

ON THE RELATIONSHIP BETWEEN THE POLITICAL AND MANAGERIAL LEVELS IN THE ITALIAN PUBLIC ADMINISTRATION REFORM

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Abstract

This paper deals with the Italian public administration reform, carried out on the basis of the “new public management” principles. This innovation is geared towards the introduction into the public sector of private management instruments, with a view to improving efficiency, effectiveness and financial stability.

In particular, the paper will focus on relations between political authorities and public managers. As it regards this, the measures introduced by the reform are mainly designed to ensure that managers have greater autonomy in dealing with political bodies. However, there has been growing criticism over the last few decades of the results of the system introduced by this reform. In fact, it has been observed how the new regulation provides juridical instruments which might influence the manager’s activities and his or her managerial autonomy.

This paper aims to explore whether such instruments can really affect managers, by preventing them from exercising their functions autonomously; it also aims to verify whether the regulation system introduced by the reform has really brought about a clear distinction between managerial and political functions or whether, on the contrary, it has only brought about a formal separation, which does not fulfill the goals of the Italian public administration reform.

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Introduction

Over the last few decades, Italian public administration has undergone significant reform, which has profoundly modified the previous structure. The aim of this reform was to rectify the structural defects in the system, which has led to inefficiency in public management and an improper allocation and utilization of resources. A further aim of the reform was to introduce private principles and instruments (such as managerial ability, accountability and control) in the public field in order to improve the efficiency, effectiveness and financial stability of state enterprise.

In particular, the reform introduces measures that are designed to provide greater autonomy to the executive body rather than to the political authorities (Cassese, 2003). At the same time, it offers politicians the power to carry out timely and regular evaluations regarding the efficiency, efficacy and financial stability of management action. Lastly, it would like managers to be involved in proposing strategic objectives. The reform, therefore, has the aim of creating a system which combines the principles of function separation and strategic interaction.

This paper will focus, in particular, on the relationship between politicians and public managers and is underpinned by analysis of the regulation (introduced by the reform) to observe whether its objectives have been achieved.

One of the main goals of the reform was to give public managers the same powers as private company managers have. Consequently, it was necessary to ensure that the management group had greater managerial autonomy from the political bodies, bearing in mind that before the reform politicians had the power to influence managerial action considerably. This often occurred because power was officially sanctioned to the political authorities so that they had the authority to substitute managers during the execution of their managerial functions.

With regard to this, the new regulation introduced by the Legislative Decree no. 165/01 (articles 4, 14, 16, and 17) has eliminated this power and seems to recognize greater managerial autonomy. However, Legislative Decree no. 165/01 also presents regulations that are unclearly-worded and, if applied to public administrations, might result in a consequent reduction in managerial autonomy (D'Alessio, 2005, a).

The regulation introduced by the reform has several "dark sides"; it could allow politicians to gain influencing powers over a manager's activities, something the reform was actually trying to eliminate.

This situation is caused by the presence of regulations that provide instruments (e.g. regulation of managerial positions [art. 19]; the spoils system[art. 19 par. 8]; top management positions [art. 19 par. 3] and the use of external managers [art.19 par. 6]), which could influence the activities of managers and their managerial autonomy.

The aim of this paper is to analyze the juridical-regulation issues concerning the relationship between politicians and public managers. It also intends to verify whether such juridical and organizational instruments can really affect managers in the execution of their duties. Lastly, this work aims to formulate hypotheses regarding legislative innovation to resolve the above-mentioned issues.

Scope, approach and limitations of work

The paper employs a legal approach and it is based on a juridical analysis of the new regulation. This analysis aims to verify whether the new regulation is really able to modify the previous system in accordance with the reform goals. It also analyzes the literature concerning the effects of Italian Public administration reform and the application of New Public Management principles in Italy and other countries.

The work stems from an initial field survey carried out by the author in the Ministry of Transportation and Infrastructures, through an interview with the Head of the Evaluation and Control Department; the objective was to understand managers' perceptions regarding the new regulation and, specifically, the extent to which greater autonomy to managers from politicians is actually granted.

