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*ON THE RELATIONSHIPS BETWEEN THE POLITICAL
AND MANAGERIAL LEVELS IN THE LIGHT OF ITALIAN
PUBLIC ADMINISTRATION REFORM*

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PREFACE

This work deals with the relationship between the political and managerial levels in the light of legislative reforms introduced during the last decade in the Italian public administration.

The choice of this research topic is related to the requirement to combine my juridical background with skills and knowledge gained during the p.h.d. course.

Firstly this work was developed through a juridical analysis aimed to verify if the discipline introduced by the reform is able to realize its goals.

Secondly the analysis was enforced by using system dynamics methodology in order to evaluate if and to what extent the discipline has been able to ensure a greater autonomy to public manager.

In particular the work has been structured on four chapters, each chapter represents a paper presented at international conferences of public management to which I participated during the P.h.d. course.

The first paper having the title “ *the introduction of new public management principles in the Italian public sector* “ was presented during the EPLO Workshop (Athens February 2010); the second paper having the title “ *on the relationship between the political and managerial levels in the Italian public administration reform*” was presented during the EGPA Conference 2009 (Malta, September 2009);the third paper having the title “ *the evaluation of public managers’ performances in the light of Italian public administration reform* “ was accepted for the EGPA Conference 2010 (Toulouse September 2010); the fourth paper having the title “ *a system dynamics approach to evaluate the level of autonomy of public managers*” will be

presented at EURAM Conference 2011 will be held in Tallin on June 2011.

In the opening side the work analyzes the general reform process of European public administrations inspired by New Public Management principles and then it deals with the effects produced by the reform on the Italian public administration, focusing, in particular, on the relationship between the political and managerial levels.

On this regard this work aimed to verify if the discipline introduced by the reform has been able to ensure a greater autonomy to public manager.

The results of this research, that as above shown, has been developed analysing the content of previsions introduced by the reform and verifying their efficacy in increasing managers' autonomy by using system dynamics methodology, shows that Italian legislator did not

realize its goal to ensure a greater autonomy to public manager in comparison to politicians.

The contribution that this work aims to provide to the scientific debate in this topic is to outline the inadequacy of the discipline introduced by the reform and to suggest hypothesis of legislative innovation in order to ensure an effective autonomy to public manager so to realize fully the principle of functional separation between political and administrative levels.

CHAPTER I

THE INTRODUCTION OF NEW PUBLIC MANAGEMENT

PRINCIPLES IN THE ITALIAN PUBLIC SECTOR

Abstract

Over the last few decades, the Italian public administration has undergone significant reform, which aimed to rectify the structural defects in the system, leading to inefficiency in public management and an improper allocation and utilization of resources. The Italian legislator, following the New Public Management guidelines, introduced private principles and instruments in the public field to improve the efficiency, effectiveness and financial stability of state enterprise.

In particular, one of the main innovations introduced in this field regarded the recognition of the principle of distinction between politics and administration and the transfer from a bureaucratic model based on norms to a managerial model based on performance.

The reform has the aim of changing the traditional “weberian bureaucratic” approach of the Italian public administration, in accordance with the “New public management” principles.

This reform process regarded also other European Countries that have undergone profound changes. As well as Italy, the reform process in these Countries was based on the principles of "New Public Management" which proclaims: an increased focus on results in terms of efficiency, effectiveness and quality of service by setting standards of productivity; an orientation towards citizens-consumers in terms of service quality and customer satisfaction; the introduction of market

mechanisms; a more strategic focus on the reinforcement of strategic capacity.

This chapter is underpinned by analysis of the regulation introduced by the reform of the Italian public administration to observe whether its main objectives have been really achieved . It is also based on a comparative analysis of the effects produced by reforms in Italy and in other European Countries. Lastly this work aims to verify if it is possible to outline a framework of convergence based on the principles of new public management.

Introduction

The Italian public administration reform was carried out over the past decades on the basis of "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. These efforts aim to correct the structural deficiencies in the Italian system, which have generated inefficiency in public management and an improper allocation and use of resources.

In particular, these innovations have affected several aspects of the public administration system, changing governance rules, introducing deregulation and a new perspective on the citizen's roles and rights, implementing privatization and externalization, making provision for

institutional decentralization, changing decisional processes and organizational models and reforming accounting systems.

These innovations also have the aim of prompting a shift from a bureaucratic model based on norms to a managerial model based on performance.

This reform process in public administrations also involved many other European Countries that have undergone profound changes ; in these Countries the reform process was also based on the principles of "New Public Management". This does not mean that a complete uniformity of application has been found; on the contrary, in this regard, it is possible to highlight differences between one country and another.

This chapter is based on an analysis of the reform process carried out in the Italian public sector to verify the results achieved . It also analyzes administrative evolution in European countries to see whether it is possible to single out a convergence, in the various European public

administrations, towards certain common principles inspired by New Public Management ideas.

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 by introducing a new legal framework to suit the new conditions.

The above-mentioned reform process was based on the principles of "New Public Management".

1.1 New Public Management principles

The adoption of New Public Management has represented, over the last twenty years, one of the most significant events for the study and practice of public administration in most industrialised countries. This could be seen as an epochal evolution in the way the public sector is conceived, although doubts still exist regarding the components, the central characteristics and the definition itself.

In fact, the initials NPM represent a “wide-scale formula”, to which various meanings are attributed. These range from the general idea of “modernisation of the public sector” to the narrower meaning of rationalisation of the public administration. The NPM makes claims to being universal; in fact, initiatives of the NPM type are common enough throughout the OCSE countries and have reached most Commonwealth countries, not to mention the ex-communist countries(Borins 1998; Hood 1991, 1995a:166-170). This does not mean that a complete uniformity of application has been found. On the contrary, in this regard it is possible to highlight differences between one country and another, since the profiles for modernisation range from complete openness towards market forces and privatisation (Great Britain), to a radical re-planning of the public sector in line with the model of the private sector (New Zealand); from cases of rapid advance towards managerial running, to cases of co-existence with residual links with more traditional forms of

bureaucratic government in accordance with pre-defined rules (Japan, Germany, Austria) (Naschold 1996:19 ss.). A greater impact of NPM-type ideas has also been noted in Anglo-Saxon contexts (though with internal differences) when compared to eastern regions of continental Europe (Ferlie, et al. 1996:15-20). This could quite reasonably be due to the long tradition based on the predominance, in most European countries, of a school of thought of a juridical nature with regard to the public administration.

NPM should not be understood as a continual, uniform push towards a common public sector model; if anything it might be seen as a global change permitting differentiated local solutions, i.e. a widespread shift, as regards convergence, towards a limited variety of new and more uniform ways of government by the public administration.

In other words, the “global” movement is rendered compatible with a certain number of differentiated models, which, in their individual cases, reflect the way in which the following variables combine and interact:

- . specific components introduced within each model and the order of priorities assigned to them;

- the speed of the reform movement (which depends on the vitality and degree of convergence of the guiding forces);

- the internal and external conditions determining the context in which the process of modernisation has to develop;

- the approach taken in order to complete each model.

In spite of the above-mentioned observations, which aim to mitigate assumptions about the universality or globalisation of NPM, it is, at the same time, possible to try to extrapolate a table for general reference.

The basic features of the NPM ideas might be synthesized into three fundamental elements (Osborne e Gaebler 1993:277):

1. Re-definition of the boundaries between State and market through privatisation and externalisation.

2. Re-formulation of the macro-structure of the public sector through the delegating of state functions (at the lower organisational level) to within the macro-structure (this phenomenon could be denominated institutional decentralisation or external decentralisation).

3. Re-definition of operational rules characterising the way in which the public sector carries out its functions and achieves its goals. This third component might be considered as characterised by seven main sub-components:

3.1. Toning down of the ties conditioning the public sector as compared to the private sector. This phenomenon includes the transformation of state economic bodies into limited companies and might, generally speaking, be called formal privatisation;

- 3.2. Re-structuring of activities/businesses in the public administration,

so that they are operating “on a commercial basis”, i.e. in a state of

equilibrium between costs and revenue (corporatization);
- 3.3. State competition (internal market);
- 3.4. Devolution of functions and competences from the centre towards

outermost units or the lowest organizational levels within every entity in

the public sector (this phenomenon might be called internal

decentralisation);
- 3.5. Re-definition of the administrative machine;
- 3.6. Deregulation of the functioning of economic and social systems;
- 3.7. Re-definition of citizens’ roles and rights.

2. 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 the modernization process has impinged on the following aspects of the public administration system.

a) It has been changed 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) It has been introduced deregulation and a new perspective on citizens' roles and rights.

Deregulation initiatives have only been activated on a wide scale in the last few years. In terms of deregulation the idea is to carry out a swift thinning-out of existing legislation (notable for its size, detail and

confusion). The process, which has only just been activated, is based

principally on the following elements:

- It aims to involve the various levels of government (State, Regions, local enterprise);

- Parliament must establish areas of activity, where the greatest priority needs to be given to deregulation;

- Parliament retains its function of approving certain basic norms, which it is thought might be better decreed at the national level;

- The remaining activity of deregulation (assuming it is necessary) and its implementation will be delegated to state administration, to independent supervising and regulating authorities, to the Regions and local bodies, in relation to their respective institutional competences;

- A great number of proceedings, pertaining to a vast range of branches of activity, were instigated following the initiation of simplification and thinning-out procedures.

Particular emphasis is given to structural reform of administrative processes, so that these are guaranteed to businesses, organisations or individual citizens:

- swiftness and certainty of reply in answer to requests for information or supply of services; • greater responsibility on the part of public employees (to whom pecuniary sanctions might be applied, so that in the event of a delayed or unmotivated execution of a procedure the citizen might be compensated);
- transparency of administrative operations.

The juridical problems of deregulation are contiguous to measures in which issues of an essentially operational/managerial nature are made evident. Here we are referring, on the one hand, to the wholesale adoption of service-charters geared towards facilitating access to services and information and stimulating social control of public management and its performance. On the other hand, the reforms we are taking into

consideration are openly aiming to boost the citizen's participation in the defining processes of these charters and in monitoring the results. Again, so that these arrangements might be effective, it is necessary to introduce well-devised operative mechanisms and adopt managerial tools aiming to foster quality of service, involvement of the client and achievement of results. A primary initiative in the reformulation of regulations relating to administrative procedures, in terms of better information, opportunity for access to services and transparency, was carried forward through law no.241/1990.

c) It has been implemented privatization and externalization.

The privatisation process started at the beginning of the 1990s, with the formal privatisation of the *Casse di Risparmio* and all other public banks (law no.218/1990).

The privatisation process proceeded slowly, in spite of the critical importance for the nation of its two major goals, i.e.:

- contributing to the development of the financial system and the Stock

Market;

- contributing to the re-balancing of public financing, whose deficit was

already a very serious problem in the early 1990s. Naturally, the process

was (and continues to be) accompanied by a heated debate over the

“classic” questions of more convenient ways of launching the said

privatisation (Anselmi 1994; Berti 1998; Bianchi 1994; Clarich 1994):

- the options between a model on the lines of the public company

(British experience) and the *noyau dur* (French experience);

. recourse to the golden-share model with the objective of the State’s

maintaining special rights of control of privatised public services;

- the decision to institute supervising and regulating authorities for

public services.

The law regarding privatisation (no.474/1994) chose to favour the public

company model (although in several important instances the alternative

noyau dur was applied). The golden-share solution was eventually adopted and was followed by the decision to institute independent supervising and regulating authorities for public services.

As opposed to privatisation, the externalisation (which consist on the delegation of public services supply to private market) is came about , and continues to be verified, without any explicit legislative reform.

Above all, this is affecting local bodies (including local health units – *aziende sanitarie locali*) as is indirectly demonstrated by the gradual reduction in expenditure on personnel as compared to that on purchasing goods and services. This evolution is, moreover, partly and more specifically caused by the recurring restrictions on taking on personnel imposed on local authorities by decisions at the intermediate level.

d) It has been made provision for institutional decentralization and a substantial delegating of functions from the Central State to the Regions .

