

The Legal Status of Italian Civil Servants



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1) Contractualisation



Reform in two stages:

1. 1992-1993, Minister Cassese (Law 421/1992; Legislative Decree 29/1993)
2. 1997-1998, Minister Bassanini (Law 59/1997; Legislative Decree 80/1998)

2) The Italian Tradition



A traditional statutory civil service (since 1908):

- Recruitment by competitive examination
- Oath of allegiance
- Obligation of residence
- Obligation of exclusivity
- Career system based upon merit and seniority

3) Precedents



- a) “Report on Key Problems in State Administration” (1979), Minister Giannini: proposed **privatization** of employment contracts for **state employees and workers**

- b) public service framework law or *legge quadro* (Law 93/1983): collective agreements to be legally binding **transferred in a decree** and regarding only **financial issues**.

4) Background to the Reform



- Huge crisis in the public service sector due to scandals and trials for corruption and other criminal offences, referred to as *Tangentopoli* (from *tangente* meaning bribe) or as *Manipulite* (meaning Clean Hands)



PUBLIC ADMINISTRATION DISCREDIT

Important reforms to regain citizens' trust and to restore public administration accountability:

Law 142/1990, general law on local government bodies

Law 241/1990, general law on administrative procedure

Law 421/1992; Legislative Decree 29/1993, contractualisation of public sector employment relations

5) 1992-1993 First Stage



- 1) Public servants subjected to **labour law**, like the private sector
- 2) **Individual employment contracts**
- 3) **Collective agreements** regulating not only to financial aspects

Nevertheless, many special provisions still in the public servants' code

Except for judges, *prefetti*, police, and diplomats (all the public authority functions) and “temporarily” for university professors and researchers.
Initially highest top civil servants also excluded.

6) 1992-1993 First Stage



Reform of top civil service, from “bureaucrats” to “managers”:

- with “**powers and capacities of a manager in the private sector**” (Legislative Decree 165/2001, Art. 5)
- without hierarchical relationship between politicians and top civil servants: “separation” of administration from politics.

... Let managers manage

7) 1992-1993 First Stage



POLITICS

- Only **orientation** (definition of policy and programs) and **control** over their implementation

No longer powers of cancelling and modifying administrative decisions.

TOP CIVIL SERVANTS

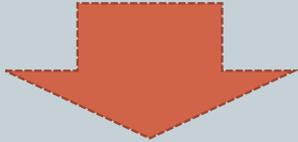
- Issuing of all administrative decisions
- Financial, technical and administrative management

8) The Theoretical Justification



Italian Constitution, art. 97: “Public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration”

Less impartiality, more efficiency? (Const. Court, 313/1996)



The statute ensures
job stability and
continuity (“tenure”)



The private model ensures
greater *Economicity*,
Efficiency, *Effectiveness*

*NEW PUBLIC MANAGEMENT
THEORIES*

9) 1997-1998 Second Stage



- From administrative judges to labour law judges (with jurisdiction over litigation between public servants and administration).

Except for judges, diplomats, police and *prefetti*, and for litigation regarding competitive examinations.

- Higher top civil servants are “contractualised”.

10) Labour Law Judges and Public Servants Litigation



- Decisions concerning human resources management



No longer qualified as «administrative decisions» subject to public law and especially not to administrative procedure law (Law n. 241/1990)

**Adopted by top civil servants with «powers and capacities of a manager in the private sector»
SUBJECT TO CIVIL LAW**

Exclusion of public law rules, such as obligation to motivate, right to be heard.

Labour law judges respect the autonomy of managers in the exercise of their organisational power, unless judges recognise a violation of workers' rights

11) The Impact of the Reform



- No exhaustive research on the results

Some considerations are possible:

In general: growth in public debt and not completely satisfactory standards for public administration and services

According to its «fathers», the reform has partially failed to achieve its goals

The transformation of top civil servants into «private managers» is a «legal fiction» (Mario Rusciano, 2008)

Agents with two principals: politicians but also **USERS**
«officials are at the Nation's service» (art. 98, Const.)