The employment of a juridical approach is considered by the author as relevant to the research goals, since it allows one to verify to what extent a change in the regulation framework is able, by itself, to guarantee the separation of functions between politicians and managers and the recognition of greater managerial autonomy to public executives.

It is on this subject that we start our analysis, on the assumption that the regulation level is only a first step in the innovation process. In fact, this process must also embrace proper changes in the management system (e.g. planning & control tools and approaches, evaluation and career mechanisms, information systems, organization structures and mechanisms, management development systems, cultural development) and in the wider social system (e.g. implying a change in the system of values and perceptions of citizens and the wider community, and in the processes through which it communicates with the public sector, and evaluates its performance). More specifically, the thesis of this work is that the reform has not accomplished its goals, principally because it was not well designed by the legislator.

The limitations of this work are only related to the juridical approach adopted, with the initial limitation in the paper, in particular, depending on the elaboration of the analysis under juridical profiles alone. In fact, as previously stated, we understand that, in order to carry out a thorough field analysis, it is necessary to consider other relevant areas and topics, such as, for example, planning and control systems, career and retribution systems and other organizational mechanisms. These important variables will be analyzed in a subsequent stage of our research.

Another limitation of this work is represented by the completion of only one interview in the field analysis. A single interview does not actually enable one to gather the information and empirical data needed to sustain a general field analysis. Nevertheless, this interview is still useful for the validation of our thesis.

1. New Public Management and modernization of public administration

The public administration, in the last twenty years, has undergone profound changes linked to the altered socio-economic context of modern post-industrial societies. Previously public organizations had an organizational and managerial structure on the

lines of a bureaucratic model and did not possess the necessary capacity to deal with the new needs of the citizens. The rising complexity, the lack of financial resources and European politico-economic integration required a process of modernization in public administration. This process has affected: a) the managerial perspective, taking public systems in the direction of new principles and instruments to be used in the process of organizational, managerial and information system innovation; b) the political perspective, leading the public sector towards new forms of legitimization c) the juridical perspective, prompting the public sector to acknowledge the social-economic changes in society.

The above-mentioned reform process was based on the principles of “New Public Management” which proclaims: a) the replacement of centralized and hierarchical structures with plainer and more decentralized management areas; b) an increased focus on results in terms of efficiency, effectiveness and quality of service by setting standards of productivity; c) an orientation towards citizens-consumers in terms of service quality and customer satisfaction; d) the introduction of market mechanisms; e) a more strategic focus on the reinforcement of strategic capacity.

1.1. The modernization process in the Italian public sector

Modernization of the public sector in Italy started later and at a slower pace than in other countries (such as the United Kingdom, Australia and New Zealand) and has only started to speed up in the last decade. In particular, it has impinged on several aspects of the public administration system, mainly by:

- a) Changing the governance rules, through a redistribution of powers between the different levels of government; reforming the political system through the adoption of the majority system and, finally, considering the third sector as a relevant social actor;
- b) Introducing deregulation and a new perspective on citizens' roles and rights;
- c) Implementing privatization and externalization;
- d) Making provision for institutional decentralization and a substantial delegating of functions from the Central State to the Regions;
- e) Reforming accounting systems, ranging from legitimacy preventive controls to controls based on the evaluation of management performance;
- f) Changing decisional processes and organizational models, through the introduction of those operating mechanisms needed to bring about more performance-oriented management in public administration.

In particular, the main innovation introduced in this field regarded the recognition of the principle of distinction between politics and administration, the transfer from a bureaucratic model based on regulations to a managerial model based on performance and, lastly, the privatization of the state sector.

The new relationship between politics and administration necessitated providing politicians with orientation skills and public executives with managerial skills in

order to avoid political interference and to fully achieve managerial accountability in the sphere of management.

