

THE CIVIL SERVICE

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1. A BRIEF HISTORICAL NOTE

The first organic regulation of public employment in Italy can be traced back to the Act approved by Giovanni Giolitti in 1908. The Act had two main purposes. On one hand, it aimed to guarantee the impartiality of public administration, protecting the civil service against arbitrariness on part of the Government. On the other hand, the so-called “Statuto Giolitti” had been issued to bar the civil service from unionizing.

Thus, a special regulation had been applied to all public employees, including those holding middle and lower-rank positions. The Parliament granted civil servants wages and rights which were not available for private employees at the time.

The same approach prevailed during the Fascist period. In 1923, a second statute had been introduced by Alberto De Stefani. This Act, influenced by the new political culture, was largely based on the principles of hierarchy and uniformity, following the example of the military administration. According to that model, the State set, somewhat unilaterally, the rights and duties of its employees. The Act also established that all disputes concerning public employees were to be settled by the judge for the Public Administration, the State Council. This provision turned out to be decisive in consolidating the peculiarity of public sector employment relationships, which had already been widely recognized and supported by legal scholarship.

The advent of the democratic Constitution in 1948 altered this state of affairs only to a marginal extent. The third statute on public employment (Decree of the President of the Republic No. 3 of 1957, still in force for certain categories of employees such as the police forces), largely re-presented solutions (related to career paths, duties, and guarantees) which had already featured in the De Stefani Act, despite its initial ambitions and also due to the civil service's resistance to change.

In the latter half of the 1900s, the number of public employees grew robustly, together with the increase in public offices and the intensification of State intervention in the economy and society. Public employment became the most desirable (but often also the only) professional outlet for the middle and élite classes in Southern Italy, which suffered from pervasive unemployment already then. The Italian "Southern Question" thus became indissolubly linked to the "administrative question".

Complaints regarding the civil service were widespread and concerned several factors, including: public employees' inefficiency and low productivity; the scarcity of merit-based incentives; the irremovability of employees; favoritism in recruiting and promotion processes; the excessive cost burden imposed on the State budget.

In the 1980s, pursuant to the Giannini Report on the status of the public administration, the first reforms were attempted. These eventually led to Law n. 93/1983 (the so-called Civil Service Framework Law), which, however, still featured compromises to an excessive degree.

A clear paradigm shift took place only in the early 1990s, during the period of severe economic and political crisis known as *Tangentopoli*.

In-depth reforms became necessary, especially to restrain the impact of the civil service's inefficiencies on the public debt's growth. The ideas and reform projects derived from the "New Public Management" philosophy, which had already successfully taken root in the Anglo-Saxon world, easily entered the Italian scene, partially facilitated by the presence of several technical experts in the governments of the time.

2. THE 1990S REFORM

Two guiding principles of New Public Management in particular were transposed to the Italian administrative system: the distinction between management activities on one hand, and direction and control activities on the other; and the diffusion of contractual and market models in the public administrative context.

The first principle led to reformation of the civil service's management classes; the second, instead, to the privatisation of public employees' employment relationships.

2.1 The new public sector management

Before the 1990s, administrative civil servants did not possess specific, clearly defined, competences. Even as far back as the 1970s, laws had been enacted for the purpose but were never applied (namely, the Decree of the President of the Republic No. 748 of 1972).

In practice, all public measures, contracts, and even documents establishing the organization of facilities and staff were adopted or concluded by ministers directly.

Senior civil servants never sought to claim greater powers for themselves. In return, politicians allowed the class to independently regulate its career paths, which featured definite and predictable seniority-based advancements. This tacit deal – defined by Sabino Cassese as a “certainty-power exchange” – led to inefficiency and deterioration in responsibility.

This perspective was inverted upon issuance of Decree No. 29 of 1993, according to which only public managers (as opposed to political leaders) “are responsible for administrative activities, for management and related results”; they hold specific expenditure and organizational powers; they adopt all acts which create obligations binding the administration towards external parties. Ministers may not directly interfere with administrative management; instead, they may only provide direction for managers’ actions and, by liaising with offices instituted for the purpose, ensure the achievement of operational objectives and the efficient management of resources.