Decree no. 59/1997 and constitutional reform in 2001 introduced a sort of “administrative federalism”, in other words, the most wide-ranging delegating by the State, of functions, to the Regions and local administration. The principle of subsidization was affirmed as a basic criterion regulating relations between the various levels of government.

Only a very limited number of functions were to remain under the direction of State administration. In their turn, Regional administrations were forced to delegate to local bodies all those functions that might be better exercised at the local level, in line with the same principle of subsidization. This fundamental decision was supported by the ordaining of a certain number of operational criteria as guide-lines for the delegation of functions (globality, efficiency, economizing). Together with substantial privatisation and externalisation, institutional decentralisation aims to guide public administration towards the idea of a “light-weight” State.

e) It has been reformed accounting systems, ranging from legitimacy preventive controls to controls based on the evaluation of management performance.

The 1990s witnessed important changes in the structure of public sector accounting. The fundamental stages were:

- reform of the health system, approved in 1992, entailing the adoption of economic accountancy on the part of local health units (aziende sanitarie locali) and the abandoning of financial accountancy (Marcon e Panozzo 1998);
- wide-ranging reform of the local authorities carried forward in successive phases starting in the early 1990s, led to important changes in the accounting system of local bodies, including the introduction of a performance budget (denominated executive management plan) based around certain objectives, programmes and resources (Marcon 1996, 1997). Another aspect was the adopting of “economic” (=

economic/patrimonial or general) accountancy, side-by-side with, and backed up by traditional financial accountancy;

- reform of State Accounting System (1997). Among other things, this deals with re-planning the budget structure in accordance with the organizational structure, which is organised in such a way as to open the way towards a budget crafted for centres of responsibility. Another cardinal aspect is the differentiation between content and structure in the balance, in agreement with the informational needs of the principal actors (Parliament, on the one hand, ministers and managers on the other), analogically with the balances of local bodies. The framework is completed by the introduction of instruments of managerial control (as a system of analytic accountancy on the part of the cost-centres) and a link between resources/results and the management's budget goals.

Taken as a whole, the above-mentioned series of accounting reforms reflects the strategic change that is characterising the public sector's

decision-making processes. In fact, the acceptance of a new relationship between politics and administration and the principle of managing for results, requires a transformation in accounting information. In the previous set-up the decision-making processes were of a centralised type and controls were of a legal-formal type, whereas the basic function of the budget was one of authorisation. On the contrary, the new set-up is characterised by decentralised responsibility, wide-ranging delegation of authority to management and the adoption of efficiency-effectiveness checks.

On the other hand, as regards control-system initiatives the synthesis of the most significant initiatives of an NPM type taking place in Italy over the last twenty years has greatly emphasised the emergence of new instruments and mechanisms of government (among the various aspects).

First of all, the entire Italian public administration was hit by a change in

the philosophy and functions of checking. Under these labels the elements can be grouped as follows:

- Shift from preventive checks of legitimacy to subsequent checks of results.
- The adoption of the principle, on the basis of which, results of the assessment process should influence the allocation of public resources, in accordance with a system of prizes and sanctions based on merit.

Consequently, a change in checking objectives was introduced, as well as a change in the actual nature of the checking instruments utilised. The shift from traditional monitoring of expenditure to monitoring of costs, output and outcome, belongs within this category, as do adopting a system of assessing performance and adopting periodic reports on efficiency, effectiveness and economizing.

f) It has been changed decisional processes and organizational models, through the introduction of those operating mechanisms needed to bring

about more performance-oriented management in public administration(Bianchi, 2004).

In particular, the main innovation introduced in this field regarded the recognition of the principle of distinguishing between politics and administration, the transfer from a bureaucratic model based on norms to a managerial model based on performance and, lastly, the privatization of the employee relationship in the public 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 (Marcon 1996, 1997; Mussari 1994a).

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.

The innovation was first implemented through legislative decree n. 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 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.

3. The current state of the reform in Italy

Everything described in the previous paragraph justifies our affirmation that during the last twenty years the Italian path to modernisation of the public sector has been taking advantage of the entire “system of instruments” of an NPM type. The various elements making up the whole NPM structure have entered the Italian context in a more or less wholesale fashion and at several levels. Certain aspects regarding the motivations, temporal development, range and impact of the various initiatives have already been dealt with, but further consideration do now seem appropriate.

Firstly, privatisation entered the picture at a later date and more gradually when compared to other components; in fact, it is seen as a controversial issue, since it gives rise to political conflict in both left and right-wing parties, because of internal philosophies favouring the type of public sector with a significant position in the economy; this is without

counting political movements inspired by Catholic solidarity, and which strongly support State intervention. The need to streamline the public sector is widespread, because of enormous state expenditure and public debt(Messori, Padoan e Rossi 1998:118 ss.).

Secondly, a toned-down version of corporatization was introduced (Borgonovi, 2005). In most cases the costs incurred by those utilising the services do not reflect the principle of total cost, as postulated by the expression “management on a commercial basis”, which defines the concept of corporatization in rigorous fashion. This means that most “corporatized” public bodies continue to be widely financed by taxpayers and this also continues to hold true, though in decreasing mode, in sub-sectors (such as health units and local bodies) where the process of corporatization has advanced on a wider scale.

Thirdly, competition is still in its initial stages and only makes its presence felt in particular cases, such as certain partly-privatised public

services and health organisations (following the introduction of the principle of patient mobility compensation).

Fourthly, a fresh surge of institutional decentralisation is now breaking ground under the previously-mentioned label of “administrative federalism”; but there are still great expectations of further development, witnessed by the on-going debate regarding fiscal federalism and federalism plain and simple. In fact, it is constitutional reforms that occupy end-of-century prime time in political debate. It is difficult to foresee the final outcome and implementation times, since these reform schedules group together not only the theme of institutional decentralisation, but also particularly complex questions, such as: overhaul of the electoral system in a more decidedly majority-based direction; overhaul of form of government (adoption of a presidential system is one of the fundamental options); modification of norms governing judiciary power and the functioning of justice.

The same considerations with regard to privatisation and institutional decentralisation are applied to initiatives such as: deregulation, re-definition of the role of citizens' rights and accountancy reform at the State level. In all these cases: a) the reform process has only recently been begun; b) the impact is therefore still limited; c) there is strong pressure for further development.

Fifthly, a few initiatives are distinguished by more significant advances. These include: formal privatisation, re-definition of the administrative machine and internal decentralisation. In fact, almost all public economic bodies have been transformed into limited companies. The intervention in the administrative machine is distinguished by the wholesale adoption of the principle of budget delegation: from the political organisational level to the managerial level (and further down the scale the organisational level as far as local public bodies). This is drastic move away from traditional managerial regulations, firmly

anchored to centralisation and politicising of decision-making procedures. Moreover, the internal decentralisation issue is distinguished by the wholesale adoption of operational mechanisms for planning and checking; these aim to ensure that managerial operations connected with acquisition and employment of resources are carried out in the light of the principle of discernment-integration between politics and administration, and of the principle of economic rationality (pursuit of efficiency and effectiveness).

A relevant consequence of the widespread adoption of discernment-integration between political function (planning and checks) and administrative function (operational management) is that budget decision-making by political organs will now be in the hands of management.

In the light of the above considerations it is possible to affirm that New Public Management principles have strongly affected the reform process

in Italy leading the Italian public sector towards the modernization of its previous structure.

This is certainly a profound change, probably destined not to find its equal in other countries in the NPM movement.

4. Administrative evolution in European countries.

The United Kingdom is seen as the progenitor of New Public Management in Europe. During the eighties Margaret Thatcher shifted power from the intermediate centres of power, which had been created by the political powers and the administrative body as a whole (unions, local bodies, professional groups), moving the responsibility for state-reform towards the centre . The white-collar unions were sized down considerably and top managers with permanent contracts were placed in charge of administrative agencies (Rhodes 1997). The previously-nationalised industries and public services were nearly all privatised.

Even more emphasis was placed on the characteristics of pragmatism and managerial ability, which were however already present in Britain's administrative organisation. With the change of government from Conservative to New Labour in 1997, the role of market rules in the public services went from offering discipline and guaranteeing the monetisation of the effects of competition, to being the source of innovation and renewal in the public services. Public contracts and public procedures of supplying money were inspired more by collaborative methods than strictly competitive ones. In many respects Scandinavian countries can be treated as a whole, with the Netherlands often being grouped together with them (Torres 2004 e Preforms 1998). Scandinavia and the Netherlands are linked by the fact that their administrations place great care on the needs of their citizens and there is a continuing tradition of consultation and negotiation between public and private authorities (Torres 2004, 101). The direction of

administrative reform in these Nordic countries is one of radical political decentralisation and administration, in the context of a public sector that remains pervasive and a state that is committed to providing welfare (which has only been sized down to a slight extent). However, Scandinavian public administration remains strongly legalistic (Jorgensen 1996). Sweden has several public agencies, whose independence is guaranteed by the Constitution. The ministries do not have direct responsibility in the agencies' decisions and therefore they cannot oppose their decisions. Checks are carried out by administrative jurisdiction and the ombudsman. In Denmark and Norway, on the contrary, public agencies are subject to direct ministerial control. Norway and Sweden differ from Denmark in that they have politically nominated secretaries of state and elections every four years. In Denmark, the prime minister can decide when to call general political elections. These differences bring about different relationships between politicians and civil servants.

In Norway and Denmark, during the 1980s, a system of management was introduced based on the definition of goals and verification of results (Christensen e Laegreid 1998). All the Nordic countries adopted excellent initiatives for verifying administrative performance. Among Scandinavian countries Denmark is often seen to be in the vanguard of decentralisation (Preforms 1998). Compared with Sweden, Denmark has a more pragmatic and liberal style, whereas Sweden has a long tradition of official policy analysis and diagnosis of administrative problems, with strong ties between academia and actual practice. In the Netherlands, institutional tradition has always aimed to involve civil society in the supply of services and local-level decision-making (Kickert 1995). Norway and Finland lag behind Denmark, Sweden and the Netherlands, but the reform dynamics are similar.

In the German-speaking world(Austria, Germany and Switzerland), the administrative model is still the classic Weberian one (Torres 2004). The

public sector has a distinct profile that clearly places it outside the social and economic sphere. Administrative practice is linked to the Rechtsstaat doctrine and is strongly legalistic. Relationships between offices function through detailed directives, organised in line with a strict hierarchy. The public employer-employee relationship is characterised by permanent contracts, job security and non-transferability of post of work. The parties recruit their managerial class from the actual ranks of public administration(Torres 2004, 101).

New Public Management philosophy, based on contractualisation and managerialisation runs into institutional, cognitive and normative obstacles in the German administrative tradition.

An overall reform-bill is further complicated by the federal structure of these countries, where each region holds the reins of its own administrative policies and there is a strong tradition of local autonomy (Wollmann 2001, 167). In Germany and Austria there has not yet been

an extensive application of the instruments for checking accrual-accounting balances and performance indicators. The introduction of contractual instruments of common law as a normal method for managing public activity is still in the embryonic state.

In Switzerland the status of civil servant is open and the interchange with the private sector is quite good (Schedler 1997). However the salary levels and the rigid salary scheme make it difficult to attract certain specific types of worker (e.g. programmers and financial managers). At intermediate or regional levels of public administration, the influence of consultants from the private sector has been decisive in the introduction of typical New Public Management solutions.

The countries of southern Europe are influenced by the French administrative model, founded on the centrality of administrative law and the supply of services at the same level throughout the country, through the workings of the central apparatus of the state. The

management of public finances is still mainly centralised, in spite of a recent tendency towards federalism or fiscal regionalism (Torres 2004, 104).