This is the principal element which distinguishes the old conception of public administration from the new. In fact, the previous decision-making process was plainly managed by politicians, while executives could not be rendered accountable for their activities. The new model, on the other hand, envisages public executives with greater managerial autonomy, and at the same it implies that managers have full responsibility for results achieved in the execution of their duties.

2. Reform of public management regulation

Public management was regulated in Italy since 1972, by presidential decree no. 748. This measure aimed to recognize precise competences in managers, but it did not deal with the hierarchical relationship which linked public executives and politicians. The political authorities were able to influence management activities through their power to lay down precise instructions for managers, their power of revocation and modification of a manager's actions and their power to substitute the manager in the execution of his or her duties.

This situation led to inefficiency in public management and an improper allocation and use of resources. For this reason, the Italian legislator, following the New Public Management guidelines, introduced private management tools into the public sector with a view to improving its efficiency, effectiveness and financial stability.

With regard to the relationship between politicians and public managers, the reform aimed to give public managers the same powers as private company managers. Consequently, it was necessary to ensure management had greater autonomy from political bodies, bearing in mind that the previous regulation recognized in politicians the power to influence managerial action considerably.

The innovation was first implemented through legislative decree no. 29/93, which stipulated a clear distribution of skills between politicians (orientation competences) and executives (management competences) and modified the hierarchical relationship between them through the elimination of the above-mentioned powers, which allowed politicians to influence managerial activity. The objectives of the reform were finally implemented by the legislative decree 80/98, which extended the innovations to all managerial positions, and by the legislative decree 165/01, which coordinated and regulated all provisions concerning public employees. The new regulation introduced the principle of functional separation to regulate the relationship between politicians and public managers.

3. The functional separation between political and administrative levels

The relationship between political and managerial levels is very complex bearing in mind that in the Italian system there are several constitutional principles which regulate this field (Alesse, 2006). In particular, article 97 of the Italian Constitution defines the public administration as a bureaucratic apparatus separated from political power and characterized by its impartiality and efficiency; while art. 98 states that

public executives must operate exclusively in the national interest. On the other hand, article 95, assigns to each Minister responsibility for the activity of his/her Ministry and enunciates the principle of the public administration's instrumentality in the implementation of general government policy.

The constitutional regulations require administrative activity to be connected to the orientation and powers of control of the representative institutions (principle of democracy). At the same time they require a guarantee of impartiality on the part of public administration action, so as to avoid favoritism and discrimination in connection with the individual's political affiliations (Merloni, 2006, p. 138).

The reform of the Italian public administration aimed to reconcile these requirements through the application of the principle of functional separation between politics and administration (Forte, 2005), which was introduced into the organization of the Italian State through the legislative decree 29/93.

The above-mentioned principle provides for a distribution of the functions within the public sector between orientation competences assigned to the political authorities and management competences assigned to the professional executives (D'Alessio, 2005, b). This principle was formally adopted in Italian legislative reform. In particular, art. 4 of the legislative decree no. 165/01, expressly entrusts public managers with all managerial competences (and direct responsibility for the results of their activity) whilst art. 14 prohibits politicians from interfering in a manager's activities (Colombo, 2004).

However, the regulation also contains rather vague aspects, which might contribute to preventing the actual application of the above-described principle. Our analysis will concentrate on a complex series of instruments that could provide political authorities with the power to influence an executive's actions.

4. Instruments influencing the executive's actions: regulation of the managerial role [art. 19 leg. decree 165/01]

Regulation of the managerial role is closely connected to the principle of functional separation, because it allows us to evaluate whether this principle has actually been introduced by the regulation. The regulation stipulates that the managerial position be assigned through a unilateral measure, followed by a contract defining the economic conditions. More specifically, the law provides for three kinds of managerial position: the top management position, the general managerial position and the ordinary managerial position (D'Alessio and Valensise, 2004). The first two positions are conferred by political authority (which also has the power of revocation) and principally to managers belonging to the first managerial level, whereas the last is conferred on second-level managers by the higher-level managers. Therefore, in each administration there is a list of executives with managers being assigned to one of the two levels.

