Interchange of Public Officials in European Public Administrations: Italian Case

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Abstract

In a Europe without internal borders that must compete in a global economy, in which there are constantly evolving the needs of an aging society and the labor market, it is essential to achieve a very high level of mobility. The percentage of workers mobility in the EU is relatively low: currently about 2% of working-age citizens, originating in one of the 27 EU Member States, lives and works in another Member State. Mobility in the labor market, covering the mobility from one job to another and mobility between Member States or regions, is a fundamental part of the Lisbon objectives, and an important component of Europe's response to demographic change and globalization. This study analyze the issues related to public employment, ie employment in the public administrations of EU Member States, subject to the free movement of persons under art. 45 paragraph 4 TEU by a clause of exception that will safeguard the public interest. The study has highlighted the Italian legislation, the different types of access to European and Italian Public Administration and its application.

Keywords: Public official, European public administration, Access to public employment, Outplacement, secondment, Italian public administration

1. Clause of Exemption in Public Administration: Evolving Interpretation by the Court of Justice of the European Union

Paragraph 4 of Art. 45 TEU (ex Art. 39 TEC) provides an exception to free movement of person with regard to Public Administration, stating that: "*The provisions of this Article shall not apply to employment in public administration.*" This rule was not incorporated by any legislative act; the Regulation No 1612/68 does not contain specific provisions for access to public service, but has been the subject of great work by the interpretation of European Court of Justice. The main difficulty concerned the definition of the concept of "public employment" and, especially, "public administration". The Court has made the daunting task to give an interpretation, a Community definition, a Community concept of "public employment" and therefore of "public administration". The choice, inevitable for the Court, was to opt for a Community concept of public administration over the independent interpretation of each Member State, the only one able to guarantee the uniform application of Art. 45 paragraph 4 TEU throughout the Community and to ensure that the terms used in the different national legal systems limit the effectiveness and scope of Community rules on free movement of workers.

These aspects have been affirmed by the Court in several judgments already in the late seventies and consolidated during the eighties and nineties. In Judgment of December 17, 1980, Commission of the European Communities v Kingdom of Belgium (Note 1), the Court has established two fundamental principles: "*the concept of public service should be interpreted in a uniform way throughout the community*" and "*can not be left to the sole discretion of the states*". This ruling has also determined that the exemption under paragraph 4 of ex Art. 39 TEC (45 TEU) only concerns *"series of posts which involve direct of indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the stat e or of other public authorities, such posts presume [...] the existence of a special relationship of allegiance to the state and reciprocity of rights and duties which form the foundation of the bond of nationality"*.

The Court has indicated a functional criterion emphasizing only the tasks and responsibilities which correspond to those in public administration, tasks for which considered it necessary the special bond of solidarity and loyalty to the state, as well as the correspondence of rights and obligations inherent in the bond of nationality. The definition of public administration, as stated by Sabino Cassese, "*it does not follow the rules of the regime - public law - to which an*

apparatus is subjected, but the substantive nature of the activity and powers" (Cassese, 1996). So, Cassese continued, "*the notion of public employment identified by the Court has functional characteristics"* and *"serves to delimit the area in which it is not granted the access without the nationality of the State*" (Cassese, 1996).

The exception to the principle of free movement of workers provided by paragraph 4 of art. 45 TEU (ex art. 39 TEC), should be thus interpreted restrictively.

The principle of functionality is also confirmed by the Court in the Judgment of July 3, 1986, Deborah ***Lawrie-Blum*** v Land Baden-Württemberg (Note 2), key judgment on the matter, where it is also stressed that "*the concept of worker, pursuant to art. 48 (45) of the Treaty, has a Community meaning and it must be defined according to objective criteria*" and states that "*is that a person performs services of some economic value for and under the direction of another person in return for which he receives remuneration*". A feature of the employment relationship, even of the public nature of the case of a teacher is, therefore, the subordination, as previously defined by the Court. And the judgment states, in fact, that "*the term 'worker' covers any person performing for remuneration work the nature of which is not determined by himself for and under the control of another, regardless of the legal nature of the employment relationship* " and, therefore, "*the fact that the period of preparatory service is a compulsory stage in the preparation for the practice of a profession and that it is spent in the public service is irrelevant if the objective criteria for defining the term 'worker' , namely the existence of a relationship of subordination vis-a-vis the employer , irrespective of the nature of that relationship , the actual provision of services and the payment of remuneration, are satisfied*".

The public nature of the employment relationship does not affect, therefore, on the free movement of workers, who may circulate within the internal market, even if employed by a public administration provided that such use does not involve the exercise, even indirectly, of public authority and that does not concern the safeguard of the general interests of the State and other local governments.

