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THE SENIOR CIVIL SERVANTS ("DIRIGENTI") IN ITALY

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Prof. Francesco MERLONI

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1. THE UNIQUENESS OF THE ITALIAN "DIRIGENZA" IN THE EUROPEAN LANDSCAPE OF SENIOR CIVIL SERVANTS.

The Italian administrative Reform is largely based on a huge investment in a new role for the "*dirigenza*", approximately correspondent to the British experience of the Senior Civil Servants.

In the present legal discipline a high level public official, either in a central government Department or in a Region/local authority has, at least from a formal point of view, powers of acting independently from the political bodies governing its administration. Furthermore he has powers of governing the civil servants allocated to his office in the same way as a private entrepreneur.

Italy has formally abandoned the "ministerial responsibility" system, creating a clear and rigid distinction between the (only political) responsibilities of governing bodies in the public administrations and the responsibility of "*dirigenti*" for the administrative action.

The Italian reform of public administration, started in the early nineties' (1992-93), has two main objectives: to ensure a better efficiency, introducing, implementing the Italian principle of "*buon andamento*" fixed in the art. 97 of the Constitution, in the functioning of public administrations, ideas and instruments driven from private business experience; to guarantee more impartiality in the use of administrative powers (the impartiality principle of the same art. 97 Const.).

This legal discipline is, in many ways, unique in the European landscape[1] (even though non-exempt of serious problems of implementation) and therefore deserves to be better known and understood.

2. HOW TO BORDER THE LIMITS OF THE CATEGORY

In order to better border the space covered by this category is necessary to recall that the Italian *dirigente* has the exclusive power of taking administrative decisions and formal administrative acts. After the administrative reform of 1992-93[2] members of political bodies can no more directly assume any administrative decision of specific care of a public interest; they can only adopt acts of general direction, of "political address" which can delimit the discretion of *dirigenti*. This is the so-called "distinction between politics and administration" within any body of the public administration.

That has the consequence of a clear distinction in the area of "decision": the *dirigenti* are decision-makers whose relationship with the administration is different from that of politicians or of political staffs (political advisors, in general any position attributed on a fiduciary basis). The *dirigenti* are senior civil servants permanently operating for their public administration, on a basis of professional status, while the other figures act for the administration on a temporary basis[3]. The former receive a salary for their activity, the latter receive only an "indemnity".

[1] A comparative analysis of the different legal system of the Senior civil service in Europe can be found in F. MERLONI, *Dirigenza pubblica e amministrazione imparziale*, Bologna, Il Mulino, 2006.

[2] Act n. 421/1992 and the following Legislative decree n. 29/1993. All the present discipline is now summoned in the Legislative Decree n. 165/2001.

[3] In the Italian terms they are "honorary officials" (see G. FERRARI, *Funzionario onorario*., *Enc. Dir*.).

In the "decision-making area" there is a "political" decision (of political address, directive) and an "administrative" decision, reserved to different and separated categories of decisions makers.

Within the large category of civil servants, corresponding to the wide categories of French "fonctionnaires publiques" or German "beamten", the Italian *dirigenti* are a specific category of "public employees"[4].

How can we distinguish between the general position of "public employees" and the *dirigenti's* one? Even in this case is possible to use a functional criterion: while all the public employees are (as in all the European countries) collaborators in the administrative process of decision making, the Italian *dirigenti* can act either as collaborators (with the political bodies in the adoption of political decisions) or as direct decision makers. This implies that their legal status is for same matters common with the general status of public employees and for other, more specific matters, a particular status.

3. HISTORICAL NOTES

The history of the Italian *dirigenza* is a history of progressive appearance of the category, within the larger category of "public employees".

The first step has been the formal creation of the dirigenza at national level in 1972[5]. In the following twenty years the Italian *dirigenza* enjoyed a position approximately

[4] In the ordinary legislation the discipline of the legal status is always concerning the public employees. In the Constitution (in particular art. 97) this term is used in combination with the term "*funzionari*".

[5] Presidential Decree n. 748/1972, which provided three level of dirigenza: "dirigente generale", "dirigente superiore", "primo dirigente", corresponding to three levels of offices in the public organization (particularly in the ministerial departments).

similar to the “senior civil servants” or to the “haute function publique”. They were always closed collaborators with the political (and administrative) decision makers, not themselves decision makers. This new category of public employees were comparable to the other in the European landscape only in terms of tasks given and functions, not in terms of tradition of impartiality or neutrality. The Italian *dirigenza* was, at the beginning, a weak and politically dependent one.