The regulation states that all the positions are conferred for a limited period (from three years to five years). The above description shows how regulation of the managerial role contains elements which might prevent both the actual attainment of managerial autonomy and the principle of functional separation.

4.1. Power of nomination and role duration

The first influencing element is represented by the power of nomination of top managers and general managers, a power which the law (art. 19 par. 3, 4) grants to political authorities. These powers can directly affect the managers in their activities, considering that the politicians can, at their discretion, assign and confirm managerial posts. In this hypothesis managers could be influenced in their managerial choices by politicians who have the power to confer the role on them.

The regulation provides a further influencing aspect, which is represented by the term of duration of the appointment (art. 19 par. 2). The limited duration of the position might prevent managers from remaining impartial from political bodies (D'Orta, 2002).

In fact, managers with a short-term appointment might be subject to severe pressure from politicians having the power to re-confirm their appointment (D'Alessio, 2009). This influencing power is greater when the duration of the managerial position is shorter than the political term (usually five years), because in this case the power of renewal of the position will depend on the very same subject exercising the power of nomination (D'Alessio, 2006).

In this case, in the execution of his management duties, the manager that is interested in being re-confirmed might be more open to suggestion on the part of the political authorities. This situation may affect the impartiality of the manager and consequent administrative action.

The above description demonstrates that the limited duration of the position and allocation of power of renewal to politicians might represent instruments that put pressure on the manager's activity.

4.2. Career progression of professional executives [art. 23 leg. decree 165/01]

The separation of competences between political bodies and managers requires guarantees of personal independence on the part of executives (Ponti, 2006). This could be accomplished by preventing any interference on the part of politicians in procedures regarding the career progression of managers.

When management is organized on two levels (as in the case of the Ministries) it may exercise a political influence, because the choices made by the political bodies might affect an executive's career development (Talamo, 2004). In fact, the regulation (art. 23, par. 1, leg. decree 165/01) states that only managers who have held a general managerial position or equivalent duties for at least three years, may be incorporated on the higher managerial level. A position conferred by politicians (who have the power to confer top manager and general manager positions) might have direct consequences on the manager's career progression (Merloni, 2006). Therefore executives on the lowest level will have a particular interest in achieving the high-level position and holding it for at least three years. This situation might influence managerial choices.

5. Instruments influencing an executive's actions:

Spoils system and top management position

The regulation introduced by the reform presents two further juridical instruments which could greatly affect managerial autonomy. The first of these is the spoils system mechanism, which might influence a top manager's activities, while the second concerns the influencing power that top managers can exercise over professional executives.

5.1. Influence on activities of top management through the spoils system

[art. 19 par 8 leg. decree 165/01]

Analyzing the regulation of the spoils system is essential for defining the relationship between politics and administration (as introduced by the reform). The spoils system is a mechanism that allows politicians who have won elections to choose which persons to assign to top managerial posts (e.g. General Secretary or Head of Ministry Department) (Gardini, 2002).

This system usually provides for a position having an equal duration to that of the political post. Of course, this does not mean that when there is a change in the political scene the top manager also loses his post (this situation only arises in the case of external managerial appointments).

In fact the spoils system only influences the managerial position because in the organization of the Italian State there is a distinction in the relationship between employees (who have a permanent contract) and the managerial post, which, on the other hand, is conferred for a limited period. Top managers whose appointment is not reconfirmed are assigned other duties (study or evaluation activity).

More specifically, the regulation (art. 19 par. 8 leg. decree 165/01) states that the top management appointments (general secretary and head of department) will terminate 90 days after the new government has taken office, without any need for justification because of the new government.

The spoils system has been affected by several rulings by the Italian Constitutional Court, which has defined the legitimate constitutional parameters of this mechanism (Talamo, 2003).

The Court affirms that the spoils system is legal if it only concerns the top managerial posts. In order to identify these positions, the Court first introduced the criterion regarding the nature of conferring bodies (the top management position is considered as such when the position is conferred by political authorities) (Gardini, 2006) and, subsequently, it proposed a further criterion, which individuated a top management position only in the cases of a direct and immediate relationship between managers and political bodies (Corso and Fares, 2007).