The Commission in 1988, in the light of the judgments of the Court of Justice, has issued a Communication entitled "Free movement of workers and access to employment in the public administration of the Member States: the Commission's action in respect of the application of article 48 paragraph 4 of the EEC Treaty" (Note 3), where, acting on fields, divided activities of public administration into two categories: "*specific functions of the State such as the armed forces, the police and other forces of the maintenance of order, the judiciary, the tax authorities and the diplomatic corps",* and, for obvious reasons, falling within the exception in question*, and "fields that do not imply the exercise of public authority and responsibility of the safeguarding the general interests of the State, for example: administrative tasks, technical consultation, maintenance",* so do not fall within the exception. In relation to posts in State ministries, regional government authorities, local authorities, central banks and other public bodies, are similar to those in the first category, but do not fall within the scope of the exemption unless it refers to "*the personnel engaged in coordinated activities of a public power of the State*". Concept reiterated by the Commission in a new communication of 2002 (Note 4), where adopting a more rigorous approach, in overcoming the impression of 1988 of possible national reserve for all these activities, claiming that only the "*management and decision-making posts involving the exercise of public authority and safeguard the general interests of the State may be restricted to nationals of the Member State*". The aim of Communication of 1988, as stated in the preamble, is to implement a true internal market, an area without internal frontiers within which the free movement of persons would have a fundamental place.

The new setting of the Commission has resulted in three infringement proceedings pursuant to art. 226 (169) TEC, suggested against Luxembourg, Belgium and Greece (Note 5). The cited Member States were accused of imposing a general requirement of citizenship for access to employment in fields related to public services such as research, teaching school and university, health, transport, post and telecommunications, water distribution, gas and electricity radio, television and music.

The Court accepted the appeal and upheld his own previous case law and the Commission's approach. Member States agreed, in fact, could not "*in general, subjecting all posts in the considered sectors, to a requirement of citizenship, without exceeding the limits of the exception provided by art. 48 (39), No 4 of the Treaty*" and "*the fact that some posts in those fields may possibly come within the exception (...) is not such as to justify a general prohibition*". Case law has clarified so that the application for exemption must be evaluated case by case and not in relation to whole categories, confirming that the exception should be interpreted restrictively.

The public employment is a job that has no commercial value or merchant, does not stimulating the economy by itself, does not develop and does not involve exchanges between countries, and therefore, in view of the original Treaty of Rome was not included into free movement of workers. The substantial change in the objectives of the Community, first, the European Union, later, which was gradually materialized and reached over time to obtain the opening of the strongholds of Community law of national sovereignty - such as visas, asylum and immigration, judicial cooperation

and police, although certain aspects are still inter-governmental -, has necessitated a review of legislation, including national phenomenon of "employment in the public administration", and a evolving towards the concept of free movement of the person very large and which not increasingly aware of the aims of the movement itself.

As it will be described in the next chapter, Italy has taken about thirty years to adapt its internal laws on free movement of public employment and access of citizens of the Member States in the Italian public administration.

2. Adaptation of the Italian Legislation

Until fairly recently, Italy has received into its legislation the principle of the national reserve of employment in the public administration, i.e. the necessity of the existence of Italian citizenship condition for access to public employment and public competitions. The request of citizenship as a general requirement, culminating with the fascist experience, was justified by the need to protect the security of the state from possible foreign interference and by the need to increasingly develop a sense of patriotism for public employees.

The Italian Constitution, at a first glance, would seem to contain impediments to the admission of foreigners in public administration, or at least, some doctrinal opinions interpret in this sense (Ferrari, 1962; Rossano, 1966). Citizenship as a requirement of access to public employment, in fact, does not represent a fundamental principle of our constitutional order.

Article 54, paragraph 1, provides for the duty of loyalty to the Republic and the obligation to comply with the Constitution and laws, applied without distinction to all citizens and to all those who are in awe of the State, not being a specific feature of public employment. Paragraph 2, concerning the duty of its own public officials to perform the assigned duties with discipline and honor, even if not expressly provided for the citizen, does not excluded that it can also refer to the foreign citizen. This duty does not imply the reserve of public functions to the citizen, but is extensible to anyone found in a service relationship with the Administration.

In his paper "*The individual public duties in the Constitution*", Carbone believes clearly and effectively that "*the Constituent Assembly has used the term 'citizens' to indicate the recipients of duty*" (Carbone, 1968), but this is probably because Ferrari has considered "*that the employment relationship with the State is typically based on trust, and therefore, presupposes certain subjective qualities that only a status of citizen can guarantee (...) since it implies the duty of loyalty to the State*" (Ferrari, 1962), the duty to uphold the Constitution and laws was combined, in the meaning of the provision, to that of loyalty to the Republic, that, based only on the relationship of citizenship, could not fall on all those who possess that status. But the meaning of the constitutional provision can not be limited to the duty to uphold the Constitution and laws, when it is certain that the law is binding on all those who are in awe of the State.