The turning point occurred in the 1992, when an acute financial crisis, doubled by the appearance of corruption cases in public administration, imposed an administrative reform focused in the research of more efficiency and more impartiality in the functioning of public bodies, at all levels of government.

Both objectives has been conceived as strictly linked with a new role for the existing weak *dirigenza*.

As far as efficiency is concerned, the Italian reform was largely inspired by the New Public Management set of instruments and concepts. The main target was to “isolate”, within the organization of different public bodies, individual offices (or separate public bodies or authorities/agencies), in order to measure their costs and their outputs. The measuring of bureaucratic performance, generally aimed to identify the apt action necessary to achieve better organization (and better procedures), in the Italian version also implied a stronger responsibility of the civil servants nominated as chief of the “isolated” offices.

The basic idea was to stimulate the *dirigenti* to obtain better use of the labour force allocated in the offices assigned to their responsibility. The stimulus has been conceived as twofold: on one hand a positive one (in terms of prizes awarded: a part of the salary is linked to the results obtained by the office under the *dirigente*’s guide), on the other side negative: the lack of efficiency of the office or the not fulfilment of the action targets fixed

in the directives adopted at political level could imply the early removal from office or the non confirmation of the job at its expiration[6], or a cut in the prize part of the salary.

As far as impartiality is concerned, the basic idea of the reform has been to reserve the powers of adopting administrative acts only to the *dirigenti*, excluding any intrusion of the political bodies. Trough a legislation more and more clear, the present discipline provide a clear-cut division between tasks of political bodies and *dirigenti*[7], strengthened by the prohibition for the political bodies of "revoking, modifying, reserving to themselves, taking over or in any way adopting acts in the competence of *dirigenti*[8]. The consolidated jurisprudence of the administrative courts considers unlawful acts of actual management adopted by political bodies (or by their staffs). The consequence is the annulment of this kind of acts, considered as invalid for incompetence[9].

The reform is founded on the idea that a professional civil servant, recruited on merit basis (trough a competition procedure) and depending from the administration on the basis of permanent status, better guarantees the impartiality of administrative action, while politicians (and all the figures acting on a fiduciary basis) are competent only for acts of political address and guidance of the dirigenti's activity.

These principles have been always confirmed and in many cases consolidated by the following legislation, in the years 1998, 2001, and 2004. In 1998 the employment relationship between the *dirigente* and the administration in which he operates has bee

[6] This is the so called "responsabilità dirigenziale": see art. 21 of the Legislative Decree n. 165/2001.

[7] See art. 4 of the Legislative Decree n. 165/2001.

[8] See art. 14, paragraph 3, of the Legislative Decree n. 165/2001.

[9] On the legal concept of competence in the Italian discipline of the public organization see A. PIOGGIA, *La competenza amministrativa*, Torino, Giappichelli, 2001.

clearly defined as a private law relationship for the entire category, including the *dirigenti generali* (at the beginning of the Reform process not privatised)

Finally, in 2009, came the so called "Brunetta legislation"[10], aimed to strengthen the performance measurement of public employees and the responsibility of the *dirigenti* for the results obtained by the offices under their control.

The legal discipline of *dirigenza* deserves a brief description, to focus the basic points and the problems still opened in its implementation.

4. BASIC ITEMS: POWERS, NOMINATION, JURIDICAL STATUS

As told before, the *dirigente* has reserved powers of administrative action (following the public law rules on administrative procedure) and powers of the so-called "micro-organization", that implies powers of organizing the activity of the employees and powers of giving them tasks and objectives.

For the latter part of his activities the *dirigente* acts applying private law rules. He is the "private employer"[1112] for the civil servants allocated to his office. In this case we are in presence of a simulation, strengthen by the privatisation of the labour relationship of

[10] By the name of the Minister for public administration presently in charge, starting from 2008. The two major acts are: the Act n. 15/2009 and the Legislative Decree (of development of the Act n.15) n. 150 of the same 2009.

[11] See art. 5, paragraph 2, of the Legislative Decree n.165/2001.

[12] For a suggestive interpretation on the entrepreneurial role of the *dirigente* see P. CERBO, *Potere organizzativo e modello imprenditoriale nella pubblica amministrazione*, CEDAM. Padova, 2007

civil servants in Italy. All the civil servants acting in Italian public administrations[13] have their working conditions regulated by private collective agreements. They are paid for the work services given. The consequence is the possibility of simulating the existence of a private system of labour relations: on one hand the *dirigente* as a private employer; on the other hand the civil servants allocated to his office, considered as his subordinates.