In accordance with the above-mentioned rulings, the spoils system must operate only with regard to managers who have a close relationship with politicians.

The decisions are based on the consideration that a fiduciary relationship with the top management could help the government in the achievement of its objectives (Battini, 2006, p. 911).

Although the Constitutional Court recognized the spoils system's legitimacy, there are many doubts about its compatibility with Constitutional principles; in particular with art. 97 (it demands impartiality of public action and the guarantee of regularity and continuity of administrative action, even in the event of a change of government). In fact, when managers are linked to politicians in this way, it is very unlikely that administrative action will respect the principle of impartiality (art. 97) which requires, on the contrary, the objectivity of managers with regard to interests they have to oversee (Satta, 1989).

5.2. Influence on the professional executive's activities through the top management positions

The top management positions are represented by executives at the highest level of the administration. They support political bodies in the functioning of their duties and they also guarantee the continuity of the administration's activities in the event of reversal of the political scenario.

These figures were introduced in the ministerial structure through the creation of a General Secretary or Head of department.

In the new model introduced by the reform, which is characterized by a complex system of relationships between political and administrative levels, this figure could be brought into question by the need to distinguish clearly between the two orders of competence (Merloni, 2006).

On the one hand, the Italian system provides for political bodies which have the support of the cabinet offices, and on the other, executives who have their specific managerial competences, but at the same time have to apply the directives indicated by the political authorities. There does not seem to be space for a figure on the borderline between the two competence levels, due to the uncertainty as to whether to assign this figure to the politicians' level or the management level. In the new scenario introduced by the reform the employment of this figure is becoming more frequent, with emphasis being laid on the fiduciary features (Cassese, 2005).

There are two possible explanations for the success of these figures; the first considers the top management position as a useful instrument for providing the administration with cohesion and enhancing its ability to respond to political orientation.

A second possible interpretation is that the success of this figure depends on its ambiguity and on the possibility that it could be used, in the politics-administration relationship, to allow politicians to regain those powers of intervention in the management area that the reform aimed to abolish (Merloni, 2007).

This can occur through providing top managers with excessive powers (e.g. powers of nomination and evaluation) over lower-level executives, or allocating not only simple coordination powers, but also hierarchical powers (such as the power to order or the power to give precise directives to professional executives).

With regard to this, art.19 par. 5 and art. 16 par. e, seem to recognize the above-mentioned powers for high level managers. The recognition of these powers for top

managers could strongly influence an executive's action, not only being influenced by upper-level managers, but also, indirectly, by politicians, bearing in mind that the relationship between political bodies and top management positions is a fiduciary relationship; for this reason top management is particularly keen that lower management should follow politicians' recommendations in management activity.

Lastly, one might affirm that in the absence of dispositions expressly preventing these figures from developing and becoming the politician's instruments of intervention, without clearly defining their managerial duties, there is a real risk that the principle of the functional separation might be wrongly applied.

6. Instruments influencing an executive's actions: the improper use of external management [art. 19 par 6 leg decree 165/01]

The possibility of also assigning a managerial position to subjects who do not belong to the professional executive staff ("external management") is not provided for by the law as a type of fiduciary position, but as an opportunity to employ professional skills not readily available within the administration (Merloni, 2007).

The vague wording of art. 19, par. 6 has allowed politicians to widely use this opportunity to boost the number of fiduciary positions.

External management represents an instrument for introducing the spoils system in the public sector, and it has permitted executives to join the upper managerial level as a result of their personal affiliation to political bodies. This seems to be the interpretation provided by decree no.262/2006, which modified art. 19, par 8, leg decree 165/01 (the disposition that specifies the spoils system for top management positions) so as to extend its application additionally to external executives.

