JUSTICE AS A PUBLIC SERVICE (PUBLIC OFFICE AS A CONSTITUTIONAL AUTHORITY). CRITERIA OF COST-BENEFITS EVALUATION OF JUDICIAL REFORMS RELATING TO GROSS NATIONAL PRODUCT AND FISCAL BUDGET.

1- JUDICIAL REFORMS AND NATIONAL WEALTH.

When confronting with the problem of the effects of any “Reform” impinging with any Judiciary system, accuracy and soundness of elicited results should lead legislators to consider the proper assumptions, terms and consequences of the new regulation to be introduced.

As a reasonably required starting point, the recognition of the “field”, to which bring in any changement or alteration, should consider the actual “value” that measures the general “utility” of the present legal system in order to correctly appraise the positive differential benefit of the new rules.

This value should embrace the whole contribution of judicial activity to Gross National Product (GNP). It could result in a complex and difficult task and nonetheless the attempt would be able to dissipate uncertainties and miscalculations stemming from any mental habit that could lead to uncorrect planning of reforms in the matter.

The starting point should be to set the value of judicial activity as a whole related to the component elements of GNP [C+I+(G-T)+ (X-M)].

We can even more “safely” address the issue by assessing the productivity for each unity (judge) given by the sum of the whole (in terms of GNP) divided for the number of judges.

According to the basic criterion adopted to estimate the GNP, the value of a general “service” (due to the rationale of considering not possible to correlate full costs to a remunerating price or fee to get the access to the service), is usually taken into consideration as the global amount of retribution (wages) paid to judges.

In order to have a more precise and accountable use of this same and also alternative criteria, we ought to opportunely consider the distinction between “ordinary” (from a constitutional point of view, whether provided), that is civil and criminal law judges, and other “special” judges, like the “administrative” judges, and in such a case, any other “voice” of cost-benefit, later on specified, should be taken into consideration for each separate given category of judges.

2- A RATIONAL FULL-IMPACT BASED APPROACH.

To consider just the traditional criterion of the amount of retribution can reveal itself as un incomplete and not sufficiently reliable method to estimate the effect of judicial reforms.

Judicial activity appraisal can so be referred not only to the “trial-proceedings”, taken in themselves, as an allegedly exhaustive consideration of judicial activity “output”, especially given just by the number of “settled” case-proceedings (by any category of final “decision”).
This traditional criterion ends up in assigning a “quasi-zero” value to the real “core” of this activity (the “Judicial”) in terms of complete and actual correlation to GNP, all absorbed into the evaluation driven by the standard in terms of retribution-wages.

2.1. What, instead, is not considered by the traditional approach is the autonomous “quality” of the formal, substancial and economic “fall-out” of such “output”: in fact, the judicial decision, settling a controversy, according to legal (and most of the times constitutional) provisions, has the “strength”, the “binding” attitude, to irrevocably assess and define (“to compone”), “once and for ever”, the correct legal and economical balance of the transaction-act of exchange that gave rise to any controversy/litigation.
2.2. Taking this definition of a more engulfing (social and economic) output as a keener and more precise point of reference, we could argue that:
a) the “composition” or “end of uncertainty” related to the judicial settling-decision of the case can be economically referred to parties involved into the proceeding, but it’s univocally, inseparably, consequential to the decision itself, and is not, therefore, absorbed and “discounted” in the criterion of retribution-wages, only related to the preliminary (prior) proceeding as a “phenomenon” arbitrarily considered as separable from the effect of the “end of uncertainty”;
b) the “value” of the peculiar and additional legal effect of judicial decision-making, however established as the main, inherent, goal of the entire judicial activity, can also be considered as the plus-value “added” to the previous value (in terms of commercial credit “discount”) of the same sum-credit (assessed by the decision) estimated before the judicial settlement;
c) so we should estimate a differential determined by the (negative) variation of the interest-rate on the operation of “discount” of such sum-credit, interest usually increasing with the “risk” and the uncertainty in time-line of the fulfilment-payment of any debt (stemming from the “facts” object of the controversy). We can surmise that, before judicial decision, the capital value of the credit is in inverse relation with an increasing “insurance-cost” (in various forms) against the risk of debtor insolvency (whoever is assumed as a debtor in a given controversy), that is, being this cost (or interest) the highest when most distant in time, and most controversial, the assessment-fulfilment of the alleged credit;
- this insurance-cost is a common criterion to estimate the value of any credit, in international commodities transactions (for instance settled by a CIF-cost insurance fright- clause) as well as in

financial contracts (national and international), whereas, in an open capital market, we find derivative instruments (so called “over the counter”) negotiated between parties that correspond to an insurance cost (credit default swap-CDS) that influence the cost-interest of “discount” of the credit and decrease its capital value in terms of price of selling.

