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Essays and Articles

The legal provisions consolidated in the legislative decree n. 165/2001, and then continuously modified in the following years, express an ambitious project to reform the Italian administrative constitution. The reform intended to change the relationship between politics and administration, the balance between law and contract in the regulation of civil service employment and the very nature of this relationship. On retrospective assessment, however, the reform was distorted. It assumed public management that was more independent and more accountable for results. On the contrary, the administrative leadership is now subservient to politics and crushed under the weight of responsibility for violating the rules, developing a defensive attitude. The reform intended to entrust organisational structures to the law and the employment relationship to collective bargaining. Yet, this border line has been continually crossed and betrayed. The reform aimed to introduce private sector flexibility into the public sector. However, public flexibility has produced generalised promotions and stabilisation of non-permanent workers without open competition procedures. The reform was based on the principle of the unification of public and private work. Still, the latter's evolution in the sense of precariousness again distances the two sets of regulation.

The essay retraces the twenty-year evolution of decree no. 165/2001 and the two core principles it is based on: the application of private law to employment relationship of civil servants and the functional distinction between politics and administration. Then the essay moves on to analyse the essential legal rules referring to the phases of establishment, performance

and termination of the employment relationship. The paper seeks to demonstrate that the aims of the first phase of the reform have been partly overturned during the last twenty years. The Parliament has approved many minor modifications of the statute aimed at restricting the scope of collective bargaining and the autonomy of management. It has also implanted principles deriving from the public law into a private law model, an alteration that blurred the boundary between the two domains, with repercussions not only on the theoretical level but also on the actual one. Therefore, it is necessary to rationalise some aspects of the regulatory regime.

An agenda for public employment reform in the digital age (p. 391)
Fabrizio di Mascio, Alessandro Natalini

Over the course of the 1990s the Italian public sector employment regime has been brought under the civil code. The norms established by a spate of decrees have been later collected into a consolidated text, legislative decree 165/2001. This decree drastically reduced the number of provisions in force with the aim of delimiting the scope of special rules that regulated the distinctive features of the public sector employment status. The "privatization" of public employment constituted a response to global "New Public Management - NPM" pressures that have suffered from an implementation gap in the Italian context. First, the article identifies the political and institutional factors behind this implementation gap. Second, it reviews the impact of Covid-19 on the Italian administrative system and considers whether the actions taken so far by public administrations are actually conducive to digital transformation. Third, it suggests how to use this Covid-19 induced experience in planning administrative modernization, including a digitally-enabled reconfiguration of work.

The open competition system and the speciality of the access to civil service (p. 417)
Barbara Gagliardi

The reforms adopted in Italy in the '90s have not changed the traditional public law nature of the rules that apply to civil service access. The courts have asserted the binding character of the principles of openness

certain, as it is positioned in a cone of shadow that leads to tensions and malfunctions. Based on this premise, this paper aims to account for this relational dynamic and its most recognisable criticalities. We will try to focus, in brief, on the critical aspects of a system that has not succeeded, both on the legislative and on the administrative level, in outlining an adequate model that has been able to combine the democratic principle with the administrative impartiality principle. Therefore, the text will highlight the main problematic issues on the subject, also proposing some specific corrective measures in order to create a system within which administrative management can be more autonomous from political leadership and the latter can focus on defining objectives and strategic directions.

Between administrative organization and employment relationships. The (collective bargaining) agreement between politics and administration, twenty years later (p. 483)
Marco Ragusa

The paper deals with the relationship between collective bargaining and administrative organisation and describes the evolution of legislation in the last twenty years. The analysis focuses on the role taken by national and integrative collective bargaining in defining the relationship between politics and administration. The contractual rules relating to the managerial positions and managers' organisational powers are examined to draw the path taken so far by the law.

Codes of conduct for civil servants: the tension between private and public regulation in the wake of public employment reforms (p. 499)
Francesco Merenda

The article starts from a brief excursus on the transformations that the codes of conduct have undergone, following the reforms that have taken place since the nineties up to the current version, which provides several innovative factors and various problematic elements. Subsequently, the paper focuses on the two issues that negatively affect the efficiency of the discipline of codes of conduct: firstly, the

The paper traces the historical-regulatory evolution of agile working as an alternative and flexible employment relationship in the public sector. The intent is to think about the possibility that agile working will rise to the ordinary way of carrying out work tasks, well beyond the conclusion of the current emergency due to the Covid-19 pandemic. The direction suggested by the legislator, with the establishment of the Organizational Plan for agile working and the consequent prescription of the obligation to draw up this document by January 31 of each year, seems to push towards a broader and more concrete implementation of the institute. However, the adoption of this innovative organizational approach to human resources implies a cultural change and calls for an overall rethinking of the current regulatory and contractual regulation of work employed by public administrations, which has become, in some respects, now obsolete.

Twenty years after the issue of legislative decree no. 165/2001, an analysis on managerial work in local authorities continues to retain interest for two reasons. Firstly, an interpretative settlement on the division of power between national and local governments has not yet been reached; secondly, because of the undoubted urge offered by the recent signing of the collective bargain of local government civil servants. The essay aims to outline the juridical-organizational physiognomy of the local management and its connections with the constitutional case law. The intersection of the regulations gives the interpreter a regulatory framework that is not only lacking but at times ambiguous, slightly “integrable” with the current directions of the autonomy of local authorities.

One of the most significant elements in the attempt to concentrate all public-employment disputes within civil courts' jurisdiction is the power of non-application of administrative decisions: its use can guarantee civil servants complete protection despite the involvement of the administrative decision. However, the undoubted procedural benefits have ended up obscuring the adverse effects that the application of the non-application doctrine generates on a substantial level, as it undermines the principle of legality. Nevertheless, it does not seem impossible to avoid these effects when interpreting the law. Thus, the paper seeks to redefine the non-application doctrine in original terms so that the decision to concentrate the protection of civil servants in a single jurisdiction does not translate into a lack of protection against administrative decisions.