Even reading the combined effect of paragraphs 2 and 3 of Article 51 of the Constitution, it could rise an interpretation requiring the citizenship as a prerequisite for access to public employment, but also the doctrine, in this case, felt compelled to interpret the norm in broad sense (Virga, 1973; Nascimbene, 1988; Piraino, 1984). The same applies to Article 98, because it can not give the other meaning than that which prevent any foreign interference to the adhesion of exercise at the public employee's power that legitimate him (Pastori, 1967). Finally, the constitutional reserve of citizenship, even were exist, would not prevent the application of Community law.

The Court of Justice of the European Communities and the Italian Constitutional Court, in fact, converge, although at different times, in affirming the primacy of Community law in the event of conflict with the Constitution: that of the Court of Justice by virtue of absolute primacy of Community law on national sources for hierarchical superiority of rules belonging to a single law, the constitutional Court based on the limitation of sovereignty, Article 11 of the Constitution, which follows the signing of the Treaties and the only limit that meets the principles fundamental system of constitutional and inalienable rights of the human person, while maintaining the distinction in two jurisdictions does not take precedence over, but placed on an equal footing.

The analysis of ordinary legislation leads to different conclusions. The requirement of citizenship *tout court* was required by art. 2 of Presidential Decree January 10, 1957, No 3 (Note 6), the Consolidated Law on the statute of civil servants of the State. While the Community is moving to a single labor market, functional internal market, with the elimination of protectionist barriers as possible in favor of national workers by ensuring equality of treatment and the abolition of discrimination based on nationality even for the public administrations, Italy continued to ignore the issue by upholding the requirement of citizenship for preventing access to public service, thus, of EU citizens.

As regards the free movement of workers, it can be said, because of immediate applicability, with direct effect, of the provisions of EU issues in the matter, the non-necessity of an immediate and timely implementation as direct sources of legal controls and therefore already executable in the internal law.

However, beyond the direct applicability of EU law, the modernization of national legislation was necessary, even at the level of Italian public service, being part of a European system that for thirty years leans towards integration, and that, therefore, was very old and inadequate compared to requests from the Community.

The Presidential Decree December 30, 1965, No 1656 (Note 7), entitled "Provisions on movement and residence of citizens of Member States of the European Economic Community", is a first step toward updating our system.

Article 2 established the right of Community workers, with employment relationship, and their families to stay in the Italian territory for a period at least equal to that of the permission of work, who became five years with the changes made by the Presidential Decree December 29, 1969, No 1225 (Note 8). Subsequently, the Law April 4, 1977, No 128 (Note 9) grants to Community workers and to their families the right to remain on the Italian territory after having been employed. All the work of adapting the Italian legislation is, finally, merged in the Legislative Decree 6 February 2007, No 30 (Note 10), transposing Directive 2004/38/CE (Note 11), with significant implications of enlargement and development compared to a rigid labor market.

The achievement of free movement of workers within the common market reached to the end of the transitional period, the pressing decisions of the Court of Justice of the European Community concerning the public service and Communication issued by the European Commission in 1988, and confirmed later in 2002, did not prevent the application of the principle of national reserve contained in Italian legislation.

The realization of free movement in Italy's public sector employees and access to public employment of the Community citizens had to wait more than twenty years. Into publication of 1994, the Presidency of the Council of Ministers and the Central Office for the coordination of legislation indicate, as the first sign of interest to the problem, the Decree Law December 30, 1989, No 416, converted into Law February 28, 1990, No 39 (Note 12) - the so-called "Martelli Law" - "Emergency measures on asylum, entry and residence of non-EU citizens and regulation of non-EU citizens and stateless already present in the territory of the State". That law provides that non-EU citizens and stateless in Italy at December 31, 1989 can access the reports of public employment when, notwithstanding the obligatory public competition, the selection is based on academic qualifications among the list of placement and mobility. This provision is also aimed at EU citizens.

As exception to the requirement of citizenship in favor of Community workers, which has great importance to the influence on the next innovation of the internal law, it is the opinion of the State Council, Section II., 20 June 1990, No 234, in which the advisory body, responding to a question put by the Ministry of Education regarding the possibility of allowing Community citizens to activities of public education, endorses the principles set out by case law asserting that "*the scope of the derogation to the principles of free movement and equal treatment enshrined in the first three paragraphs of Art. 48 (45) of the Treaty, should be determined with regard to the aim pursued by the entire provision. Consequently, extending the exception stated by the fourth paragraph of Art. 48 (now 45) to the posts which, even depending of the State and public bodies, does not imply any participation at the management of public powers, would tend to subtract the application of the principles of the Treaty a significant number of jobs and create inequalities between the Member States. It must, therefore, determine if it can be traced back to the notion of posts in the public administration pursuant to Art. 48 (now 45) paragraph 4 and it must be done a uniform interpretation throughout the community. The case law analysis consist in question if the employment is or is not characteristic of the specific activities of the public administration as responsible for the exercise of State authority and to protect the general interests of the State*."