Thus, external executives are designated on a fiduciary basis and their appointment is terminated at the end of the legislature (or at every change of government during the legislature). This legislative intervention could have a negative impact on the executive structures. In fact, an improper utilization of external management (which increases the number of fiduciary executives in public administration) may provoke a negative effect on the conditions of personal independence of the professional executives.

A report by the Italian Audit Office has underlined the anomalous use of external managerial appointments (Corte dei Conti, 2006).

In particular, it shows an increase in the number of external appointments and also stresses that the appointed figures are hardly justified and the general criteria for the assignment and the revocation of the appointments are not clearly specified.

The same authority (with sentence no. 836/04) suggested the prerequisites for conferring external appointments. These are the lack of specific knowledge and experience in the administration; the necessity for activity geared towards resolving specific issues; the lack of appropriate staff within the administration; the specificity and temporariness of the appointments; shortage of certification of personnel, specific professional qualities required and adequate justification, which would permit the verification of the prerequisites produced (Nespor, 2006).

The assignment of external positions, in other words, should be characterized by the exceptionality; conferment modalities that do not reflect the above-mentioned criteria actually violate not only the regulation prescriptions, but also the constitutional principle stated in the art. 97, par. 3.

An analysis by the Audit Office reveals an instrumental use of external management and the spoils system by politicians. In particular, these instruments are used to build a fiduciary team (in state managerial structures) operating without any respect for the principles of impartiality and transparency, which ought to regulate the actions of public offices (Talamo, 2007).

This description underlines the lack of criteria regarding the conferment of external managerial appointments in the public administration and this vague situation could allow politicians to abuse power with regard to this kind of position.

7. Instruments influencing the executive's actions: organization restructuring

The legislative decree 300/99 (art. 4 par. 1) assigns the adopting of organization restructuring to public sources, such as government regulations and ministerial decrees. This possibility is often exploited by political authorities to operate the systematic removal of managers, the phenomenon being called a “disguised” spoils system (Merloni, 2007).

This is another instrument that might increase the politician's power and induce executives to be more open to political intervention at the management level.

It is very difficult to show its real influencing aim, because it is quite complicated to demonstrate that organization restructuring is only motivated by the wish to remove undesired executives. Therefore, the frequency and scope of organization restructuring in the public administration could have a negative effect on the stability of managerial positions. This consideration can be emphasized through analysis of the effects of organization restructuring carried out in the Economic Development Ministry, in application of the law n. 122/08.

This law indicates the need for reform of certain Ministries and stipulates (for administrations which have carried out a transfer of duties) that the organizational structures are to be redefined through the ministerial regulations laid down in art. 4, par. 1, of the leg. decree 300/99.

The analysis of organization restructuring carried out in the Economic Development Ministry shows that only nine general level managers were confirmed out of a total of twenty one offices of this kind which are provided for in the Economic Development Ministry system. This happened even though the organizational modifications resulted, in many cases, in only a re-allocation or re-denomination of the existing offices, or their unification (Club Dirigenti P.A., 2009).

Non-confirmed managers were transferred to another post or their appointments were terminated in advance. The managers were either moved from their operative duties to research activity or obtained an ordinary managerial position, because they had not completed the three years (in the general managerial position) required to accede to the first managerial level (art. 23 leg. decree 165/01).

This outline demonstrates how organizational restructuring might allow politicians a generalized and anticipated exercise of their discretionary powers in the conferment of appointments, without respecting the legal expiration terms for the managerial position (D'Alessio, 2005, a). This happens especially when organizational restructuring is rather frequent and not adequately justified. The problem is not only to guarantee the manager's rights (i.e. the right to a stable job or the right to carry out one's duties without politicians interfering), but also to ensure the continuity of administrative activity in the interests of citizens and the Nation as a whole.

8. The law no. 15/09

Recently, a new measure (Law no. 15/09) has been adopted in the public management sector, with the aim of improving the quality of performance in the public administration and modifying public management regulation (provided by legislative decree 165/01) in order to implement the principle of separation between orientation and management functions. This law involves only some of the instruments influencing executives' actions, as outlined above. More specifically, it aims to modify the rules concerning career development of professional executives, stipulating that, in order to accede to the first management level, it is necessary to pass a specific public competition. This mechanism is applicable only to a select number of the available vacant positions.