In France the public sector has been affected by competition. Market principles and the individual assessment of performance are difficult to impose in a context of heavily unionised public employment (Guyomarch 1999, 177 e 185). Spain represents a particularly interesting example for other reasons. Until 1975 the country was governed by an authoritarian regime, which, on the contrary to the rest of Europe, greatly limited the spread of the welfare state and administrative structures. With the fall of Francoism the democratic regime tried to close the gap, and between 1975 and 1995, public sector expenditure went from 24.4% to 45.5% of GNP. Therefore Spain found itself combating a rapidly expanding public sector, whilst throughout Europe New Public Management called for a containing or reduction of public

spending. In more recent times, the Spanish government has introduced many of the New Public Management instruments, but with no great results (Torres e Pina 2004, 446). Wide-scale administrative decentralisation and greatly reinforced unions have, without doubt, made the road to change more complicated. Adopting occasional measures, without the introduction of a complete reform packet, has been another cause of the reformers' significant failure. In Spain too, privatisation has not been accompanied by incentives to be competitive. Managerialisation has advanced slowly, and responsibility for actual management has not been clearly defined. The public finance system is still centred exclusively on correctness and formal ties in management, rather than on checking the results. Administrative management is strictly separated and it is difficult to establish retribution systems based on individual performance, just as it is difficult to attribute responsibility

functions to external personnel recruited *ad hoc* (Torres e Pina 2004, 453-456).

To conclude this brief summary it should be noted that the rush for reform that has involved the public administration set-up throughout Europe is multiform. So far the road to reform has been laid down by the intervention philosophies of New Public Management. The reforms carried out in Nordic countries and Holland might represent an alternative to the model for modernising the public sector based exclusively on the actual character of the market, accessible above all to German-influenced countries and the Mediterranean area, where a certain bureaucratic spirit has been maintained in the recruitment and training of civil servants. In these countries the functionaries are, and will remain, professionals in law and are by nature reluctant to take decisions. In Nordic Europe and the Netherlands the predominance of jurists was greatly reduced in the second half of the 20th century.

Southern European countries introduced various measures aimed at raising the quality of public services. For this reason they have based themselves on directives of the European Foundation for Quality Management (Efqm), which lays down goals regarding leadership, attention towards employees and citizens, collaboration with other bodies and institutions, development of performance indicators and checking of results.

As regards the other elements in New Public Management, more closely linked to competition (such as the providing of public services based on competitive bargaining and emphasis on the private managerialistic style), the three great continental-European models (Nordic-Scandinavian, Germanic, southern European) need to question the role of the public sector in society, and therefore strong resistance or refusal will presumably be encountered. Only Sweden, and to a certain extent

Finland and Holland, seem to have embarked on concrete initiatives in this sense.

5 .Directions of convergence

In spite of the different ways in which NPM principles have been received in various European countries it should be noted that, from analysis of the administrative reforms carried out over the last few years it is possible to single out convergence in the various European public administrations towards certain common principles inspired by NPM ideas. By convergence we mean specifically the introduction of guidelines laid down by NPM into the public administration of various nations with the aim to complete the modernization process and to improve performance of public sector.

International convergence of public administrations is also favoured by the increasing importance of the international arena, and therefore by

the diminished capacity of governments to isolate themselves economically and politically from global pressures. These pressures manifest themselves through international markets and organisations such as the European Union. Convergence and internationalisation of national public sectors is developed in the following principal directions inspired by the actual principles of NPM (Peters e Pierre 1998).

A) Thinking up new instruments for checking and allocating responsibility: changes the role of elected representatives, something which is usually downsized. Political leadership is less strongly-linked to an elective public office and begins to be more dependent on political entrepreneurship. Political leaders take on key responsibility in developing networks and “consortiums” of public and private resources. The only role of a traditional type left to politics is that of establishing goals and priorities.

B) Streamlining of the separation between public and private.

It is necessary to close the gap that has been created between the state and the rest of society. Anybody operating on the market, under strong pressure, has developed sophisticated models of management and allocation of resources. Public bureaucracies have long remained cut off from any type of pressure. This has resulted in disorganisation and neglect, inefficiency, obsession with procedure, indifference towards the needs of the consumer. New Public Management theories maintain that efficient management techniques are the same in every sector, and should not therefore be differentiated in accordance with the public or private nature of the organisation (Peters 1996).

C) Greater emphasis on competition.

The idea of exploiting competition to create greater efficiency and more attention to the client in the public sector is a clear demonstration of the penetration of the principles of company-oriented derivation. The introduction of competition has had important consequences: it requires

a loosening of political control over functioning of services and the attribution of wide-ranging decisional discretion at all levels of the organization. Thanks to the creation of an internal market for all services, the competition consents each organizational unit to evaluate its costs in a much more accurate way.

D) Greater emphasis on checking results.

The checking of results was introduced through the use of indicators such as customer-satisfaction, or introducing private actors or volunteers in the production and supply of public services, in order to boost adherence to the rules of good administration and adaptation to citizens' demands.

E) Creation of new management tools and techniques.

According to the theories of New Public Management managing by pointing in a certain direction is the key task for the public sector (Rhodes 1997, 49). This entails establishing priorities and setting goals.

The lowest common denominator of these intervention policies is a state that, if not yet minimal, is certainly more streamlined, less costly and potentially more efficient than the Weberian state. The intervention policies can be translated into specific reform measures in three categories: 1) “market-based”, 2) “participative”, 3) “deregulation-based”.

Market reforms include (Merusi 2002) : introduction of the agency model, which attempts to keep administration away from political decisions; payments linked to merit for public employees; the creation of an internal quasi-market, separating suppliers from purchasers in the public sector; bargaining based on achieving goals, especially in recruiting other managers; adoption of accrual accounting instead of cash-based accounting, emphasising the importance of disposable capital and costs of future outlay; revision of every administrative programme on the basis of cost-benefit analysis; creation of “single desks” in all cases where it is possible to eliminate duplication of competences.

Deregulation is based on the assumption that many of the rules laid down within public bodies for managing personnel and the budget are useless and should be eliminated. There are various similarities with market reform, but the central element in this case is different.

Deregulation can predict: a change in the rules of financial management, so as to consent agencies to decide in greater autonomy; the attribution of greater autonomy to single administrative units with regard to supply agreements and contracts; the elimination of rigid controls over employment, promotion and dismissal of public employees (Peters 1997).

Reforms of a participative nature aim to improve the quality of services by involving workers from the sector and consumers (often called “clients”) in decision-making.

Participation reforms include: citizens’ procedural rights in dealings with institutions; quality management; decentralisation, which devolves responsibility for projects to outside bodies; citizens’ charters or service

charters, which stipulate the minimum quality levels to be expected from the services provided. We shall now analyse several of these reforms of a participative nature in more detail, and with the aid of examples.

5.1 The ombudsman and the defence of good administration

Among the tools for fostering quality in administrative activity, the ombudsman stands out in the latter part of the last century as the institution with the greatest capacity for international diffusion (Mortati 1974). Today there is an ombudsman or an analogous authority at the national level in more than 100 countries throughout the world, without counting the ombudsman instituted at the local level. The institution of the ombudsman, better known in Italy under the title “difensore civico” (lit. civic defender), originated in Sweden in 1809, and after more than a

year's incubating period started to spread throughout Scandinavia and subsequently the rest of the world. The basic characteristics of the ombudsman are today those of a "complaints office" for the citizen dissatisfied with his treatment by the public administration. Through informal powers and the moral persuasion that it possesses (recommendations to public administration, official relations with Parliament, faculty of proposing reforms) the ombudsman can often resolve controversies through negotiation between administration and private parties (Cominelli 2005), and can put itself forward as an institution to reform other institutions. The limited costs and reduced operational times have turned the ombudsman into a practical alternative to administrative jurisdiction (Leino 2004, 364) .

Although the ombudsman exists at Regional and local levels, only Italy and Germany of the 25 members of the European Union do not have an ombudsman at the national level. In 1995 the European Union

nominated the first EU ombudsman (named “Mediatore europeo”, i.e. European mediator, in the Italian versions of the treaties), which could officially deal with complaints made by EU citizens about EU institutions. In the first ten years of activity the EU ombudsman has seen the number of complaints quadruple and has had many decisions overturned, as well as administrative practices that do not fully respond to the canons of good administration. The institution of the ombudsman has had considerable success in State organisations and its reach is today also spreading to International organisations. It is a flexible tool and a permanent source of administrative reform proposals. The EU ombudsman has managed to put so much pressure on the Charter of Nice and the Constitution that the right to good administration has been incorporated, and various institutions have been compelled to take into consideration the possibility of a binding “good administration code” for their employees. The best road for the ombudsman to take consists in

keeping an eye over quality in administration, not from a legalistic point of view, but fostering a culture of service in the administrative sector (Tomkins 2000). While this might not present a problem for the Nordic administrative culture, difficulties arise with the German, French and southern European administrative models. The ombudsman adapts to whichever institutional and cultural context it might find itself in, and modulates its operations by following the Pole star of change and good administration. Specifications as to what constitutes “good administration” crop up ever more frequently in national regulations and paradoxically stem from a compilation of cases of poor administration.

5.2 Service charters for the citizen

Citizen’s Charters are an experiment arising out of a UK government initiative launched in 1991 with the aim of implementing a ten-year programme to improve public services. The Citizen’s Charter proposed to

set standards of quality in the providing of services, to assess the validity of performance and in the final analysis, to encourage improvements in quality through pressure applied by public opinion. The standards laid down in the Charter were of either a quantitative type (e.g. maximum waiting time) or qualitative type (e.g. respect for an individual's privacy and dignity), and in cases of infringement compensation was envisaged.

In subsequent years other countries followed the example of the Citizen's Charter: among these there were France, Belgium, Portugal, Italy and Spain (Torres e Pina 2004) . The Italian initiative was launched in 1993 and the major difference from the UK model was that there was still no provision for a standard (as regards services) applicable at the national level, the faculty to fix its own minimum standards being left in the hands of the individual bodies.

Apart from this, very few Italians knew about the Service Charters, at least initially, because they were poorly advertised, and so adoption of

the Charters was delayed by many months or even years. A survey carried out in 1998 by the Electricity and Gas Authority revealed that knowledge of the Charters on the part of the citizen varied from sector to sector, and even in the most virtuous sectors the figure never rose above 10%. In electrical services the quality standards had been set directly by the operators, with very ambitious goals. Compensation in the event of disservice was only awarded on request, and seeing the lack of information regarding standards, in the vast majority of cases compensation was never even claimed.

Little attention has been devoted to the launching phases and evaluation of the results of the Service Charters. In the United Kingdom, implementation of the project was entrusted to a permanently operational task force endowed with excellent resources. The committee responsible for supervising the Service Charters in Italy did not have a permanent staff and was made up of three part-time experts. However,

the most significant element of differentiation when compared to other experiences was that in applying the standards of quality practically in Italy these were confused with a formalised right to a certain level of performance. On the other hand it was observed that the best way of rendering the Charters more effective was, rather than create binding obligations for the service-supplying body, to create moral obligations of responsibility and accessibility in dealings with citizens. One of the advantages of the Service Charters in the United Kingdom was to succeed in improving quality without it being necessary to initiate great legislative reforms. The legislative provisions that set down new laws risk constituting an obstacle to development of the most flexible and responsive public services. In the United Kingdom, the results of the assessment did not only serve to impose sanctions, but also, and principally, to create higher expectations.

The differences in the link between “rights” and “action” are often related to the cultural context.

In the common law profile, the service Charter represents a verifiable tool inspired by New Public Management. Goals to be reached, rather than juridical aspects, are indicated; these objectives are laid down from above in order to maximise public attention of consumers and managers.

In the public law profile, the service Charter tends to confuse standards of quality with rights, and ends up creating additional guarantees, which often actually turn out to be rather ineffective in the administrative system (Lo Schiavo 2002, 695).