Another impetus for change in the national system is given by the Legislative Decree January 27, 1992, No 115 (Note 13), regarding the implementation of Council Directive No 89/48/CEE (Note 14) on the mutual recognition of diplomas, in which, paragraphs 3 and 4 of Art. 13, states the authority to the Government to draw up a list of those posts in public administration that, in light of the Court of Justice, can access, on an equal treatment with national citizens, citizens of other Member States.

The Law on privatization of public employment, the Legislative Decree February 3, 1993, No 29 (Note 15), implementing the delegation referred to reform the public sector Law October 23, 1992, No 421 (Note 16), plugs the gaps of the then current legislation. The Decree on the "*rationalization of organization of public administrations and revision of regulations on public employment*" in its article 37 - now art.38 of Legislative Decree No 165/2001 -, following the logic of the Court of Justice of the European Communities and those expressed in the Opinion of the Council of State, states at the first paragraph that "*citizens of the Member States of the European Community have access to jobs in public administrations that do not involve direct or indirect exercise of public authority, or do not relate to the safeguard of national interest*."

Paragraph 2 of Art. 37 postpones the identification of jobs and functions for which it is applicable the reserve of nationality to a special regulation.

In application of the regulation was enacted the Decree February 7, 1994, No 174, "Regulations on access for EU citizens to jobs in the public administration" (Note 17).

Art. 1 of the Decree enumerates the specific posts to which access can not be separated from the possession of Italian citizenship: the managerial levels of state administration and other public administrations, of non-economic public bodies, of local authorities and of the Bank of Italy, judges, lawyers and state prosecutors, civil and military functions of the Presidency of the Council of Ministers and the Ministries of our political and administrative system - such as the Ministry of Foreign Affairs, of Internal Affairs, of Justice, of Defense and Finance, with the exception of those posts that do not require a higher degree. This part of the provision would seem to exclude from the free movement a significant number of posts in many administrations, and therefore would not be in line with the community regulation and the interpretation of the Community Court of Justice and the opinion of State Council. In fact, it can not be excluded the EU citizens from posts of mere technical and administrative support of bodies responsible for the exercise of official authority.

The Government, noting that the exercise of public authority is found in other duties whose identification is less easy and immediate because of differences in organization or, because of qualifications between different administrations, has adopted a second criterion for the identification of functions that legitimately require the nationality prerequisite, citing Article 2 of the regulation, functions of the elaboration, adoption and execution of coercive measures and functions of authorization and control, both legitimacy and merit.

For the posts referred to in Article 1, the exercise of public authority is considered intrinsic to the typology of work, for others is necessary to analyze case by case, in order to evaluate and verify possible correlations with the tasks referred to in Article 2.

The privatization of the public employment, established with the Legislative Decree No 29/93 and subsequent amendments and additions until to the Legislative Decree 80/98 (Note 18) for implementing Law 59/97 (Note 19), the so-called “Bassanini Law”, now incorporated in Legislative Decree March 30, 2001, No 165 (Note 20) - "General rules on the public employment", has led to the contracting of the employment through deregulation of the sources of regulation with the aim of reducing the traditional gap with the private work.

Article 2 of the Decree. 165/2001 sets out clearly the objective of the reform by imposing the direct applicability of private law to public employment delegating the discipline, or at least in part, to the Civil Code.

The Italian case law, and in particularly the administrative one, on several occasions had incorporated the needs of the legal integration at European level and ensured effective application of Community rules on free movement of public workers. As well as the aforementioned opinion of the Council of State No 234/90, the decision of the Court of Lombardy No 2125/90 (Note 21) concerning the illegitimate exclusion of a French citizen on the recruitment procedures as researcher at a public institution, citing the decision of Court of Justice in Case Lawrie-Blum.

The Public Administration and the division of responsibilities within it, although incidentally relevant to this topic, has undergone a further change with the reform of Title V of the Constitution intervened in the Constitutional Law October 18, 2001, No 3, entitled "Amendments to Title V of Part II of the Constitution" (Note 22) and with Law June 5, 2003, No 131, known as “La Loggia Law”, on implementation of the Constitutional Law on "Measures for the adaptation of the Republic to Constitutional Law No 3 of October 18, 2001” (Note 23).

The phenomenon of European integration was unknown to the founding fathers, so the limitations of sovereignty of Italy as European Union Member did not have a specific status, if not by a forced interpretation of Article 11 of the Constitution, up to this reform of Title V, which made it possible to put, for the first time in our Constitution, a reference to the European Union and the acts which it emanates.

This is a reform that, in the matters of purely internal relations between State and Regions, for implementation of federalism, and based on the application of the principle of subsidiarity, refines the competences among them, redesigning the role of Regions at internal and international level.