However, the decree also granted ministers the power to appoint and dismiss managers. At first, the power was exercised only occasionally and extremely carefully, in deference to the tradition of career self-regulation; however, subsequently, increasing and more incisive use of the power was made.

In particular, since reforms introduced in 1998 (with Legislative Decree No. 80 of 1998 and Decree of the President of the Republic No. 150 of 1999), appointments to the civil service became fixed-term and fiduciary in nature, and could be confirmed or revoked at the minister’s discretion. Also, ministers may relieve managers of their tasks or confer merely auxiliary duties upon them.

Thus, the executive, once again in the position to influence public sector managerial careers, regained its capacity to interfere with administrative activities, a capacity that it had lost through the operation of the principle of distinction between functions. However, public sector managers were compensated with significant wage increases.

The “Italian-style” spoils system, a middle ground between a merits-based system and pure political patronage, became entrenched: public managers may be selected by means of an open competition, receive high wages and enjoy tenure, but their career is controlled by the executive.

2.2. Privatisation of the employment relationship

As outlined above, for almost a century, Italian public employment was at all levels characterized by unilateral regulation and by the jurisdiction of the State Council. Transfer of an employee, disciplinary measures, and even payment of wages were deemed to be administrative acts, and thus subjected to a special legal regime. Public and private employment relationships were considered “ontologically” different.

This logic too was reversed by Decree No. 29 of 1993, which established that all measures relating to employment relationships (including recruitments and dismissals) were to be given the same legal treatment as those taken by private employers. Only open competitions would still be regulated by parliamentary laws, to ensure impartial and meritocratic selection processes.

Today, public sector employment relationships (including issues such as working time, leave, disciplinary duties, transfers, wages, etc.) are regulated by collective bargaining agreements negotiated every four years by the principal trade unions and the ARAN, a government agency.

The approval of collective bargaining agreements automatically annulled the hundreds of specific laws and regulations which once regulated public employment and often gave rise to injustice and serious inequalities (i.e. the “wage and normative jungle”).

However, the introduction of private law did not also bring the efficiency which characterizes private undertakings. The cost of public employment had shrunk in the 1990s but returned to rise in the last decade, at rates even twice those of inflation and of the cost

of private work. Furthermore, at a local level, promotions and career advancements were laxly granted, without organizing open competitions but on the basis of mere seniority.

Attacking these practices would have been extremely costly for governments, in terms of political consensus. To reduce the cost of public employment, recruitment policies were intervened upon, in particular through measures preventing turnover. Consequently, in recent years, young graduates have entered the public administration largely by means of fixed-term contracts, without any right to job stability.

3. THE BRUNETTA REFORM

In 2009, with the enactment of Law No. 15 and the subsequent delegated decree No. 150 (which, together, introduced the so-called “Brunetta” reform), Parliament initiated an in-depth review of the law governing public employment. In particular, the role of collective bargaining agreements and of other forms of trade union participation were significantly scaled down, while the management powers granted to the senior civil service were enhanced.

3.1. The subjects and procedures of bargaining and concertation

Prior to the Brunetta reform, all aspects of employment were negotiated with trade unions. Formal national collective agreements governed regulation of the employment relationship. Merit-based incentives were established by complementary agreements negotiated within individual administrative bodies. Working time, transfers, staff evaluation and salary scales were all matters of “concertation” (that is, of discussion and informal agreement) with trade unions. Trade unions had to be informed and consulted regarding all other organizational decisions.

Since the reform, regulation of many of these aspects is reserved to laws, regulations and unilateral measures taken by administrative bodies (articles 5, 9, 40 et seq. of Legislative Decree No. 165 of 2001). Such aspects include: serious disciplinary measures and the disciplinary process, job mobility, career paths, staff evaluation and the distribution of productivity bonuses. Concertation practices have been de facto abolished, and general policies governing the organization and management of employment relationships need now only be communicated to trade unions.