Conclusions

In the light of all the above we might conclude that the principles of NPM have had a great influence on the processes of reform and modernisation in the Italian public administration. In particular, from a comparative analysis with other European countries it emerges that Italy is one of the countries that has been most stimulated by the NPM guidelines. However, it should be stressed that the NPM principles have influenced reform movements in most of the world.

In fact, initiatives of a NPM type are widespread throughout the OCSE countries and have reached most of the Commonwealth countries, without excluding, however, the ex-Communist block countries. This does not mean that a complete uniformity of application has been found.

In fact, to this end it is possible to highlight differences between one country and another, since the profiles for modernisation range from complete openness to market-forces and privatisation (United Kingdom)

to a radical redefinition of the public sector in line with the model for the private sector (New Zealand); from cases of rapid advance towards managerial running, to cases of co-existence of deep-rooted links with more traditional forms of bureaucratic government in accordance with pre-set rules (Japan, Germany, Austria). A greater impact of NPM-type ideas was also discerned in Anglo-Saxon contexts (also with internal differences) when compared with eastern regions of continental Europe. This can be reasonably put down to a long tradition based on the predominance in most European countries of a juridical-type school of thought in public administration. In particular, every administrative tradition has reacted differently in accepting or refusing the various types of reform. Changes in the public sector certainly depend on differing cultural variables that impinge on the circulation of ideas and policies. Anglo-American culture has shown itself to be particularly inclined towards market reform, whereas German culture has opposed it forcibly.

On the other hand Scandinavian administrative tradition has proved to be receptive towards injections of managerial quality. Deregulation reform has been carried out more frequently in Australia and the USA than in Europe. The most common reforms have been those of a participative nature, followed by internal deregulation in public bodies. Nevertheless in the light of what has been documented here it is also possible to identify (in spite of national differences) an administrative convergence of reform movements carried out in the various European states on the road to adopting several common principles, clearly inspired by the NPM, which have facilitated the birth and implementation of the process of modernisation of European public administrations.

As above shown, one of the main elements of modernization introduced in the Italian public administration is represented by the change of decisional processes and organizational models, through the recognition of the principle of distinguishing between politics and administration.

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.

On this regard this work in the following chapters will analyze the relationship between politicians and public managers in the Italian public administration in order to verify if the discipline introduced by the reform has been really able to realize the principle of distinguishing between politics and administration.

CHAPTER. II

ON THE RELATIONSHIPS BETWEEN

THE POLITICAL AND MANAGERIAL LEVELS

IN THE ITALIAN PUBLIC ADMINISTRATION REFORM

Abstract

This chapter 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 chapter will focus on relations between political authorities and public managers. As 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 chapter 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 normative 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.

Introduction

Over the last few decades, the 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 have 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 the political authorities (Cassese, 2003). At the same time, it recognizes to 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 chapter 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. 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 N°165/01 (articles nos. 4, 14, 16, 17) has eliminated this power and seems to recognize greater managerial autonomy.

However, the Legislative Decree N°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 betrays several “dark sides”; it could allow politicians to gain influencing powers over a manager’s activities, something which the reform was actually meant to eliminate.

This situation is caused by the presence of norms 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 chapter is to analyze the juridical-normative 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 chapter keeps to a legal studies approach and 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 normative 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(Borgonovi , 2005).

It is on this subject that we start our analysis, on the assumption that the normative 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 chapter 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 chapter, 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 & 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. Reform of public management regulation

Public management was regulated in Italy since 1972, by presidential decree n. 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 n. 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.

2. 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, whilst 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 norms 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. n. 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.

3. 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 normative.

The regulation provides 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 & 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 normative 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.

3.1. 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.

3.2. Career progression of professional executives [art. 23 leg.decreet.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 normative (art. 23, par. 1, leg.decreet. 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.

4. Instruments influencing an executive's actions: Spoils system and top management position

The normative 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.

4.1. 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.

More specifically, the normative (art. 19 par. 8 leg.decreet. 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 individuate a top management position only in the cases of a direct and immediate relationship between managers and political bodies (Corso & 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, which 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).

4.2.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 border-line 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.

5. 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 formulation 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.decreet 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 n° 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 normative 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.

The above mentioned situation could be rather demotivating for internal managers, because they could 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.

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

The legislative decree 300/99 (art. 4 par. 1) assigns the adoption 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 Legislative 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.decreto 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 normal 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.

7. The law 15/09 and the legislative decree 150/09

Recently, new measures (law 15/09 and legislative decree 150/09) have been adopted in the public management sector, with the aim of improving 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.

The above mentioned provisions involve only some of the instruments influencing executives' actions, as outlined above.

More specifically, these measures aim 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 (50%) of the available vacant positions.

The normative covers the issue of employment of external management drafting a new regulation for external appointments that deals with the criteria for the individuation of the minimal prerequisites that external managers ought to possess in order to obtain the appointments. However, it does not advocate a reduction in their number.

Apart from the above mentioned profiles these measures are 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 of law 15/09 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 norm 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 legitimation 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”.

Therefore the law 15/09 was too generic and allowed the government to have considerable discretionary powers in its implementation. In fact even though the normative 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 15/09 has provided few accurate principles and directive criteria.

Highlight the above considerations it is possible to conclude that although these measures do present some interesting elements, they do 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.

8. 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 Infrastructure¹, in order to get his opinion about how the new regulation, at the management level, concedes to managers greater autonomy from politicians.

The interview was realized through short questions regarding the above mentioned issues related to the relationships between politicians and public managers. The answers to these questions was immediate and short as well.

The interview was based around the consideration that the normative introduced by the reform does not entirely fulfill this purpose. Our interviewee pointed out three factors which might affect managerial autonomy .

¹ Mr. Ciro Esposito is a top manager who has worked in several public administrations. He is an engineer and now he is developing an activity regarding the evaluation and control of the employers' performance into the Ministry of Transports and Infrastructures.

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 demotivating 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.decreree 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 normative as pointed out in the first part of the chapter. 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.

9. Hypotheses for legislative innovation

It is possible to hypothesize certain modifications to the legislation which would aim to correct the normative 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 accorded in the event of conferments of a technical function and functions which do not come under the influence of political orientation.

At the end of the appointment, the introduction of a manager's right to receive confirmation of a function or an equivalent assignation, 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 normative 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.

Conclusions

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 work 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 .

CHAPTER III

THE EVALUATION OF PUBLIC MANAGERS' PERFORMANCES IN THE LIGHT OF ITALIAN PUBLIC ADMINISTRATION REFORM

Abstract

One of the most important element in the analysis of public administration's performances is the management. In fact it is the connection point between objectives (fixed at political level) and the system of outputs and outcomes, achieved by public personnel at different levels.

This is the main reason why during the last decades, the reform of Italian public administration has concentrated on improving public action performances, by a regulation of public management and the connected introduction of two key words: autonomy and accountability. This means that managers should be endowed of greater autonomy in the execution of their managerial activities and, at the same time, they are fully responsible for both personnel's and whole body's performance.

Even though the legislative decrees nr. 286/99 (art.5) and nr. 165/01 (art.19-21) introduced an evaluation and control system of managers' activities, they have been applied with a very little success inside public administration. The reason is that evaluation has been realized in a bureaucratic way, often by the use of a great number of general indicators, which do not concretely reflect actual organizational processes and related outcomes.

According to the above considerations, it could be stated that the reform of the Italian public administration did not completely accomplish its two fundamental goals.

First of all, it did not recognize a greater autonomy to managers, considering that in the Italian system there are many instruments which can be used by politicians to affect managers' executive action and, on the other hand, it has provided a managers' performance evaluation system which is not compliant to the reality.

However, according to these themes, a new discipline has been recently provided by the legislative decree nr. 150/09. Its aim is to introduce a concrete system of measures and indicators, which are oriented to ensure the accountability of public managers' activities.

The purpose of this chapter is to verify why managers' performance evaluation system provided by legislative decrees nr. 286/99 and nr. 165/01 was not proper and well-functioning; to analyze the changes

introduced by the new discipline and, finally, to verify if such innovations are really able to realize an adequate evaluation system of public managers' performances, in order to built a strong feedback flow for the review of personnel policies.

Introduction

Up until the changes brought about by law 15/2009 (passed in 1992-3 and integrated in 1997-8) and its various executive decrees, public administration and public work reform in Italy was based on several fundamental principles. These included: the principle of separation of politics and administrative management; the reinforcing of managerial autonomy and responsibility; privatization/contracting of employer-employee relations and reform of trade union relations; the introduction of managerial techniques typical of the private sector, including the handling of human resources. This programme's approach drew its inspiration from 'new public management', Public Choice and the economic theories of organization that aimed to remove all differences between the public and private sectors of the economy (Hood 1991 e 1995) .

In particular, the issues of management and regulation of managerial roles are at the centre of critical thinking regarding the applicative experience of the reform process in the nineties.

According to most authors many of the novel elements introduced by the reform “haven’t worked”, either because of shortcomings in the original norms, unsatisfactory application, or failed implementation. Among the shortcomings, we find, above all, an inadequate or unrealistic configuration of the manager’s commanding and organizational role, not only in his/her relationship with the political powers, but also in his/her role as trade union counterpart. Among the poorly applied solutions we find the discipline of managerial appointments, both with regard to permanent-contract managers and to so-called external managers, taken on short-term contracts (and without public selection) and the connected problem of the spoils system. Thirdly, assessment of management has never really taken off or has not produced the expected results, both

through the negligence of those involved, but also because of poor initial planning.

More specifically, the failed implementation of the *virtuous circle*, which the reform had proposed to launch (included among the discipline of managerial appointments, assessment procedures and managerial responsibility) could be blamed on contingent factors and bad practices that these have generated (failure to single out management goals, assessments of a merely formal nature, non-functioning of mechanisms attributable to managerial and disciplinary responsibility, indiscriminate distribution of economic incentives with no control over results); at the same time “certain structural blind-spots in the present normative framework” also emerge, with a specific focus on “excessive, uncontrolled and uncontrollable links between politics and management”.

The relationship between political organs and administrative management almost always takes centre stage, and in particular, the problem of how to ensure management autonomy and safeguard it from political interference, as a condition for implementing the constitutional principles of impartiality and successful functioning of public administrations.

In this context the profound relevance of assessing management cannot be underestimated; it represents an “element of closure of the whole system” (Talamo 2007:137), an indispensable link both for activating the *virtuous circle* of autonomy/responsibility (in the name of the principle of healthy functioning) and for stemming the discretionary power of political organs in order to safeguard management autonomy and the impartiality of its actions.

1. Assessment of public management

According to many authors one of the weak points of the reform in the nineties lay in the implementation of management assessment(Zoppoli, 2008).

The instrument under examination is of primary importance in the construction of a modern public management figure geared towards expressing “organisational logic” (Rusciano, 1993); this is a precious resource to be exploited in such a way that the organisation may carry out a specific political programme, providing competitive, quality results.

Only through assessment, do elements such as the conferment of appointments, exceptional discipline, and managerial responsibility assume a precise meaning.

Laying importance on the assessment of the performance of the manager means inducing him/her to demonstrate the capacities and powers of a private employer with a view to the results to be achieved. The manager

is forced to define in responsible fashion his personal strategies, making use of instruments recognised by law: managerial power, power of control, sanctioning power, assessment of personnel and analysis of performance with a view to improvement and learning, handling of prizes. For all this he/she will assume the necessary responsibility with regard to the organisation to which he/she belongs.

Management assessment was initially regulated in the bill d.lgs. n. 29/93 , but it was with d.lgs. 30 July, 1999, no. 286, that there an organic and integrated discipline of internal controls began to take shape. Of course, the afore-mentioned normative source contained uncertainties and several failings. It should in fact be stressed that d.lgs. no. 286/99 was rather unclear in its mechanisms for setting objectives and some of the solutions adopted succeeded in weakening the assessment organs. For example, this happened in the case of the assessment nuclei because of

the lack of clear intervention geared towards preserving their functional autonomy and precisely defining roles.

