts"), give legal advices online and appeal to marketplaces like a "showcase" for advertising and communication of his/her legal activity.

This new way of working guarantees more flexibility, a better time management—as there is no need to travel to the workplace—and it improves work-life balance, with benefits for the effectiveness of the activity. However, working remotely and, more specifically, the difficulties in understanding the meaning of non-verbal acts, makes it harder to communicate clearly and effectively with clients and colleagues, leading to health issues including social isolation and chronic stress (so called "technostress").

The possibility of carrying out a professional activity outside of the legal office has also tax consequences. Since, the legal practitioner can place its residence abroad, even if he/she works in Italy and he/she is registered to the Italian Bar Association, it becomes necessary to establish where to tax the incomes from his/her activity according to the Article 2 of the "Consolidated Income Tax Law" ("Testo Unico delle imposte sui redditi").

In conclusion, the digital revolution demands new considerations about the legal practitioner, who has undefined and unique characteristics. The modern digital society requires "millennial lawyers", who are hybrid, digitalized, delocalized, and able to keep up with the new legal technologies.

Over the last two decades, lawmakers have begun the digital transformation of the Italian civil proceeding, which impacts directly on the lawyers's legal activity.

According to the telematic proceeding, lawyers are able to interact with the legal departments and their employees, like judges and clerks of the court. Moreover, it allows legal practitioners to file a digitally-signed version of a judicial pleading with the Court, to consult their digital paper trial, to make or receive summons or communications and to pay judicial expenses digitally.

The pandemic crisis has accelerated the adoption of new technologies and its integration into the legal practitioner's activity, leading to the introduction of virtual hearings and digitalised proceeding.

The new rules introduced with the above-mentioned reform in the light of simplification, readiness, and rationalization concerns different fields.

First of all, the electronic proceeding regulation shall be applied to all proceedings even in front of the Italian Supreme Court.

Secondly, the reform concerns the service of judicial documents by electronic means which shall prevail on the analogic one.

Thirdly, it becomes mandatory to file judicial expenses (so called "Contributo unificato") through the electronic system (PagoPA).

Fourthly, the hearing can be held remotely whenever no one other than the parties and the defending lawyer is required to attend. Consequently, virtual hearings shall be outlawed when witnesses have to be examined.

In conclusion, the lawmakers' aim was clearly to reach a complete digitalization of the civil proceeding. However, there are still parts of the proceeding where the analogic dimension cannot be substituted and it has an impact on the digital lawyer's activity. Regardless of the normal hypothesis of the malfunctioning of the telematic civil proceeding, there is still a connection between the analogic and digital field each time a legal practitioner interacts with an individual physically. However, the lack of a digital identity of the individual blocks the dialogue with the legal structure, forbidding the lawyer to pursue the trial in an entirely digital dimension.

As a result, it turns out that the lawyer cannot be considered fully digitalised. The bond between the legal practitioners and the analogic dimension takes place where the digitalization of the proceeding withdraws. Digital lawyers are flawed, that is where the research project reveals the need of defining their essential features either under a sociological and a financial perspective. This is essential if the practitioner wants to work in a digital world, keeping up with other professions.

The Impact on the Fiscal Rules

The evolution of the legal activity through the introduction of new ways of working, shall be very interesting also under the tax system point of view.

The functioning of tax institutions is typically linked to the territory: the traditional approach has always valued the physical place where the activity takes place. For example, the Article 23 of the "Consolidated Income Tax Law" (also known as the "Testo Unico delle imposte sul Reddito") localises the incomes of non-resident and self-employed individuals (such as lawyers), through a unified standard which is "the place where the activity takes place".

Although it is necessary to establish a physical location where the activity takes place, this may be difficult because the legal activity is now generally conducted using digital means, which are inherently non-territorial. The above-mentioned criterion refers to the traditional way of carrying out the legal activity so it has to be revised taking into account the new activities characterised by virtuality which entail a physical absence from the territory.

The legal activity could be located everywhere, because the lawyer can practise without leaving home. Consequently, it is not easy to argue that an activity has been carried out in Italy if the lawyer takes the mandate by electronic means, consults databases, services documents with certified e-mail, interrogates telematic folders,

participates to online trials, receives online judicial hearing verdicts, and hypothetically is paid from a foreign bank account.

As a result, when the whole activity of the lawyer loses touch with the territory, it becomes harder to affirm where a certain activity has been conducted.