The regulation covers the issue of employment of external management and invites the government to draft new regulation for external appointments, advocating a reduction in their number. However, it does not deal with the criteria for the individuation of the minimal prerequisites that external managers ought to possess in order to obtain the appointments. This measure is rather vague, as regards the relationship between politics and administration under the functional and structural profiles (Capano, 2009).

With regard to the functional profile, in fact, Article 6 par. 1, states that "the exercise of the delegation is geared towards enhancing the principle of separation between orientation and management functions and aims to regulate the relationships between politicians and upper-level managers so as to guarantee the full and coherent realization of government policies in the administrative field".

This regulation does not specifically address the issue of managerial autonomy. It has been observed, on the contrary, "that the main interest of the law is to exploit the legitimacy of the spoils system provided by the Constitutional Court rulings to enforce the fiduciary tie between top management and politicians" (D'Alessio, 2009). On the other hand, as regards the structural profile, art. 6 par. 2 assigns to the Government "the task of redefining the criteria for conferment, change and revocation of managerial appointments on the basis of the principles of the constitutional and the jurisdictional field".

The law is too generic and allows the government to have considerable discretionary powers in its implementation. Even though the regulation calls to mind the principles of the constitutional field it does not specify what exactly these principles are.

With the above considerations in mind, it is possible to affirm that the law has provided few accurate principles and directive criteria. Although this measure does present some interesting elements, it does not seem to provide solutions for resolving issues regarding the presence, in the Italian system, of instruments which might potentially be used by politicians to influence a manager's activities and his/her managerial autonomy.

9. Case study; Ministry of Transportations and Infrastructure

In order to confirm our hypotheses, we interviewed the Head of the Evaluation and Control Department, Ministry of Transportation and Infrastructure, in order to hear his opinion about how the new regulation, at the management level, concedes to the managers greater autonomy from politicians. The interview was based around the consideration that the regulation introduced by the reform does not entirely fulfill this purpose. Our interviewee pointed out three factors which might affect managerial autonomy.

The first is represented by the spoils system and by organization restructuring. The Head of Department confirms that these instruments can create an influencing situation because they prevent managers from freely exercising their duties. While the spoils system only concerns the top management positions, organization restructuring has more radical effects, considering that it can involve not only the top management positions, but also all the managerial positions in the administration (top, general and ordinary managerial positions).

The second aspect regards the extensive employment of external managers, who are often chosen not for their specific competences, but for their political affiliations. The Head of Department thinks that this phenomenon might be rather de-motivating for internal managers, because they might realize that, in order to advance one's career, it is more advantageous to follow political directives than it is to work efficiently and effectively in the drive for improved performance. According to top managers, it is one of the principal reasons preventing the concrete application of the principle of functional separation within the public administration.

The last critical point regards the phenomenon of the managerial group, which develops in response to political influencing. The Head of department affirms that, in the public administration, executives often set up internal groups whose aim is to facilitate the career progression of the managers belonging to these groups. This might happen, for example, with top executives employing their power to confer appointments, over secondary managers (art. 19 par. 5 leg. decree 165/01). General Managers usually appoint executives who have followed their recommendations in their managerial decisions and have thus demonstrated their loyalty. Because of this situation, career development in managerial positions depends on one's belonging to groups such as these rather than being based on the executive's skills and competences.

The interview confirms the critical aspects of the regulation as pointed out in the first part of the paper. It also endorses the need for fresh regulation to rectify the

structural ambiguities which do not allow a thorough application of the principle of functional separation.

10. Hypotheses for legislative innovation

It is possible to hypothesize certain modifications to the legislation which would aim to correct the regulation ambiguities described above. These measures should address those causes that prevent the application of the principle of functional separation (Merloni, 2007). In particular, in order to achieve this purpose, the following solutions might be adopted.