The socio-organisational logic proposed in d.lgs. n. 286/99 was substantially ignored for reasons connected to both management and politics, thus adding to the structural difficulties. In fact it is a commonly held opinion that the political component had actually given up governing with competitive strategies(Natalini, 2009).

To this can be added a symmetrical position in the management hierarchy, for whom activating assessment systems means an increase in responsibility in accordance with one's own position Battini, 2009). All this produced an inevitable exchange between politicians and managers(Merloni, 2006) on the basis of which the former were to "actually introduce themselves into administrative management", whereas the latter would receive "monetization (salary increases not based on evaluation of management results) for the assuming of exclusive

responsibilities connected to the exercising of their duties”. This degeneration undoubtedly led to the sacrificing of the idea of the *virtuous circle*, based on healthy management functioning.

There was, therefore, a clear opportunity for a normative intervention in the juridical framework of assessment. The afore-mentioned intervention was implemented through the bill d.lgs 150/09.

One should be aware that for a correct ascertaining of results of the assessments proposed by d.lgs. n. 150/09 it will be necessary to wait for the outcome of its application; nonetheless, under a strictly juridical profile the exegesis of the formulation of the normative provisions seems to be indispensable for the subsequent verification of applicative practices. In fact, as an initial premise, we should be asking ourselves if the norms can overcome the problems emerging from the application of the normative thus far in force(Zoppoli, 2008), whether they have within themselves the instruments to consent a functioning of the

system of assessment of personnel and management, real and not merely formal, and if they are able to create a *virtuous circle* (Morciano, 2009), fostered by the proclaimed reinforcing of the actual managerial roles.

The goals of this article are: 1) to highlight the critical state elements present in the system of assessment operating before the Brunetta reform; 2) to proceed to a critical analysis of the normative provisions introduced by d.lgs. n. 150/09 with regard to evaluation of individual performance, in order to single out which are:

- a) the positive and disciplined aspects in a clear manner in the provisions in question;
- b) the elements presenting a need for clarification because of an imprecise normative formulation or because of a lack of internal coordination in the normative provisions;

c) the deficit elements which might have opportunely welcomed an intervention on the part of the legislator in order to create instruments capable of getting the system to work in an optimal manner.

2. Critical state elements in the assessment system operating before d.lgs

150/09

2.1. Politicisation in management assessment

The system in force before the 2009 reform provided for an assessment handled entirely by political bodies, which had the responsibility of laying down objectives and carrying out the evaluation. The aforementioned formulation resulted in poor functioning of the assessment system. In fact, it is quite legitimate for political bodies to determine the policies; but the existence of these political factions alone, of whatever type, is not sufficient to identify and show off a real responsibility for results. The goals and the connected indicators of realisation should

emerge from these lines of policy, as long as assessment of the extent to which the goals have been achieved can be conjugated with assessment of organisational behaviour. It is in relation to these profiles that the norms in questions are shown to be lacking inasmuch that they have not provided for instruments geared towards reducing the inappropriate intrusion of politics and have not provided for any procedural measures for eliminating all forms of judgement, in order to ensure the maximum possible impartiality in assessing the performance of any single manager.

At this point there are two main aspects, in particular, to analyse: 1. the setting of goals 2. the subjects who will carry out the assessment.

a) Politicisation in the setting of goals (sections 19 of d. lgs. n. 165/2001 and 5 of d. lgs. n. 286/1999).

As regards the setting of objectives, section 19 of d. lgs. n. 165/2001, stipulated that, with the conferring of the appointment, the reasons for

the appointment and the goals to be achieved should be singled out, with reference to priorities, in the plans and programmes as laid down by the governing bodies with their specific policies and any potential alterations to the latter, which might arise during the relationship.

It can be deduced from this norm that the objective, like the appointment, should be assigned to the manager using the same unilateral measures, which may be periodically modified, again in unilateral fashion. This is an interpretation that reduces managerial responsibility and assessment regarding the regulating of conferment of appointments, creating a discipline characterised by an intrinsic handling of immobility and a dangerous overburdening of programmatic expectations. How is it, in fact, possible that at the moment of conferring appointments there can be such a precise awareness of objectives and resources for carrying them out, to project oneself forward, very approximately, for the subsequent three years at least? Is there not a risk

in this way of including in the appointment extremely vague objectives that are substantially inadequate for precipitating real and proper managerial responsibility? The fleeting reference in section 19 d. lgs. n. 165/2001 to “potential alterations” is also so general and all-inclusive as to suggest that any modification of the initial objective can only lead to priority modifications, simple programmes and lines of policy. In the light of the above considerations it can be seen that section 19 d. lgs. n. 165/2001, rather than being defective as regards the concrete ways for assessing management and investing it with responsibility for results that are both imagined, in order to ensure, on the one hand, the unilateral nature of conferring appointments, and, on the other hand, a minimum duration of the appointment itself, rightly fixed at three years so as not to render management too precarious a phenomenon. These are important requirements that need to be safeguarded, although they concern the static and structural profile of public organisation, and the balance

between subjects and powers that spark off “entrepreneurial function”; at the same time they seem to relegate to an inferior position the dynamic-managerial aspect of management assessment, without which, however, the functioning of the whole system, as already mentioned, might be jeopardized.

The norms proved to be rather ambiguous as regards reference to the manager’s rights of appointment and assessment, creating a considerable risk of confusion between the minimum term of appointment and systems of evaluation.

b) Politicisation in individuating assessors.

With regard to subjects who have to supervise the process of annual assessment, d. lgs. n. 286/1999 adopts a model tried and tested in the private sector, where, most importantly, the protagonist in the

assessment of results is a manager, acting in accordance with strategies, policy and lines of responsibility singled out by company organs.

However, the discipline under examination limited itself to establishing the principle of the direct dependence of support structures on the organs of the political group, completely neglecting the need to lay down homogeneous principles in relation to the functional autonomy of these organisms and to the extension of their roles. In the way in which it was formulated the discipline of assessment has contributed considerably towards the politicisation of assessment organs and to a huge “corporation-style” mode of functioning. All this is probably one of the main reasons why assessment has not produced the expected effects; in particular a system of assessment of managerial performance that consents real comparison has been lacking.

In comparison with the private sector, what has, in fact, been forgotten is that it is not possible to compare results among public administrations

commencing from their market presence. Assessment that exhausts itself in each organisational dimension is bound to be influenced by the old and new characteristics of each organisation, without there being a moment of truth regarding the results which that particular administration manages to produce externally, for citizens and other administrations. There is little doubt that the discipline of subjects manifested all its shortcomings, rendering assessment of managerial performance an affair internal to the administrations and bureaucratic management.

Furthermore, the discipline under examination has not introduced objectives and indicators capable of substituting more effectively the absence of parameters deducible from an actual real market, and has greatly reduced the role of assessment nuclei.

2.2. Applicative dysfunctions of section 5, d.lgs. n. 286/99

The system of assessment of management as laid down by section 5, d.lgs. n. 286/99 has been characterised by a formal application of the normative provisions, often with broadly positive evaluations, generally speaking, certainly not symptomatic of the system's efficiency (seeing the administrations' unsatisfactory output), so much as an element highlighting applicative disorders (Gagliarducci, Tardiola, 2008). An upward projection of the evaluations has shown, as a consequence, that they have no influence on concrete effects on the career of the person being assessed, and on the diversification of retributive dynamics. Thus, although this praxis has widely consented the obtaining of result-based retribution from the angle of "immediate reward" (i.e. the retributive aspect), from the "medium-term"-reward perspective (i.e. that which is linked to the selecting of subsequent appointments) a generally-speaking positive assessment has compromised the possibility of discovering the

real managerial capabilities of each single manager, hindering a possible comparison of various candidates for a single appointment. As regards the “disciplinary” angle, managerial responsibility linked to assessment was not in fact implemented, and has often been side-stepped through legislative interventions containing annulments that content politicians but are not linked to (lacking) managerial professionalism.

3. Prospects for analysis of present legislative data

Section 5, d.lgs. n. 286/99 has now been repealed by the Brunetta decree and the provisions relating to public managerial assessment have been included in a series of norms to be found in Document II and Document III of d.lgs 150/09.

In the following paragraphs we shall be endeavouring to verify whether the new norms:

1.- have overcome the problems relating to identifying objectives when conferring managerial appointments, these being the indispensable presupposition for correct assessment of managerial-level personnel;

2.- maintain their “guarantees” during the managerial assessment process (on the basis of repeated requests by the Constitutional Court);

3 might have repercussions for the main institutes linked to the system of assessment, i.e. a) to the conferment of new and subsequent appointments; b) to managerial responsibility.

4. The necessary presuppositions for managerial assessment: towards a correct role for the political element

In the sphere of distinction between politics and administration, the former is given the task of identifying objectives and the latter the task of implementing them with managerial autonomy correlated to the required managerial responsibility; in order to be able to assess first one

needs to plan, i.e. individuate and subsequently assign objectives (Gagliarducci,Tardiola,2008). Although it is central and strategic, the moment of programming has thus far witnessed a lack of attention on the part of politicians responsible for policy, with a corresponding failure to transfer the objectives to managerial appointments. Going back to the initial delegating law, the so-called Brunetta reform has devoted little space (q.v. section 4, comma 2, lett. b) l. n. 15/09) to the fundamentally important “planning” issue; nor has much more space been devoted by the delegating decree, where the individuation of objectives is inserted mainly between section 5, d.lgs.n. 150/09 (objectives and indicators) and section 10, d.lgs. n. 150/09 (performance plan and report on performance). This planning, in the final version of the Brunetta decree, is placed, fairly and coherently, in the system of distinction between politics and administration, in the hands of the political-administrative policy-makers* with the involvement of upper management.

In the three-year planning phase attention to the need for a collective approach certainly emerges as a positive factor, along with individuation of correspondence between objectives and resources, the highlighting of the specific nature and clarity of objectives, which should also be measurable and comparable with defined standards at the national “and international” level. This programme takes shape in the “Performance plan” (Q.v. section 10, d.lgs. n. 150/09). This Plan, to be adopted by January 31, for State administrations(Barrera), “contains” the Minister’s annual directives, singling out the strategic and operational objectives and defining the indicators for measurement and assessment of administration performance and the objectives to be assigned to managers. Thus the formulation of the normative can be viewed in a positive light; with the help of the Committee (Q.v. section 13, d.lgs. n. 150/09(Natalini, 2009)) it requires programme contents that will hopefully be translated into adequately specific objectives, but one

cannot help noticing that the provision is lacking with regard to the propulsive phase, providing instead for “disciplinary relapses” that do not affect the politician so much as the management. In fact the corrective measures implemented by the legislator as a suitable instrument for encouraging policy-making are the ones in section 10, comma 5, d.lgs. n. n. 150/09, which establishes that: “In the event of failure to adopt or update annually the Performance Plan, result-based retribution to those managers who have been shown to play a part in the failed adoption of the Plan should be stopped, because of omission or inaction in carrying out their duties, and the administration must not proceed to take on personnel or make appointments for denominated consultants or collaborators”. Failure to adopt the Performance Plan on the part of State administration will therefore have repercussions on personnel with managerial appointments; this would confirm the essentially punitive approach to management, without there being present a balancing with a

counterweight that might induce the politicians responsible for policy to programme in terms as laid down by the normative. This provision has been confirmed in several parts of the decree, which, on the other hand, is lacking with regard to the presence of a disincentive for delays (equally important), which acts as an impulse to politicians, balancing up the normative provisions

5. The individuation of objectives for the manager and the significance of assessment in the conferment of subsequent appointments.