13) The Impact of the Reform



Goals **failed**:

- To make easier to dismiss public servants



It's still difficult to dismiss

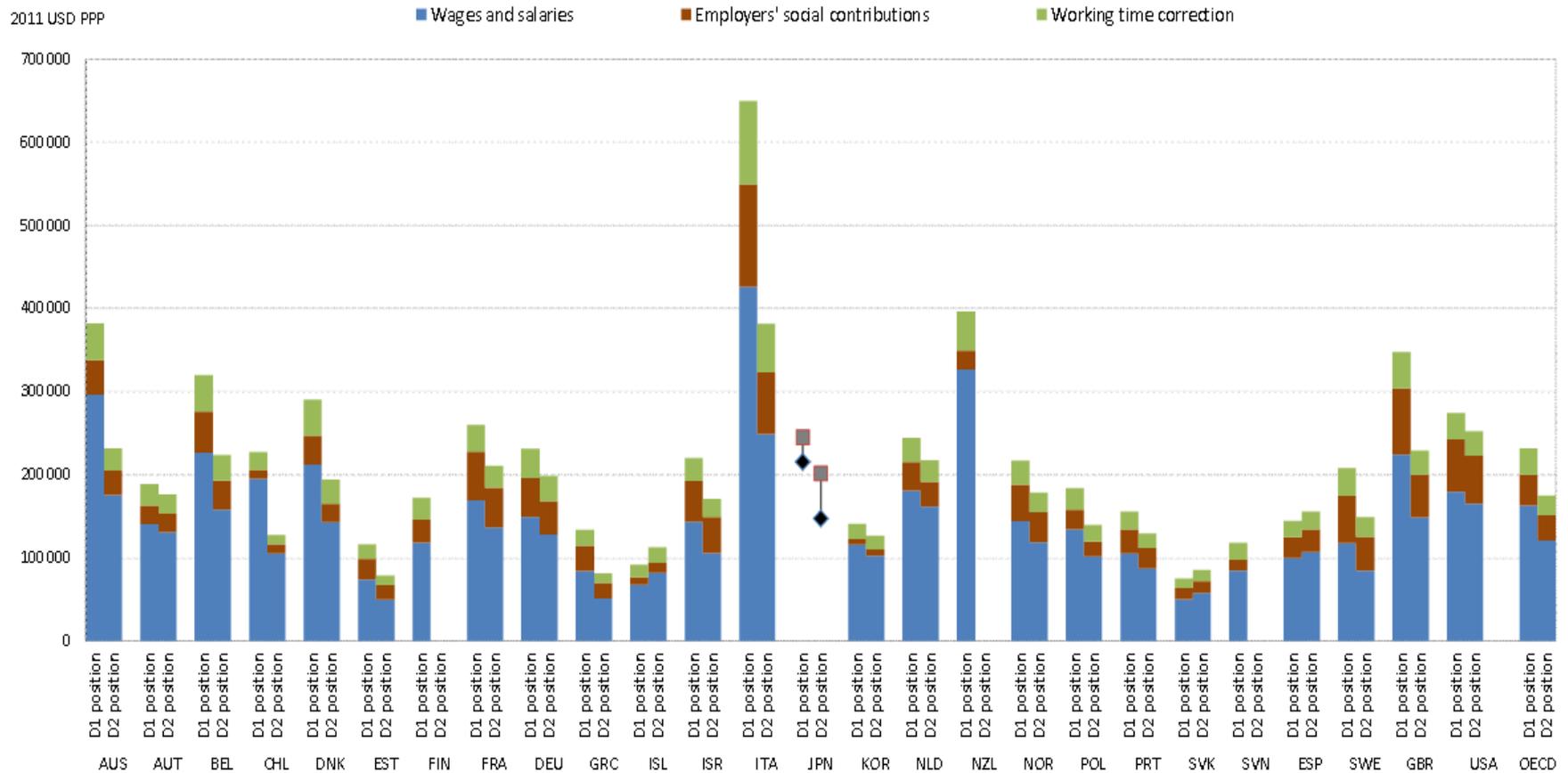
- More personalisation of individual employment relations



Individual contracts are uniform and standard, except for top civil servants

Average annual compensation of central government senior managers (2011)

Adjusted for differences in holidays



14) Compensation of Italian Top Civil Servants (OECD, 2013)

15) Compensation of Italian Top Civil Servants



Italy: 426,082 dollars PPP (international dollars)*

OECD average: 162,818 dollars PPP

Germany: 149,156 dollars PPP

France: 168,996 dollars PPP

United Kingdom: 224,442 dollars PPP

USA: 179,700 dollars PPP

Netherlands: 180,957 dollars PPP

Belgium: 226,274 dollars PPP

(compensation is not far from the OECD average for lower levels)

* A mandatory limit has been successfully introduced in 2014

16) The Impact of the Reform



- Weakness of the administration as an employer in relations with trade unions

From one unilateral regulation (the statute) to another unilateral one (contract decided by trade unions)? (Stefano Battini, 2007)



Recent efforts to limit trade union power in the public sector:

- Many judgments of the Constitutional Court in favour of open competitive examinations:
To be used for major career advances: cannot be entirely restricted to public service personnel; must be **open to the public**.
- Important reform in 2009, reducing the areas that collective agreements can regulate (back to the law) and their power to regulate in conflict with the law.



Thank you for your attention!