There are many issues—mainly of perspective—as this world is constantly and irreversibly evolving.

For example, it can be argued whether or not a lawyer has to pay taxes in Italy for his/her activity when registered at the National Bar Association “Consiglio Nazionale forense” if he/she has his/her residence in a foreign country. On the one hand, there is a duty to have a physical residence in Italy (cfr. Opinion No. 46/2019; Opinion No. 5/2019, and No. 62/2018), on the other hand, it comes out that the notion of residence is becoming increasingly formal, as it is not used straightforwardly in the performance of the activity. The “center of main interest” criterion remains the most commonly used for national and international matters and it implies an obvious material settlement, which derives the activity that generates income. This reflects the difficulty encountered in managing digital multinational earnings, which, by definition, lacks a physical establishment. The project aims to give answers to the question raised, by verifying if the circumstance of having a physical residence, ruled by the Bar Association, could be qualified as financial residence according to the Article 2 of the “Consolidated Income Tax Law” (so called “Testo Unico delle imposte sul Reddito”).

One of the main and most relevant changes introduced by the digital revolution is without doubts the impact on the physical environment. Given also the tremendous acceleration promoted by the pandemic crisis, the disappearance of the office is quickly emerged as growing and tangible reality.

The radical and historical revolution pushes the lawyer and the individual towards a totally new setting, both professionally and existentially. The possibilities of operating virtually from “everywhere” and “at any time” provide the lawyer unprecedented necessities and opportunities to better manage connections and interrelations between personal and professional needs. Flexibility, adaptability, time, and resources savings are just some of the positive outcomes that easily come to mind. Efficacy, effectiveness, and the overall balance of the professional practice could easily be enhanced by these opportunities, but only if well-adjusted and correctly integrated in the new profile of the contemporary digital lawyer. In fact, working from home-office setting could result in complexities and relational issues with clients, colleagues, and in general with any other figure involved in/by the legal activity.

The Impact on the Existential Landscape of the Lawyer

The increasing digitalization affects not only the professional activity but also all the existential landscape of the lawyer. The legal practitioner is faced with screen and devices exposure-time, the need for new and diverse competencies that are not directly referred to the traditional professional practice, the need for a lifelong based approach and safety/privacy/cybersecurity.

In addition to technical knowledge and specific training needs, the digital paradigm profoundly redefines the whole relational sphere of the lawyer, as a single individual/professional, at a broader social level, and in his/her relationship with family, relatives, and acquaintances. The so-called “technostress” can therefore emerge at various levels, and with respect to different spheres, both in the job and in the personal domain.

Professional and technological development will therefore need to be better and holistically integrated, with a radical reconsideration of the subject's entire digital ecology.

Conclusion

In this technologically-transformed dimension, the digital lawyer gives up his/her traditional identity and gains new skills. The encounter with technology results requires a rethinking of the lawyers' educational path.

We should think to develop a sort of a "vademecum" of the legal activity of the digital lawyer.

The deep changes produced by the spread of high-tech devices and services undoubtedly introduce enormous advantages, but beyond them also a host of unprecedented potential problems.

Indeed, even the simplest of factors, such as the virtually-unlimited availability allowed by modern devices for some time now, should be considered more carefully. The work-life balance, the type and quality of interpersonal relationships, and the virtual zeroing of travel represent not mere details, but urgent issues which require careful reflection. The necessity of reaching a better work-life balance is widely recognized since more than two decades, but the impact of the pandemic crisis indicates a renewed and furtherly increased need to act in this direction, in order to positively sustain the profound changes of the contemporary society.

References

- Belisario, E., & Cassano, G. (2023). *Intelligenza artificiale per la pubblica amministrazione*. Pisa.
- Del Federico, L., & Paparella, F. (2023). *Diritto tributario digitale*. Pisa.
- Marello, E., & Contrino, A. (2023). *La digitalizzazione dell'Amministrazione finanziaria tra contrasto all'evasione e tutela dei diritti del contribuente, Vol. II*. Milano.
- Mastoiacovo, V. (2024). *Giocare con altri dadi. Giustizia predittiva e predittività dell'algoritmo*. Torino.
- Natale, G. (2024). *Intelligenza artificiale, neuroscienze, algoritmi*. Pisa.
- Pierro, M., Ziccardi, G., Capaccioli, S., & Signorile, O. (2023). *Fsico digitale*. Torino.