The issue of conferment of appointments, which we shall be analysing here, is closely linked to the political sphere:

- Under the profile/presupposition (for assessment) of the need to confer appointments “for objectives”;
- Under the profile/consequence (of assessment) of the need to bear in mind the results obtained previously and obtained through the system of

assessment of performance for the conferment of subsequent appointments.

With reference to the former issue there have been difficulties up to this moment in time in arranging for managerial appointments “for objectives”. Yet the novelty of the normative, especially in the formulation linked to the so-called second privatisation of public work, “lay not in the conferment of abstractly preordained managerial functions, but in the configurations of specific appointments, corresponding to the characteristics of the actions to be carried out”; thus “all appointments of second level managerial offices are marked by features of such concreteness as to justify the conferment”, both “under the objective profile of their coherence with the framework of administrative political tendency deliberated during the years in government” and “under the subjective profile of the subsistence of suitable skills, and the professional capacities of each manager, backed up

by previously achieved results” (Audit office – Resolution, January 24, 2002, n. 6). It would therefore have been necessary to individuate in punctual fashion “the duties assigned to each manager, and with regard to these, the objectives to be pursued and the relative scale of priorities”. This specification is necessary both for a suitable placement for the manager, on the basis of his/her own professionalism, and also in order to be able to carry out an assessment that might allow one to individuate his/her possible responsibilities* (Resolution, 22 March, 2001, n. 19) and to allocate diversified retributive treatments”. In spite of this normative it is widely accepted that up to now, there does not seem to have been a concrete implementation of the provision, as stressed several times by the Audit office in its powers of preventive control (q.v. section 3, comma 1, lett. b), l. n. 20/94) (Bolognino, 2008).

The bill, d.lgs. n. 150/09, refers to “objectives to assign to managerial personnel” in section 10, comma 1, lett. a) in the drafting of the

Performance Plan, and in section 19, comma 1, as in a new formulation, however, as mentioned previously, the normative provision alone is not sufficient to guarantee its realisation and therefore, under this profile, it will be fundamental to proceed to a real implementation of the normative, because the individuation of precise objectives for management preludes among other things the possibility of implementing the system of assessment effectively and efficiently.

With reference to the other profile of analysis (i.e. the relationship between conferment of appointments and evaluations of managers; in the past it does not seem that assessment had assumed a preponderant importance as a subjective element capable of affecting, as a plus value or as a *deminutio* of a manager's professional capacity, influencing decisively the conferment of new and subsequent appointments. This scenario is certainly the consequence of a system of assessment that has had trouble taking off and therefore could not help remaining ineffective

with regard to the conferment of new and subsequent managerial appointments. In the new normative a positive aspect that emerges is the reference to the relationship between the results of assessment and “attribution of appointments and responsibility” (Q.v. in particular, section 25, d.lgs. n. 150/09). This section reinforces the content of section 19, d.lgs. n. 165/01, which stipulates that for conferment of managerial appointments one must bear in mind one’s pre-set objectives, the complexity of the structure, results achieved and the assessment previously obtained by the manager him/herself specifying that the certified professionalism in the system of assessment is a criterion on the basis of which (together with the others) to confer appointments. In this situation however, the system will also produce effects in the conferment of subsequent appointments only if, and to the extent to which, the system of assessment of performance functions adequately.

6. With the aim of guaranteeing participation of the assessed subject in the assessment process.

In the relationship between politics and administration based on a distinction between duties, in which the manager ought to handle his/her resources autonomously during his/her appointed term, assessment also absolves the important function of management guarantees and safeguard; management should be assessed for demonstrated skills and not for “political affinity” (Bassanini, 2008), also as a direct consequence of all that has been effectively mentioned, i.e. “administration and institutions are at the service of the citizens and are instruments for guaranteeing and satisfying their rights. They are not at the service of the demands of political patronage(Bassanini, 2010).. In this context it is particularly important for the normative to individuate adequate guarantees for the assessed person during the performance assessment process; these guarantees have been mentioned several times

by the Constitutional Court, which, over a period of twenty years, has made rulings regarding the constitutional legitimacy of the provisions on the subject of so-called “privatisation” of the public sector and management-employee relationships. In sentence n. 103/07, the constitutional judge established that “assessment of a manager’s professional suitability should be based on criteria and procedures of an objective nature, inspired by principles of open public debate; only at the conclusion of this is it possible to carry out withdrawal or annulment”, which, in terms of guarantees, translates as “in a system of objective, transparent and participatory assessment of personnel appointed as management” ”(Bolognino, 2008). Here we should verify in particular whether the bill d.lgs. n. 150/09 provides the manager with adequate guarantees of participation during the assessment process. This guarantee referred expressly to the repealed section 5, d.lgs. n. 286/99 and translated, at least in theory, into participation during the assessment

process, through which a manager would have been placed in a position (in the event of failure to achieve objectives) to outline the possible internal and/or external hindrances which “exonerate him/her from responsibility”. The present normative regulation, in section 7, al comma 3, lett. b) d.lgs. n. 150/09, provides for the individuation of “procedures of conciliation relating to the application of the system of measurement and assessment of performance”. Therefore the perspective of the present provision, which is projected towards “conciliation” (which intervenes technically once assessment has been concluded) seems to have been altered. If the idea of the previous normative (or contractual) plan was to attribute negative assessment to the manager (wherever this could be demonstrated), this provision leads to a missed opportunity for public debate in the assessment phase (in order to arrive at a “posthumous” conciliation). The failure of this participatory phase leads to a reduction in guarantees for public managers during assessment of their

performance, further aggravated by an unsatisfactory modification to section 21, d.lgs. n. 165/01, where the request for the manager's participation in the pathological moment is not very apparent. Only in its second part does the revised text of section 21, comma 1, d.lgs. n. 165/2001 (relative to "serious" managerial responsibility), refer to "respect for the principle of public-debate"; this is not so for the application of the sanction of impossibility of renewal of appointment, where the request is only "subject to objection", which is suitable for producing a further contraction of guarantees for the manager, reduced as much in the moment of assessment as it is (at least partly) in the pathological moment of application of the sanction (Q.v. section 21, comma 1, first section d.lgs. n. 165/01).

7. Responsibility with reference to section 21, d.lgs. n. 165/01, in the light of the modifications introduced by the bill, d.lgs. n. 150/09.

This last point is an analysis of the consequences of the results of the system of assessment concerning the disciplinary element, i.e. managerial responsibility. Perusing the text of the bill, d.lgs. n. 150/09, it is striking how many times the legislator uses the term “responsibility”. One notes immediately how the meaning is now used in a different manner, in particular in the two reforms of the nineties (linked to enabling act n. 421/92 and enabling act n. 59/97) where responsibility represented the other side of the coin of managerial autonomy. The so-called Brunetta decree, faced by a compression of managerial autonomy, has encouraged the proliferation of the hypothesis of responsibility; it should be stated that, alongside the most appropriate managerial responsibility (Q.v. section 21, d.lgs. n. 165/019), the following have also been introduced: fiscal responsibility for failed individuation by the manager responsible

for excesses on the part of personnel (in accordance with the law section 33, comma 1, d.lgs. n. 165/01); various hypotheses for responsibility individuated by the legislator as disciplinary (Q.v. newly introduced section 55, bis comma 7, d.lgs. n. 165/01; section 55, sexies, d.lgs. n. 165/01; section 55, septies, comma 6, d.lgs. n. 165/01;) and a hypothesis for civil responsibility (Q.v. the newly introduced section 55 sexies, comma 4, d.lgs. 165/0163).

Clearly, with regard to our object of analysis, we should circumscribe our thoughts regarding the hypothesis of responsibility, which is more closely linked to the relationship with assessment, i.e. the hypothesis of responsibility (Q.v. section 21, d.lgs. n. 165/01), the application of which should be the direct consequence of negative results (attributable to the manager) in the system of assessment.

The new role of the public manager (as distinguished from a role influenced by political leanings) should be autonomous, including

responsibility for appointments for fixed-term objectives; it is fundamental for the normative provisions relative to the relationship between assessment and managerial responsibility to guarantee a constitutionally obligatory balance between guarantee and sanction, so as to remove from the manager the yoke of “mere political approval”, in avoidance of the principles laid down in section 97 Cost. This balancing of guarantees must first of all be included among the provisions relative to assessment of personnel with managerial duties, and secondly must imply the clear formulation of provisions for managerial responsibility.

The latter profile has been repeatedly highlighted by the Constitutional Court, which stresses the fact that an annulment of a managerial appointment may “merely be the consequence of certified managerial responsibility”, not only following the outcome of a “process of punctually disciplined guarantees”*, but also in the presence of “determined presuppositions”, thus preventing the unilateral

modifications on the part of the employer-employee relationship established by the employer from taking place outside “typified cases in the legal and contractual provisions”. Thus disciplinary interventions regarding the appointment and permanent contract employer-employee relationship must be grounded in the presuppositions demanded by the normative data and therefore only in negative results of administrative or managerial activity or the failed achievement of objectives, i.e. “anyway for motivated organisational and managerial reasons, or following the ascertainment of negative results in management or non-observance of directives” (Bolognino, 2005).

However, in the search for these guarantees, section 21, d.lgs. n. 165/01 (already in the formulation prior to the bill d.lgs. n. 150/09) (Bolognino, 2005), presented a host of issues linked to its imprecise formulation*; these important problems were not resolved by the modifications brought by section 41 del d.lgs. n. 150/2009, which in certain instances

amplified them, especially also following the new hypothesis of responsibility introduced by comma 1 bis (D'Alessio, Bolognino, 2010).

Specifically:

- comma 1, section 21, d.lgs. n. 165/01 in the post-d.lgs. n. 150/09

formulation, continues to provide for a hypothesis of responsibility: a)

failure to achieve certified objectives via the outcomes of the “system of

assessment, Q.v. Document II of the legislative decree implementing the

law, March 4, 2009, n. 15”; b) the non-observance of directives imputable

to the manager. As disciplinary hypotheses the following continue to be

present: a) the impossibility of renewal of the same managerial post; b)

annulment of the appointment, thus allocating new roles to the manager

(Q.v. section 23 del d.lgs. n. 165/2001); withdrawal of employer-

employee relationship in accordance with provisions in the collective

contract;

- comma 1 bis, section 21, d.lgs. n. 165/01, in the post-d.lgs. n. 150/09

formulation, introduces a different hypothesis of responsibility providing for “the culpable violation of duty of vigilance of respect, on the part of the assigned personnel, for quantitative and qualitative standards fixed by the administration”, brings with it, as a sanction against the manager, “a reduction in resulting retribution, following hearings with the Committee of Guarantors, in proportion to the gravity of the violation, up to a total of 80%”

At least three questions emerge from the normative data:

- . the link between the application of sanctions and the outcomes of the system of assessment;
- . the reduction in guarantees for the weakened role of the judgement of the Committee of Guarantors;
- . perplexity arising from the new hypothesis of responsibility (Q.v. section 21, comma 1 bis, d.lgs. n. 165/01).

In relation to the link between the application of sanctions and the outcomes from the systems of assessment it can be seen that, as previously laid down by the Constitutional Court, it is extremely important to connect the criteria of assessment with disciplinary hypotheses, to which the manager will be called to answer, establishing a sort of parallelism between the provisions in question. This parallelism was less evident with the modifications brought to section 21, d.lgs. n. 165/01 con l. n. 145/02, and also continues to be absent with the modifications brought to section 41 of d.lgs. n. 150/09. The objects of assessment are: a) the performance indicators relative to the organisational sphere of direct responsibility; b) the achievement of specific individual objectives; c) the quality of the contribution ensured by the general performance of the structure, professional and managerial skills demonstrated; d) assessment capacity of one's own collaborators, demonstrated via a significant differentiation of judgements; in its

revised text Section 21 also continues, as an element for the attribution of responsibility (as well as non-observance of directives), to provide for the “failure to achieve objectives”. In terms of responsibility, it does not seem to take into consideration managerial capacity, which is also a very relevant element in assessment and, on the subject of sanctions, can entail greater attention being evoted to the role of manager.