As far as the nomination procedure is concerned, one must distinguish between the access to the career of "dirigenza" and the appointment to a specific task (with the responsibility for the activities of the office and for its results).

To become a *dirigente* there are particular ways of access, regulated by the law. The whole category of dirigenza is divided in two levels, corresponding to two levels of offices in the organization of o a public body. Normally only a *dirigente* of the upper level (the *dirigente generale*) can be appointed to the offices of "general" level, but there are many cases of appointment of dirigenti coming from the bottom level.

In a small portion of the total amount of posts also persons coming from a different administrations or by the private sector can be appointed to offices of *dirigenti* level. This is the so called "external *dirigenza*", too often utilized to introduce in the administrations persons chosen on a fiduciary basis, in order to have a larger number of followers, politically loyal to the appointing bodies.

While the recruitment of *dirigenti* (like the other civil servants) is operated through a competitive examination, is up to the political body governing the public administration to appoint to a specific public office.

The main problems linked to the appointment are:

[13] With the exception of few categories, which remain with a public law labour relation, i.e. judges, diplomats, prefects, policemen, university professors. The exception is founded on a particularly strict relation between work conditions and exercise of a public function.

a) The discretion of political bodies. Are the politicians totally free in the choice of the *dirigente* to appoint, or are the same limits (criteria, procedures to follow)? On this point the present discipline is silent, but there are positions in doctrine that propose the introduction of such limits.

b) The duration of the mandate as chief of the office. Before the reform of 1992-93 the task of responsibility for an office was given to a *dirigente* without temporal limits. The reform, in order to increase the responsibility for results, has introduced a temporal limitation. At the expiration of the mandate the task can be confirmed or not[14]. The problem stay in the effective duration of the task: a too brief duration implies that the appointment's renewal will stay in the same hands as the first one, a situation which can create a subordinate position of the *dirigente* towards the political body who appoints. The Constitutional Court hasn't yet dealt with this point, bur has stressed that «a too short duration of the task would imply some risks for the impartiality of the *dirigente*»[15].

c) The limits in revoking in advance (or not confirming at the expiration); the present discipline provides the possibility of not confirming the appointment at its expiration, in case of not fulfilment of the objectives or the not conformity with the directives given by the political bodies[16]. In case of violation of duties and of heavier responsibilities the task can be revoked in advance or the work contract can be removed.

d) The juridical nature of the appointment, which is acutely disputed. On one hand there are views that consider the appointment as an administrative act, regulated

[14] The present situation for the "dirigenti" in central administration (State) is: the mandate must last not less than three years and not more than five years. The ordinary duration of the mandate of political bodies is five years.

[15] See the sentence n. 103/2007, point 9.2: «a too short duration of the mandate appears to be not easily compatible with a good system of guarantees adequate to assure an impartial, efficient and effective development of the administrative action».

[16] See art. 21 of Legislative Decree n. 165/2001.

by the public law. These views stress the strict link with the public interest of the appointment, which is the instrument for giving the *dirigente* the public powers of administrative action. On the other side is used the decisive argument of jurisdiction: the ordinary judge (not the administrative one) is the only competent on the disputes concerning the appointments and their revocations[17]. Is possible to conclude that the act of appointment is a private one, of unilateral nature (the decision to appoint is only in the hands of the political body, it not negotiated), accompanied by a private law contract, necessary to regulate the economic aspects of the work relationship. The awarding of the public powers to act as an organ of the administration doesn't follow from the appointment act, but from the organization rules that provides competences for each office.

5. PROBLEMS OF IMPLEMENTATION: DIFFICULTIES IN ACTIVATING THE RESPONSIBILITY FOR RESULTS.

The *dirigente*'s can take his responsibility for results only if: a) each year the political bodies adopt their acts of directives, which must contain specific objectives for each office and for each dirigente; b) each year the administration measures the output of the offices, their performance; c) on the basis of the performance measuring, the political bodies adopt the consequent acts: the positive ones, the distribution of prizes (the mobile part of the salary); the negative ones, the not confirmation or the early removal from office in case of lack in efficiency or in the fulfilment of the directives.