The change in the constitutional framework sets a new and broader role of the Regions in the European context, both in the ascending and descending phase of implementation of Community law, outlining their real exercise of decision-making powers, responding to the need to simplify and accelerate the implementation phase of the acts of the European Union.

Last but not least result has been to establish the full join of Italy to the European integration process and to reserve a more active role of the regions. For this purpose it seemed necessary that the Regions can play a relevant role in the exchange of officials between local authorities of EU Member States.

3. Control of the European Public Administrations

The mobility of the public employee, i.e. the possibility of an effective exchange of civil servants belonging to public administrations of EU Member States, is stated in Article 32 of Italian Legislative Decree of March 30, 2001, No 165 - introduced by Article 11 of Legislative Decree No 387 (Note 24) of 1998, which adds an article 33-bis of Legislative Decree No 29/93, abrogated and replaced by Decree No 165/01. After thirty years since the end of the transitional period (1968 - 1998) is recognized the need for regulation of an effective exchange of experiences of public officials for a rapprochement of the various policies of the Member States also to administrative level.

A common administrative law, more approached to the citizens in a unique way and with similar systems, can be achieved and made through training of personnel in public administration that are deemed "best" from an administrative - bureaucratic standpoint and can instill a greater impetus to European integration even in areas still in shadow.

Article 32 of Legislative Decree No 165/2001 states the mobility in the forms of secondment and control, temporary tools, characterized by the provisional nature of the public service lent abroad. The provision establish the importance of training of personnel and of the administration in order to facilitate the acquisition of administrative experience of public servants of different nationalities. With regard to foreign public administrations, the article refers to the Member States of the European Union, the countries applying for accession to European Union, international organizations to which Italy is a member and other countries with which the Italy maintains collaborative relationships.

The agreements between the administrations concerned to the mobility of its officials can be of two types: included between countries belonging to a international organization or specific between individual countries.

It is not always so clear and peaceful, in fact, as regards the exchange Italy - UN, regulation occurs both by the participation of Italy to the United Nations as a Member State, whether as a result of a specific agreement between the parties .

The provision in question applies to all employees of public administrations, even if it is mentioned only the officials, and does not include any numerical limit for the Italian authorities concerned. Article 32 does not establish, therefore, or impose any quotas and restrictions to access neither incoming nor outgoing.

Paragraph 3 lays down the characteristics of the form of guaranteed mobility and granted by the provisions in question making it include, as mentioned, in the category of secondment and control: temporary nature, as an essential requirement, of the service provided abroad, that means that is not permanent, at least originally (Note 25), provisional to be established in quantum, must not, in fact, previously applied to a final and can last for a considerable period of time.

Distinctive features of the control are, therefore, the temporary nature of the destination and its reversibility. It is essentially a form of work required for a specified time and exceptionally, for certain service or where specific know-how is required, solely in the possession of the staff.

The rule also provides that the staff concerned is not employed by the administration of membership, another prerogative of the control or secondment. In fact, in this case there is a subjective innovation of the original public employment; it only determines a objective modification, in the sense that arises in employment the "*obligation to serve the interests of a different administration and subject to its hierarchical power, while the legal status of 'controlled' is not changed and remains regulated in the same way of his original system. Ultimately it has split between the organic relationship and the service, the first refers to the administration ad quo and the other to that ad quem, as clarified by more judgments of the Court of Cassation and the Council of State*" (Note 26).

The option of continuing to use or not the staff in positions of leadership is an expression, typically discretionary, of functional organizational autonomy of public administration.

The rule also stipulates that can be established special agreements between the administrations concerned in consultation with the Ministry of Foreign Affairs and the Department of Public Service.

It is not required in the provision, the employee's agreement, which, therefore, can not, or at least that's what it appears from the provision, to oppose the administration's determination - to be evaluated as a mere act of managing the relationship, taken with the powers of private employer - except for violations of that rule and of reciprocity of the agreement concluded with the foreign administration, although not in accordance with the legislation on the control between administrations of the State which provides for the consent.

Direct consequence of the persistence of the staff involved to the administration of belonging is the keeping of the length of service with all the related effects on both the legal and economic level and also, as stated directly by the

provision, the experience gained abroad will be assessed for the purpose of the professional development of those concerned.

The remuneration may be imposed on the administration of belonging, or the foreign administration or may be shared between them. It also provided the possibility of refund in favor of the Italian state by the European Union or other international organization. Everything is however left to the agreements between the administrations concerned.

Article 32 allows participation in Administrative *twinnings* or to *Seconded National Experts (SNEs)* or temporary service in another competence. The Administrative Twinning is a tool introduced by the European Commission in 1998 in order to assist candidate countries to adapt administrative and regulatory framework of the *acquis communautaire* in the national administrations to ensure a modern and efficient development through close cooperation between public administrations. An essential element of this collaboration is the secondment of public officials of the Member State in the public service of the beneficiary country.