With regard to the second issue, considering, on the part of the political subject, the ample margin of choice of sanction to be inflicted, the situation becomes more serious with regard to guarantees made by managers in their professional capacity to modify section 22, d.lgs. n. 165/01. On the other hand, section 21, d.lgs. n. 165/01 post d.lgs. n. 150/09 continues to provide for the possibility of choice between annulment and withdrawal “in proportion to the gravity of the case”, without restoring a correspondence between gravity of responsibility and the disciplinary measures necessary to reduce the room for manoeuvre as

regards the arbitrary passing of sanctioning powers into the hands of political bodies. The increase in the political organ's discretion had already been countered with "l. n. 145/02", a fictitious expansion of the hypotheses for recourse to the judgement of the Committee of Guarantors (an organ provided for by law). Thus the decision to apply sanctions to the manager is not left solely in the hands of the political subject(Mainardi, 2003) who is endeavouring to "recover in the procedural phase a possible deficit in safeguard, to be verified during the individuation of any conduct that might be sanctioned in terms of responsibility" (Mainardi, 2003). This recovery of guarantees was not effective, bearing in mind the pre-existing possibility of inflicting sanctions without the Committee of Guarantors' judgement, in the sense that "thirty days having passed from the time of the request without obtaining the judgement, it is possible to proceed without it". The present, post-d.lgs. n. 150/09 normative formulation intervenes by

further weakening the standing of the judgement in question, which as a “true opinion”, and therefore binding (which it was in the text prior to the bill d.lgs. n. 150/2009), is converted into the present formulation (post-d.lgs. n. 150/2009) in the form of a mere “opinion heard” from the Committee of Guarantors(D’Alessio, 2009).

As for the third issue, in the new “comma 1 bis of section 21, d.lgs. n. 165/01”, there has been an evident shift away from the apportionment of responsibilities and not a simplification(Boscati, 2009), wherever the failure to respect qualitative and quantitative standards might have been classified with a general assessment of the manager’s operations, with the application of sanctions, as laid down in “comma 1”, absorbing the preliminary and instrumental moment of vigilance(D’Alessio, 2009). All the same, it is the formulation of the normative, which hinges on “omitted vigilance”, hinting at the manager’s role as “controller” and not manager”(Santucci, Mora, 2009), that seems to accentuate the presence

of the subjective component of this hypothesis of responsibility(Borgongelli, 2009), with the consequent necessity to have to reflect on the correctness of its inclusion in section 21, d.lgs. n. 165/2001.

Conclusions

Taking the ideas expressed above as our cue we might state that the theme of assessment follows (in the structuring of the bill d.lgs. 27 October, 2009 n. 150) a line of development that is not always so linear when compared to the conceptual principles adopted by the previous regulatory system. The precise choice of enhancing the role of the manager, as exclusive possessor of the power to manage human resources (section 6, l., 4 March, 2009, n. 15 and in that sense Q.v. section 37 d.lgs. n. 150/09) is counterbalanced by a complex normative framework from which numerous ways of conditioning managerial activity emerge. This is primarily the result of the progressive weakening of those channels

through which the manager should have been carrying out his duties and also of the method used, based on cloaking organisational rules in a normative guise

In fact, the reform legislator has introduced an element of discontinuity, when compared to the past situation, since he has given considerable importance to the role assumed by the law in regulating the micro-organisational dynamics. The norm has become the instrument with which to pursue efficient and effective results. The rules for governing the administrative apparatus are no longer self-made; they function according to the particularity of the services provided, the external dimension of reference and the countless contextual variables which every organisation has to confront, and represent the end-product of laws applied in a unitary fashion in all administrations. The most expressive example is to be found in the normative framework of a cycle of performance management. By entrusting the configuration to an

organic and detailed discipline such as that of bill d.lgs. n. 150/09, one might risk obstructing the smooth functioning, without taking into account the differences between the various administrations(Rebora, 2009). Moreover, extensive literature(Spasiano, 2003) has shed light on the fact that the necessity of tackling the needs of the general public in a real way, when compared to the past, now entails a profound streamlining of the relationship between organisation and legislative regulation.

All this increases the risk of moulding managerial activity into an executive process of legal provision with a dual implication: to trigger inevitable processes of avoiding responsibility towards the general public (including those subjects that have to express the organisational logic and the structures themselves); to throw open the doors of management to a possible judicial inquiry. In this way there would be a risk of applying

juridical-formal logic, a jurisdictional evaluation for a subject that
requires profoundly diversified analytical parameters.

CHAPTER IV

A SYSTEM DYNAMICS APPROACH TO EVALUATE THE LEVEL OF AUTONOMY OF PUBLIC MANAGERS

Introduction

This chapter will use a system dynamics approach in order to verify if ,
despite to the problematic issues mentioned in the above chapters, the
discipline introduced by the reform has been really able to ensure a
greater autonomy to public managers.

System dynamics is a methodology and computer simulation modeling technique for framing, understanding, and discussing complex issues and problems. It is an aspect of systems theory as a method for understanding the dynamic behavior of complex systems.

The basis of the method is the recognition that the structure of any system — the many circular, interlocking, sometimes time-delayed relationships among its components — is often just as important in determining its behavior as the individual components themselves.

The system dynamics approach consists on the definition of problems dynamically by identifying of independent stocks in the system and their inflows and outflows, and on the formulation of a behavioral model capable of reproducing, by itself, the dynamic problem of concern.

Originally developed in the 1950s to help corporate managers improve their understanding of industrial processes, system dynamics is currently

being used throughout the public and private sector for policy analysis and design.

In particular, the application of system dynamics in the public sector requires three main 'levels' of analysis: (1) a political (or macro level); (2) a managerial (or micro level) and (3) a political vs. managerial conversation (or meso level)(Bianchi, 2010).

This work by using a system dynamics approach aims to verify the level of autonomy ensured by the reform to public executives.

1. Autonomy : Concept and measure in the public administration

The concept of autonomy in the public sector is represented by the level of discretion that public managers have in making decisions.

It is assumed, with the aim to evaluate the level of managers' autonomy, that greater is the number of competences assigned to public executives in the adoption of certain decisions and greater it will be their

autonomy(Ongaro, 2007). The process through which the administration may obtained such competences may be the result of a precise legislative provision, or it can depends on a formal or informal delegation or on an established practice.

This chapter aims to analyze the level of autonomy of public managers recognized by the normative introduced by the reform.

In order to allow a measurement of the level of autonomy this concept has been fixed along three dimensions: autonomy in the management of human resources, autonomy in the management of instrumental resources and autonomy in the management of financial resources.

Each of these dimensions has been split on two levels. The first level is represented by the strategic level, that concerns the possibility for executives to make autonomously choices that affect firmly the organizational structure and that concern the definition of long-term goals. The second level is represented by the operational level, which is

linked to managerial choices and that concerns the combination of resources and the individuation of the modality of defining and pursuing short-term objectives.

For each level we have defined indexes that allow to measure the position of public managers in relation to the specific level analyzed.

Highlight to the above considerations we have individuated the following set of indicators:

- strategic autonomy in personnel management;
- operational autonomy in personnel management;
- strategic financial autonomy;
- operational financial autonomy;
- strategic instrumental autonomy;
- operational instrumental autonomy.

2.Dimensions of the autonomy

This chapter, as above shown, individuates three main dimensions of managers' autonomy with the aim to measure the general level of autonomy recognized by the discipline introduced by the reform.

The first profile is represented by the autonomy of managers in the choice and management of human resources. It consists on the definition of the quantity and quality of the human resources; on the selection of resources; on the definition and assignment of tasks; on the personnel evaluation; on the assignment of incentives and on the disciplinary power.

The second profile is represented by the autonomy of managers in the choice and management of instrumental resources.

The last profile is represented by the autonomy in the choice and management of financial resources which consists on the budget definition and tariffs determination.

3.Public management regulation and its effect on managers' autonomy

D.p.r 748/72

The presidential decree n. 748/72 aimed to recognize precise competences in managers, but it did not face 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.

Legislative Decree 29/93 ;

The Italian legislator with this measure aimed to introduced private management tools into the public sector with a view to improving its efficiency, effectiveness and financial stability.

In particular with regard to the relationship between politicians and public managers, the decree 29/93 aimed to give public managers the same powers as private company managers by ensuring to management a greater autonomy from political bodies. In fact on this regard the previous regulation recognized in politicians the power to influence managerial action considerably.

The legislative decree n. 29 /93 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.

Legislative decree 165/01 and Legislative decree 150/09

A) Effects on the autonomy in the choice and management of human resources

Definition of quantity and quality of the human resources.

In order to the first profile of autonomy above considered, concerning
the autonomy in the choice and management of human resources, this
work analyzes what kind of autonomy the discipline ensures to managers
in the definition of the quantity and quality of the human resources.

On this regard the decree 150/09 introduces new provisions that increase the level of autonomy of public managers.

These are the art. 6 co. 4-*bis*. which provides that managers individuate professional profiles necessary to carry out their institutional tasks with the aim to prepare the planning of the personnel requirements ; and the art. 16 co 1 lett. a bis which stipulates that managers propose resources and professional profiles necessary to carry out the tasks of the structure.

On the contrary, the legislative decree 165/01 introduced a provision which engraved negatively on managers' autonomy. In fact the art. 4 co. 1 lett. c) of the legislative decree 165/01 provided that politicians have the competence in order to the individuation of human, material and financial resources to assign to managerial structures .

Selection of resources

About the selection of resources and the conferment of managerial appointment a positive effect on managers' autonomy is produced by the

art. 19 co. 5 of the d.lgs 165/01 which stipulates that the manager having a general managerial position confers the managerial appointment to managers assigned to his office.

However there are also some norms of the same decree which engrave negatively on manager autonomy. These are the art. 19 co. 4 that allows politicians to confer general managerial positions; the art. 19 co. 6 which allows politicians to confer managerial appointments to external managers and, lastly, the art. 19 co. 8 which provides the spoil system for top management positions.

Definition and assignment of tasks

The d.lgs 165/01 engraves positively on this profile because the art. co. 1 lett.b) stipulates that general managers confer to simple manager the appointments and the responsibility of specific projects, define the goals

that simple managers have to achieve and assign the consequential resources.

Personnel evaluation

In order to this profile the discipline introduced by the reform increase the autonomy of public managers. On this regard the art. 16 co. 1 lett. e) of d.lgs 165/01 statues that general managers run, coordinate and check the activities of simple managers.

Moreover the d.lgs 150/09 has introduced a new prevision , the art. 17 co. 1 lett. e-bis) which provides that managers carry out the evaluation of personnel assigned to their offices .

Incentives and career growth of managers

On this regard the decree 150/09 introduce a provision that increase the managers' autonomy, this is the art. 17 co. 1 lett. e-bis) which provides

that managers carry out evaluation of personnel assigned to own offices in order to correspond benefits and merit award.

On the other hand, about the profile of career growth of the professional executives the d.lgs 165/01 contains provisions that decrease managers' autonomy. In fact the art. 23 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.

Actually 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.

Disciplinary power

About this profile the d.lgs 150/09 increase managers' autonomy by introducing two new provisions (the article 55 bis and the article 55

quater) which allow public manager to inflict to personnel of his office

several sanctions such as fines, disciplinary lay-off and dismissal.

B)Effect on the autonomy in the choice and management of instrumental resources

About this aspect the d.lgs 165/01 contains provisions that engrave negatively on managers' autonomy.

In fact the art. 4 co. 1 lett c) statues that politicians have the competence to individuate instrumental resources to destine to managerial structure, while the art. 17 co. 1 lett e) provides that managers have only the competence to manage the resources assigned to their structures.

C) Effect on the autonomy in the choice and management of financial resources

Budget definition

Under this profile the d.lgs 165 /01 contains provisions that engrave negatively on managers' autonomy.