The procedures that regulate collective bargaining were also thoroughly reviewed. First, control mechanisms were reinforced: national agreements now do not enter into force until they have been approved by the Italian Court of Auditors (previously, the same Court only gave a non-binding opinion); in addition, complementary contracts too are sent to the Court and to the State General Accounts Office, to verify the compatibility of the costs envisaged with the public budget.

Second, the law establishes a specific timeframe for the completion of negotiations with social partners; furthermore, public administration bodies may now unilaterally decide upon all issues that were previously regulated by means of complementary agreements. Trade unions are no longer in the position to paralyze the choices made by administrative bodies, but may only call strikes, as occurs in the private sector.

3.2 Performance management cycles, career advancement and productivity bonuses

The system for evaluating staff performance was entirely reformed (Titles II and III of Legislative Decree No. 150 of 2009). Today, the relevant guidelines, procedures and general criteria are uniform and established for all public administration bodies by the Independent Commission for Transparency and Integrity (Commissione indipendente per la trasparenza e l'integrità, CIVIT).

Furthermore, independent evaluation entities have been established within all administrative bodies; their tasks are to create a system for tracing and measuring individual workers' performances, and to compile a competence- and results-based "ranking of individual employee evaluations". Managers and heads of offices provide the findings required for the evaluation.

Productivity bonuses must now be distributed on a differential basis, i.e. only to the employees who have achieved the best results (previously, bonuses were distributed to all employees on an egalitarian basis).

Promotions too are based on a "merit scale" and granted to a limited number of employees, within budgetary possibilities. The law provides for two types of advancement: "horizontal" advancements, which are purely economic and consist of regular wage raises but unchanged tasks; and "vertical", or career, advancements, which entail regular wage raises as well as additional and more significant tasks. Vertical advancements may be granted only if suitable vacancies arise within the workforce, but may only be relied upon to fill up to 50% of such vacancies; the remaining posts must be filled by means of open competitions (previously, in practice, over two-thirds of such vacancies were reserved to internal candidates).

3.3. Penalties and disciplinary proceedings

The reform impacted upon three aspects of this area especially, (Articles 55 et seq., Legislative Decree No. 165 of 2001).

First, new grounds for dismissal were established to address certain particularly common forms of misconduct, such as false reporting of attendance, submission of false medical certificates, and making unjustified and repeated absences.

Second, disciplinary proceedings may continue concurrently with any criminal proceedings which may have been brought to address the same facts. Before the reform, it

was necessary to await conclusion of the criminal trial: in the meantime, the employee, continued to receive partial wages even if he or she was suspended from work.

Finally, the duration of disciplinary proceedings was shortened, and the powers of control and repression enjoyed by heads of office were enhanced; indeed, these officers may now directly impose less serious penalties, without forwarding the case to the specific disciplinary offices, as was the case previously.

3.4 The management

The law sought to strengthen the role and independence of managers (Articles 16, 17 and 19 of Legislative Decree No. 165 of 2010). On one hand, managers may perform their functions with less interferences, due to the reform of relations with trade unions: organizational and management deeds must no longer be subjected to agreement or concertation, but may now be adopted through unilateral decisions. Furthermore, as mentioned above, managers have been granted new powers and responsibilities relating to disciplinary matters.

On the other hand, the Brunetta reform also sought to limit the extremes inherent in the “Italian-style” spoils system by providing for greater job stability and establishing an obligation to provide reasons in case of managers’ dismissal. However, some of these new provisions were annulled after only a few months, by means of a decree-law (No. 78 of 2010): therefore, ministers’ interests in selecting and controlling the career progression of the civil service’s upper management have prevailed.

3.5. Early implementation of the reform

In the course of 2010, implementation of the reform was largely paralysed, or at least hampered by the need to fight the economic crisis, perceived in Italy and in other European

countries. For this purpose, extraordinary and emergency measures were introduced, among which bans or limitations on recruitment until 2015, bans on contract extensions and wage raises, and the reduction of resources to finance productivity and merit bonuses. (Article 9 of Decree-Law No. 78 of 2010).