One example is the TAIEX - Technical Assistance and Information Exchange Instrument (Note 27). It is a technical assistance program of the European Commission which aims to approach, and strengthening the application of Community legislation, to be achieved through the exploitation of the skills of resources sent abroad applied in an ad hoc training courses, and is addressed to the twelve countries that joined the EU following the enlargement in 2004 and 2007, the candidate countries - Turkey, Croatia and FYRoM (Macedonia) - the Balkan countries, Russia and the countries within the European Neighborhood Policy - ENP.

As defined by the European Commission, "*the seconded national experts are people available to the Commission by a public administration - national, regional, local or an IGO - whose powers serves in a specific field*" (Note 28). Such personnel shall remain in effect serving the belonging administration.

The expert is an experienced professional in their field, with knowledge and skills not available at the Community level, entered into a direct relationship with the European institutions and, therefore, trained by those and exchanging their experiences, becomes a "*safe return of investment for national administrations"* (Note 29). The national authorities can use, to homecoming the official seconded, a high level of professionalism hardly achieved otherwise. In this sense, the SNE becomes, based on know-how acquired and developed, a "heritage of professionalism" that can and should be used in the most profitable in the interest of the expert and of his own institution and, therefore, of the entire national system.

Important in this regard is the role played by the regions, especially after the reform of Title V of the Constitution: in fact, in 2007, approximately 10% of Italians SNE seconded to the Commission came from regional administrations. Some of them also have established a direct relationship with the European institutions, acquiring an ever more active position within the community and have launched projects to create databases of potential candidates SNE.

The project V.E.N.I.C.E. - Veneto Experts Network to Improve Chances in Europe - launched by the Veneto Region in March 2005 with the aim of making more effective Venetian representation in Europe has increased the presence of regional expertise in the European institutions in areas considered of greater importance to the territorial interests. The technical tool which has used is a database of regional experts, an online data base containing *curriculum vitae* of the candidates.

Another project is F.R.I.E.N.D.S. - Fostering Regional Italian Experts for National Development Support -, a project launched by the Brussels office of the Veneto, Friuli-Venezia-Giulia, Puglia, Sicily and the Autonomous Provinces of Trento and Bolzano, in December 2, 2006. The project aims to promote the inclusion of experts linked to the territory within the European institutions, in areas deemed relevant to the regional system, proposing a database, as a useful tool, to enable constant monitoring of the high level professional offer present in regional territories. In addition, the project FRIENDS engages in propagation of know-how in the area, as well as identification and accompanying the expert before and after the secondment period.

The EU Member States are in the front of the challenge of developing new forms of international collaboration. To this end, programs have been promoted ad hoc with the aim of promoting friendly cooperation between the central administrations of Member States and to promote mutual sustainability in the context of current political conditions of participating countries. The growing internationalization of the competencies of all ministries makes necessary qualified administrations and a European policy action; in fact, the extension of competences of the European Union touch also policy areas which usually are national, and, therefore, become fundamental a multilateral harmonization and a common action.

One such project is the "Bellevue Program", named after the castle of Bellevue, the official site of the President of the German Federal Republic. Unique for the duration, intensity and number of countries, was founded in 2004 by

Robert Bosch Foundation in cooperation with the German Federal Presidency and sponsored by the Heads of State of the seven partner countries: Germany, Italy, Poland, Portugal, Slovenia, Spain and Hungary. The program's goal is to enable young leaders and officials with special skills to know in depth the governmental and administrative structures, the political conditions and processes of formation of political will in the host country. The program operates in two ways: stimulates specific professional and intercultural and "europolitica" competence of the official, who sees thus reinforced his potential for the recruitment of executive positions; stimulates transnational collaboration of the departments involved, so they see growing their European "competence". It is not, therefore, an exchange program on the basis of reciprocity, but rather an exchange which simultaneously involves all participating Member States.

The Bellevue Program provides a stay of 12 months of work during the entire calendar year, over the previous three months for the environment and the pursuit of better and more productive position. The fellow, in fact, must be engaged in accordance with his professional qualification as a collaborator.

Purposes of exchange programs is to form a public executive class that has a common core of knowledge, skills and abilities for the formation of all the European leaders into a European administrative space, and creation of a "European administrative law".

The School of Public Administration is included in two European projects (Note 30).

The first, *European Senior Civil Servant* (ESCS), in collaboration with the French ENA, the German BAKoV, the Greek EKDDA, the Polish KSAP, the Spanish INAP, the British National School of Government, the Hungarian KSZK and Sorbonne University of Paris., aims to stimulate collaboration between different administrative realities and to integrate scientific and educational experiences made at European level in order to implement a training program, transferable and reproducible in other European contexts, and to create a close link between such training organizations. The first edition took place at the School of Public Administration of Caserta on 3 - 7 March 2008 and which increased the number of participants on 18 - 22 May 2009: from 28 officers, including 19 Italians, at 60, of which 30 Italians.