In fact the art. 4 co. 1 lett c) statues that politicians have the competence to individuate financial resources to destine to managerial structure , while the art. 17 co. 1 lett e) provides that managers have only the competence to manage the financial resources assigned to their structures.

Tariffs determination

On this regard the d.lgs 165/01 contains a provision that decreases the autonomy of professional executives.

Actually the art. 4 co. 1 lett d) statues that politicians have the competence to define tariffs and fees which engrave on outside parties.

4.A system dynamics approach to evaluate the effect of the normative on managers' autonomy

Highlight of the above mentioned provisions which engrave both positively and negatively on managers' autonomy this chapter use a system dynamics approach in order to verify its assumption about the inadequacy of the discipline introduced by the reform to ensure a greater managerial autonomy to public executives.

a) What is system dynamics ?

System Dynamics is a computer based approach for modeling complex physical and social systems and experimenting with the models to design policies for improved performance. A model embodies a theory explaining internal dynamics of an abstract system built around a problem.

The basic elements of a system dynamics model are stocks, flows and feedback loops. Stocks are things that accumulate while flows are the movement of things into or out of a stock.

Feedback loops convey information about the level in a stock, for example, that might change a rate of flow or alter some other element in a system.

The implementation of system dynamics to address specific problems involves several carefully designed steps aimed at creating a clear understanding of the problem as well as the possibilities for system improvement. These steps include: 1) representation of a pattern of trends portraying the problem, for example, changes in flow rates or changes in the level of a stock, 2) identification of a causal map that qualitatively describes how the problem is created, 3) articulation of the decision relationships underlying the causal map into a computer model

4) experimentation with the model to learn about the problem and the possible ways to mitigate it.

The modeling process can be as important as the model itself. This process assists people in identifying their assumptions and testing their beliefs and assertions about causal relationships in complex systems.

b) Applying System Dynamics in the Public Sector

As above mentioned, although system dynamics' main presence is arguably in the area of business, the public sector has also been a highly fruitful area of application. The public sector has particular features and problems which are well suited to system dynamics-based work.

The application of system dynamics in the public sector requires three main 'levels' of analysis: (1) a political (or macro level); (2) a managerial (or micro level) and (3) a political vs. managerial conversation (or meso level)(Bianchi, 2010).

According to Bianchi “ *Macro ‘level’ applications of SD focus the perspective of political actors. They could be referred to: (a) an ‘inter-institutional’ or (b) an ‘institutional’ context.*

While the inter-institutional context implies that a player in a given institution undertakes a strategic dialogue with other players in other institutions, the institutional context implies that a player undertakes a strategic dialogue with other players operating in the same institution where he (or she) operates.

Micro ‘level’ applications of SD focus the perspective of management.

Relevant fields for SD modelling in this area are related to mapping ‘products’ and processes, strategic resources and results, with the aim to foster performance improvement at departmental or inter-departmental level.

The meso level analysis is related to the strategic conversation between politicians and managers. Such strategic conversation is a crucial aspect

in the public sector, for both the implementation and the design of policies. Lack of strategic conversation between the political and managerial role is likely to generate a kind of 'administrative schizophrenia'. In fact, the setting of managerial objectives, actions and targets should imply a deep understanding and communication of the strategies outlined by the political level. On the other hand, the design and assessment of policies cannot ignore the emerging problems and opportunities that can be better perceived on a managerial level (Boyle,1999).

Highlight the above considerations about system dynamics and its application in public sector, this chapter is going to use a system dynamics approach for evaluating the level of autonomy recognized by the new discipline to public executives .

**C) Model structure of the level of autonomy of public manager
recognized by the reform**

This section contains a detailed discussion of each the components of the model and an explanation of how they could replicate the problematic concerning the level of autonomy of public manager recognized by the reform .

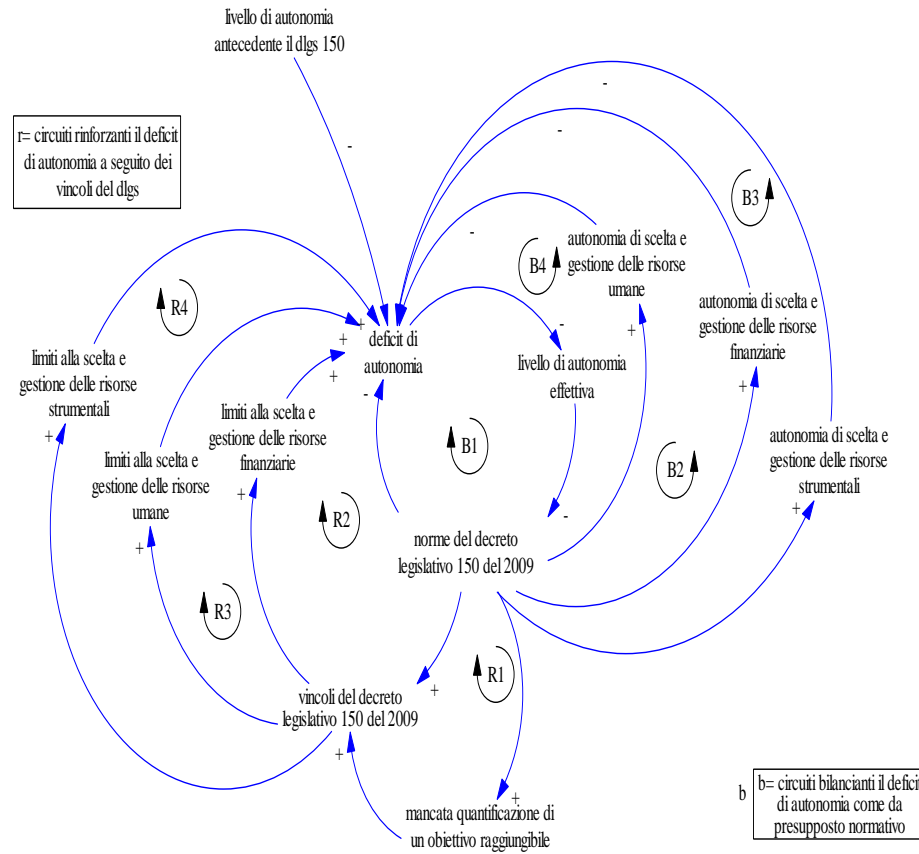
The structure hypothesis is based on the relation between the two main phenomena of the contest: *the provisions introduced by the reform which reduce the deficit of autonomy of public managers and the provisions introduced by the reform which instead produce a limitations of this autonomy.*

In fact the model structure considers on one hand, the dispositions producing an increase of the level of autonomy and on the other hand , the provisions producing a decrease of the level of managers' autonomy.

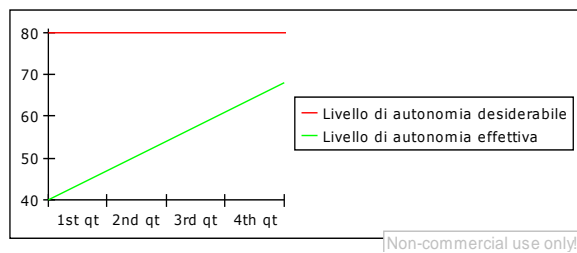
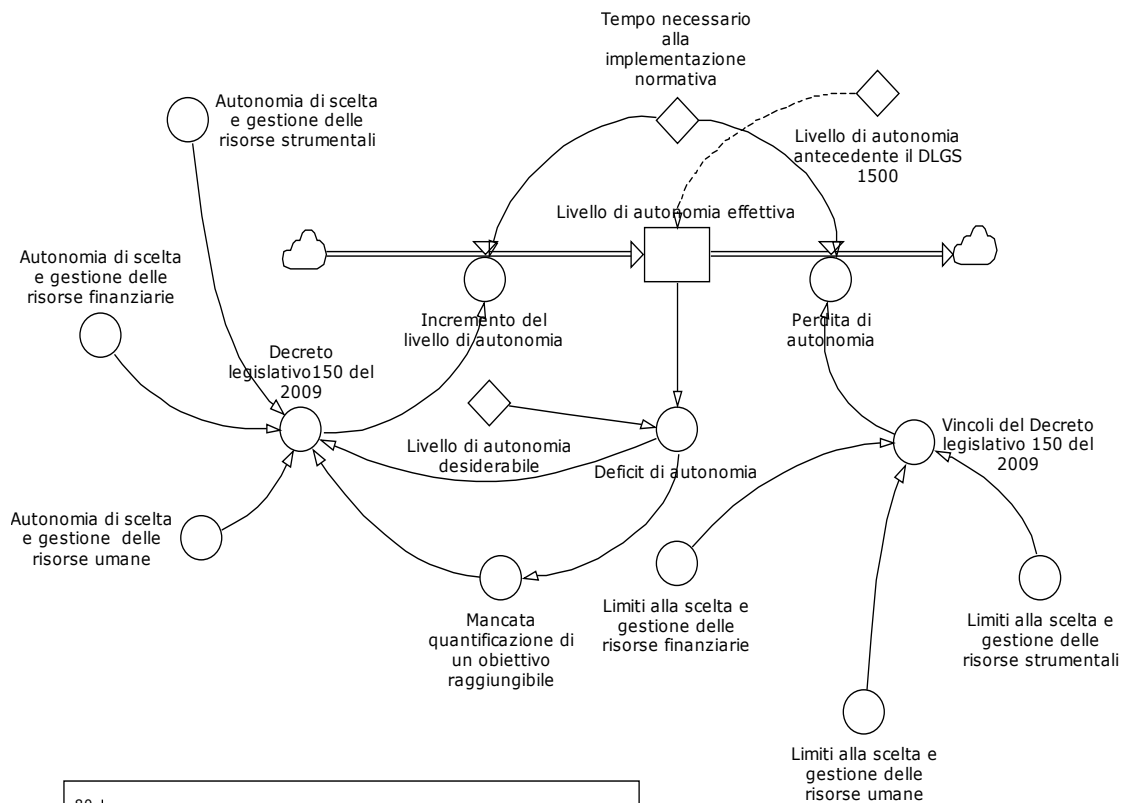
As shown in the figure below the structure presents four balancing loops and four reinforcing loops.

Balancing loops (b1,b2,b3,b4) represent those norms which aim to increase managers' autonomy reducing the deficit of autonomy existing in the Italian public administration. However these balancing feedbacks brake the growth of the level of autonomy which the reform aimed to recognize to managers and for this reason they do not allow to achieve the goal of the reform to ensure a greater autonomy to managers.

This result depends also on reinforcing loops (r1,r2,r3,r4) present in the system. Actually reinforcing loops represent those norms which introduce a limitations of the autonomy of managers in the choice and management of human, instrumental and financial resources. These reinforcing feedbacks enhance the deficit of managers' autonomy and avoid , at the same time, the growth of the level of autonomy .



The stock and flow structure shown in the figure below illustrates such behaviour of the structure. The graph shows that the level of autonomy concretely recognized by the reform does not achieve the desired level of autonomy which the reform aimed to ensure to public managers.



Conclusions

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 especially since it was not well designed by the legislator .

In fact the reform of Italian public administration has concentrated on improving public action performances by a regulation of public management and the connected introduction of two key words: autonomy and accountability.

This meant that managers should be endowed of greater autonomy in the execution of their managerial activities and, at the same time, they are fully responsible for both personnel's and whole body's performance.

Nevertheless, highlight to the above considerations, enforced by results obtained by using system dynamics approach, it may be stated that the

reform of the Italian public administration did not completely accomplish its two fundamental goals.

First of all, it did not recognize a greater autonomy to managers, considering that in the Italian system there are many instruments which can be used by politicians to affect managers' executive action and, on the other hand, it has provided a managers' performance evaluation system which is not compliant to the reality.

For these reasons, we suggest a legislative innovation aimed at rectifying the ambiguities introduced by the new regulation.

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