So when judicial scrutiny of the case (transaction) is involved, we can assume (as a line of general trend) that the cost/risk of “uncertainty” is to be “covered” not by a direct system of insurance (though the concomitance of both can occur) but by the activation of the distinct system of legal remedies accompanied by the stipulation of a contract with a legal-counsellor.
In this perspective, the voices matching the insurance cost are corresponding to:
- cost of legal counselling;
- cost of any tax-fee-contribution due by the parties (especially the plaintiff) to set up, that is put into action, the judicial litigation.

3- TWO DIFFERENT POSSIBLE AND PARALLEL POINTS OF VIEW.
It has to be pointed out that here are considered items named as “costs”, but is to be remembered that, since we are trying to estimate the whole range of contribution of judicial activity (fully taken as trial-proceeding *plus* decision-making effects) to GNP, these costs, related to a contract of legal counselling, is an income, that is a “consumption”, adding to and increasing the GNP and, on the other hand, a “tax” is a “cost” that diminishes the same GNP, *though improving the balance of fiscal budget*.
3.1. Assuming this very latter point of view, we have a distinct consideration of the same phenomenon in terms of IMPACT ON PUBLIC BUDGET, or, otherwise, in the alternate and concomitant IMPACT ON GNP.
In this perspective, we have the *cost /public expenditure*- of retribution to judges, and of auxiliary staff and organisation (buildings and other mobile goods deemed as necessary).
On the same level, we should consider all taxes and active voices of revenues, such as contribution charged to the parties to set up legal procedures, and in addition, any further tax or levy stemming from the “specific” consideration of the judicial output previously defined, that is all taxes and levies that, lacking a “flow” of judicial decisions and their binding effects, would remain merely theoretical (income and consumption taxation, or indirect taxes on transfer of property).
In the end, we have to consider all those judicial-consequent fiscal incomes, that is the ones that in absence of a legal system of decision making on controversies, wouldn’t (ever) be paid to the public “Revenue”.

So the *regulatory impact of new legislation on the judicial system* can be defined by these concomitants criteria:

A- In relation to positive ("incremental") contribution to GNP, Judiciary as a "decision-making" oriented system can be estimated tantamount to:

- amount of retribution paid to judges;
- amount of public expenditure related to auxiliary staff and organization;
- amount of income/fees of legal counselling stemming from the litigation activity, preordinated to, preparatory to and directing occurring into a trial and, besides, stemming from its peculiar effects, such as judicial enforcement-executives procedures following a decision.

From all these amounts, anyway, must be deducted the taxation and fiscal revenues corresponding to each voice.

Thus, "GNP-productivity" of the Judiciary "per unit" can be estimated by summing up the "net" (after taxes) amount of these three active entries and dividing the result for the number of judges involved, having so a calculation that measures a "product" larger and more complex than wages summing up, or the mere time-application and number of decisions related to the "activity" taken as procedure-trials series of act in themselves.

We can also assume that the cuts, provided by any "reform" legislation, in the first two of the above considered items of contribution to GNP diminishes directly, in themselves, GNP, and have also obvious and apparent decreasing effects on the third voice.

Infact, for instance, less paid and less "organization-supported" judges can, in the short term, (but not reasonably in the "long"), even keep up with the same number of "decisions-ouput"; nonetheless, due to the economical law of decreasing marginal productivity, these same "outputs" are bond to loose their ability to guarantee "the end of uncertainty" and the soundness-steadiness of the offered solution: the decreasing marginal productivity is likely to provoke a "natural" loss of technical quality of decision, converting in further more frequent controversial issues, especially due to extraordinary remedies legally provided in case of "abnormal" decision or in case of giving up, by the parties, to put into action the trial system, having to face a widespread inconsistent jurisprudence.

It would be so reasonably relevant to measure the increasing number of such extraordinary proceedings and also the (real meaning of) eventual decrease of the "caseloads" (yearly compared

to previous periods) in situation of prolongued lack of adequate resources for the Judiciary or of substanined policies of cost-cuts.

3.2. **B- In relation to public financial impact (on fiscal budget**), should be estimated public "expenditures"(costs) in opposition to tax-public revenues (incomes):

Public expenditures (public liabilities) are :

1) retribution to judges;

2) expenses for auxiliary staff and organization;

Taxes-incomes, (active revenues) are:

1) contribution due on occasion of proceeding setting-up;

2) taxes imposed and collected on the income of counsellors-lawyers directly stemming from the trial-related activities;

3) direct or indirect further taxation rising from the execution and/or compliance with the statements of judicial decision.

In both the adopted points of view (budgetary or GNP variation), as both related to potential effects of judicial reforms, we can assume that cost-cuts policies can provoke an illusory relief to public expenditures but a longer term worsening of fiscal revenues and, with major predictability, of GNP growth.