The second, *Managers for Europe - Creativity and Innovation by the European Administrative School* (EAS) (Note 31), in partnership with government schools, aims to create a network of labor and an exchange of experiences and knowledge to improve operational procedures, a *common ground* to build, at European level, a complex of administrative consuetude and common actions.

At executive level, since 2002, the Law July 15, 2002, No 145, on "Measures for the reorganization of State leadership and to encourage the exchange of experiences and interaction between public and private field", supplemental of the Law 165/2001, had stated the possibility of "*outplacement for managing activities in organizations or public/private agencies, also operating at the international level*".

4. Outplacement in Public European Administrations

Another way to make the outgoing mobility is given to the civil servants by the toll of "out of the role" according to the Law July 27, 1962, No 1114 (Note 32) - "Discipline of the legal and economic position of state employees allowed to take up employment with international agencies, or to exercise functions in foreign countries", as amended by Law July 15, 2002, No 145 (Note 33), on "Measures for the reorganization of state leadership and for encourage the exchange of experiences and interaction between public and private".

Article 1 provides the possibility to employees of public administration to be placed outside the role to take a temporary assignment, lasting no less than six months, with international agencies or bodies exercising functions, also in continuous way, in abroad offices. The law sets a quota, unlike the original provision which did not provide for limits, at 500 units. The temporary limit fixed is not really a limit because can be renewed at the expiry of the term, ad infinitum.

The lack of reference to the maximum time limit may cause, and even in the absence of reciprocal agreements, under Art. 32 of Legislative Decree No 165/2001 for the establishment of the control, the saturation of the position, which involves the loss of the will of the legislator - an exchange of experiences and greater effectiveness and efficiency of Public Administration.

The outplacement provides to create a vacancy that can be covered either by competition or mobility procedures. The employee put out the role, once lifted the placement, has the right to be structured, if there are vacancies for the corresponding qualifications in excess of the administration as stated by the original Art. 32 of Legislative Decree No 165/2001 because the employee belongs to the original administration.

The authorization is given with declaration of the Prime Minister's Office, Department of Public Administration, by decree of the concerned administration in consultation with the Ministry of Foreign Affairs and the Ministry of Economy and Finance.

Paragraph 2 of Art. 1 states that the belonging administration can be granted, pending formalization of the bureaucratic procedures, the immediate use of the employee at the international organizations that have requested the outplacement. From that moment his economic treatment is not anymore sustained by the Italian State.

It is important to point out that the Italian government, since 1962, has established the Institute of outplacement to allow their employees to carry out a continuous function even at the public administrations of Member States. The Law 145/2002 extends the provisions of the original rule, expanding the use of the tool to all staff of public administration as indicated in Art. 1, paragraph 2, of Legislative Decree No 165/2001 and not only to "public employees".

The Law of 24 December 2007 No 244 (Note 34) - Financial Law for 2008 -, at Art. 3 paragraph 79, modifying the Art. 36 of Legislative Decree No 165/2001, imposed strict limits on use of temporary assignment of personnel from other administrations, and establish flexible forms of contract that can not last for more than six months and can not be extended. It is a general rule, exception are the special rules that must prevail and expressly establish "organizational cause" by certain administrations, such as the Presidency of Prime Minister or the Ministry of Foreign Affairs, which for unique structural features and for the need to have a reliable, specific and flexible staff in use have a contingent of controlled and outplace personnel stated by law.

5. Access of European Citizens to the Italian Public Administration

European citizens can access to the Italian Public Administration as provided of Article 38, paragraph 1, of Legislative Decree No 165/2001 only for those posts that do not involve "*direct or indirect exercise of public authority, or do not comply the safeguard of national interest*".

The article, modifying the above-mentioned Article 37 of Legislative Decree No 29/93, as amended by Article 24 of Legislative Decree No 80/98, is important because for the first time, conforming to the judgments of the Court of Justice of European Union, the Italian state eliminates from the basic requirements to participate in competitions at the public administrations that of citizenship. We no longer speak of Italian citizenship but it extend the concept of citizenship to the membership of European Union. This obliges us to give wide publicity to and increased calls for government competitions.

The bond of solidarity which represent a duty for the Italian citizen is decreased by enlarging the possibilities for citizens of EU Member State to have access to the Italian public administration. There is no more the bond of citizenship. This expansion has a limit, however, consistent in belonging to the Member State of the European Union, but at the same time is reinforced the idea of community at the center of every action.