1) Rethinking the politicians' powers of nomination. This might be feasible, first of all, by limiting the power of political nomination only to cases of top management positions and those appointments betraying political leanings. The power of nomination ought to be regulated by procedures which are geared towards guaranteeing the correctness and the quality of the choices. A system of criteria should also be introduced combining the evaluation of subjective qualities and objective elements, so as to reduce the discretionary character of the choices

2) Intervening on the duration of the managerial appointment. With regard to this, two different solutions might be suggested (Merloni, 2006). The first requires the elimination of the temporary-contract managerial appointment. This does not mean that managers will be immobilized in their positions but, on the contrary, it presumes the creation of a modern and functioning evaluation system (Talamo, 2005). Another hypothesis might be to regulate the duration of the appointment in accordance with the different structural and functional characteristics of each task (Talamo, 2007). A permanent appointment could be given in the cases when technical function and functions which do not come under the influence of political orientation are involved. At the end of the appointment, the introduction of a manager's right to receive confirmation of a function or an equivalent assignment, might also be suggested, if the person in question has received a positive evaluation of his/her activities; this might avoid those precarious situations which involve political influencing of an executive's actions. This right should also be recognized for managers that have lost their positions due to organization restructuring.

3) Following the Constitutional Court's rulings regarding the spoils system. With regard to this profile, the Court has stipulated that the termination of the appointment must be preceded by an evaluation of the manager's activity, to justify the termination of the appointment (considering also the new governmental objectives). The constitutional principle of impartiality (art. 97) represents a value that has to regulate the organization of public offices (Allegretti, 1993). Its purpose is to ensure the autonomy of managers from politicians and to allow technical evaluations without political interference. To accomplish this principle, it is necessary to guarantee the continuity and the stability of the managerial position. For this reason, there is a need for a legislative intervention geared towards creating an objective and functional evaluation system (D'Alessio, 2009). In fact, in the Italian regulation there is no procedural passage where the

administration might state the reasons for the early termination of an appointment (which could also be related to a new government's objectives) and where the manager might have the opportunity to defend his/her position.

4) Using external managers only in the event of a lack of necessary professional competences within the administrations, and assigning the position only to those persons who have specific and certified prerequisites (Talamo, 2007). Criteria and limitations should be introduced to avoid abuse of the above-mentioned scenario. These abuses have also occurred as a result of an increase in the number of positions of this kind created by the regulation in the last few years. Therefore, it is necessary to rethink the number of external appointments and their terms, in order to motivate internal professionals and to avoid assigning managerial duties to subjects linked too closely to politicians. We suggest regulating the employment of external managers, abolition of re-confirmation for this kind of appointment (conferred for a limited period) and the provision of a public competition to cover the vacant posts when it is not possible to exploit internal resources.

Conclusion

On the basis of the above-mentioned findings, we might conclude that the new regulation introduced by the reform has not fully accomplished its aims.

It has provided instruments that may be used in the public administration to reduce managerial autonomy and to allow politicians to gain influencing powers over a manager's activities. For these reasons, we put forward hypotheses for legislative innovation aimed at rectifying the ambiguities introduced by the new regulation.

This paper represents only the point of departure of a longer work aiming to analyze all the critical aspects concerning the relationship between politicians and public executives in the new scenario created by the reform of the Italian public administration. It has exclusively adopted a legal studies approach to show that the reform will probably not accomplish its main objectives (such as the separation of functions between politicians and managers and the recognition of greater managerial autonomy to public executives) especially since it was initially not well designed by the legislator.

The next stages of our work will consist in going into greater depth with regard to the juridical issues appearing in this work; it will also consist in its implementation, because we understand that in order to carry out a complete field analysis it is necessary to consider other relevant areas and topics, such as, planning & control systems enhancing accountability, career and retribution systems and other organizational mechanisms; and, lastly, it will be based on the carrying out of further case studies in order to gather the information and empirical data needed to sustain a general field analysis.

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