Article 38, paragraph 2, identifies the posts and functions "*which can not be separated from the possession of Italian citizenship*" as the police force, judiciary, tax administration and diplomacy. In paragraph 3 is underlined a sensitive and important issue as that of equivalency of diplomas. This equivalency occurs in different ways: academic recognition or through the use of specific directives on mutual recognition of educational qualifications issued by the European Union - Directives 89/48/CEE and 92/51/CEE (Note 35) -, by Decree of the Prime Ministers adopted on the proposal of the competent Ministers, only in the private sector.

For the purposes of admission to the competition and the nomination as the winner, paragraph 3 states that, by decree of the President of the Council of Ministers adopted on the proposal of the competent ministers, is established between the equivalence of academic degrees and the equivalence of titles of relevant services to the assignment additional scores.

6. Conclusion

In Italy the public administration is seen by the citizen, which is the first and most privileged user, with a loser philosophy, not gaining trust and gathering critical, sometimes ungenerous and often do not correspond to reality. This attitude of distrust towards the public administration is a historical legacy due to the innumerable situations suffered before the Unit. Only after the Second World War and the end of the fascism, the new Italian Public Administration has begun to take its first steps, at the beginning received with favor by the people thanks to the work done by De Gasperi and his governments which gave security of justice.

Following the birth of new parties and political movements, resulting in a natural aspect of a proliferation of ministries and ministers, the rise of armed gangs who had intended only to delegitimize the State, have led to the Italian Public Administration collapse, which has carefully tried to recover with the Legislative Decree No 29/93. The reform of

Title V of the Constitution, reversing the territorial system of powers has made a more efficient and effective decentralization.

At decentralized level it was developed collective bargaining as a source of public employment law. In fact the trade unions have governed not only working relationships but also their organization, using almost all available resources to finance the progression of the staff instead of encouraging citizens to an open competition. Trade unions had determinate with integrative bargaining the income growth in fact higher than that of the private sector.

The Law March 4, 2009, No 15 (Note 36) contains new principles for the reform of public labor, deals with the problem of the failure of collective bargaining, beyond the control of the State, the re-centralization of legislation and re-legislate of employment. Article 1 of the Law contains a provision that overturns the standard of previous on privatizations stating that collective agreements can overrule, in respect of employment, laws targeted at certain categories of public employees only if the law expressly confer this power. In this sense, re-legislate implies the removal of fields to collective bargaining through direct regulation by the Decree No 165/01, such as disciplinary sanctions and rewards system.

Article 6 of Law 15/2009 regulates the field of public management and in the second paragraph shall lay down the guiding principles and criteria. In point a) states "*the full autonomy and responsibility of the manager, as a person who exercises the powers of the public employer*" and gave then to the employer, which is framed in the public sector in the administrative area, the management of the staff. The letter m) reinforces this policy by asserting the necessary increase of managerial autonomy in terms of compatibility with respect to both trade unions to political authority. The letters h) and i) of that Article 6, paragraph 2 concern the "*statutory provision, change and revocation of management positions*" on which it envisages a more balanced asset and more coherent with the principle of distinction between politics and administration.

This rule of management positions shall be adjusted at "principles of transparency and publicity" that require open procedures for the engagement. At para g) it is providing that "*the appointment of general management to the winners of the selection procedures, open the outside, is subject to completion of a training period, not less than six months, at the administrative offices of a Member State of European Union or international organization [...] establishing a special training program to ensure adequate supply for immediate application of discipline in the first two years following its entry into force*".

The so-called "Law Brunetta" is characterized by a recovery of "unilateral power" in public employment by subtracting fields from the collective bargaining, more or less extensive, to entrust again the law, giving it to managers as subjects who exercise the powers of the public employer.

In compliance with the provisions of the letter g) in particular and more generally by the entire paragraph of Article 6 will need to create, even for the purposes of an assessment, a fitting structure to organize and make not only effective but also efficient and productive the internship performed at a foreign Public Administration. This discipline is to place management objectives in the Lisbon Treaty with regard to occupational mobility within the European Union in order to increase the efficiency, effectiveness and profitability through more professional management, the only way to recover both economic and human investment. To this end, the Law 15/2009 has huge prospects for development, not only about the Italian public administration but also for the integration of public administrations of EU Member States making interchangeable their leaders. It is very important that the formation of European public official has a European conNotetion. The interchangeable, if managed and coordinated at best, could lead the manager of Public Administration at a level of training and preparation for higher and higher in order to gain from it both in efficiency and effectiveness so as to benefit from it all in perspective European public administrations.

Only with characteristics of effectiveness, the quality and functional efficiency of the service rendered, the formation of the manager at European level can be effective, in other ways will be just another statutory provision, full of illusory hopes but dramatically ineffective. European consciousness can see a chance of growth in the knowledge and integration that fit and insert in the daily of the citizens.

The European tradition can and must create the standardization of procedures and instruments that characterize the common life of every one of us, acts uniformly and consistently by a Public Administration at the service of "European citizen".

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