Till now the whole mechanism was jammed: the political bodies have largely preferred not to adopt their directives, distributing the prizes to all the *dirigenti* without measuring or evaluating their results. On the other hand the *dirigenti* didn't claim for an effective evaluation. No directives, no performance measuring, no responsibility for results.

[17] See art. 63 of Legislative Decree n. 165/2001.

And, as a consequence, the *dirigenti's* gratefulness (and a possible subordination) towards politicians for better salaries assured automatically.

The "Brunetta legislation" of 2009 tries to face this situation attacking the lack of responsibility from a different point. The new discipline[18] doesn't order the political bodies to adopt directives, but creates new bodies within each central administration, the Independent Organs for Evaluation[19]. The distribution of prizes has predetermined limits (the evaluation of the best performance can be recognized to not more than 25% of the total amount of civil servants working in each administration (in the case of *dirigenti* the 25% of that category) and is possible only on the basis of a previous performance measurement. In addiction the new legislation invests largely in a more wide transparency, which is defined[20] as "total access" to "every aspect of public organization", in order to stimulate "forms of widespread control" on the public administrations functioning. The idea is that transparency can be assumed as a new instrument of "pressure" by the outside (by citizens) towards the various actors in the public administrations (political bodies in their control over the performance of *dirigenti*, the *dirigenti* in controlling the performances of the other civil servants operating in the offices under their control) in order to prevent any internal collusive arrangements at the expenses of the general public interest to efficiency and effectiveness.

[18] For a first commentary see G. GARDINI, *L'autonomia della dirigenza nella (contro)riforma Brunetta*, in Lavoro nelle pubbliche amministrazioni, 2010, 579 ss..

[19] In Italian OIV (Organismi Indipendenti di Valutazione della performance). See art. 14 of the Legislative Decree n. 150/2009. The activity of the OIVs is coordinated at central level, by an independent authority called CiVIT (Commissione indipendente per la Valutazione, la Trasparenza e l'Integrità delle amministrazioni pubbliche) provided by art. 13 of the same Legislative Decree n. 150/2009.,

[20] See art. 11, paragraph 1 of the Legislative Decree n. 150/2009. For a commentary on the new legislation on transparency see E. CARLONI, *La "casa di vetro" e le riforme. Modelli e paradossi della trasparenza amministrativa* , in Dir. Pubbl., 2009, 779 ss..

The implementation of the new legislation is still at the very beginning. We shall wait and see if it will give the actual change expected.

6. PROBLEMS OF IMPLEMENTATION: DIFFICULTIES IN GUARANTYING THE PERSONAL INDEPENDENCE OF THE SENIOR SERVANTS.

The exclusive power of administrative decision recognized to the *dirigenti* is aimed mostly to exclude the politicians from taking this kind of decisions. Therefore the reserve of activity is necessary, but not sufficient. The legal condition of the *dirigenza*[21] has to assure an effective position of independence[22] of the individual *dirigente* from pressures aimed at conditioning his decision-making.

In the present situation the principle of distinction between tasks of politicians and tasks of *dirigenti* within the public administrations is formally observed: all the administrative acts are in fact adopted by the *dirigenti*. That doesn't imply that they take their decisions in an independent way.

There are several means used by the political bodies to avoid the principle of distinction and interfere with the *dirigenti's* decisions:

a) Fixing a short duration of the *dirigenti*'s mandate (for example adopting the shortest possible duration provided by the law: 3 years in central state administrations);

[21] For an organic set of proposals see G. D'ALESSIO (a cura di) *L'amministrazione come professione*, Bologna, Il Mulino, 2008

[22] On the independence as a personal character of the civil servants responsible of public tasks and offices and not as character of the public bodies see B. PONTI, *La nozione di indipendenza nel diritto pubblico come condizione del funzionario*, in *Dir. Pubbl.*, n.1, 2006, p. 185-246

b) Using incorrectly the power of appointment of external *dirigenti*, in order to have a certain number of *dirigenti* linked to politicians by a fiduciary relationship;

c) Using the spoils system method (i.e. establishing the automatic removal from office at any change of political mandate) in order to have the same results as point b).

For the first mean, till now no changes are envisaged at legislative level. Only a clear intervention of the Constitutional Court could lead the Parliament to a new consideration of the necessary independent position of the *dirigenti*.

For the second point, instead, there are important news: the recent "Brunetta legislation" has clarified that the external *dirigente* is not an instrument for introducing fiduciary civil servants. The appointment of an external *dirigente* has to be "explicitly motivated". The persons coming from outside should have a "specific professional qualification not present" inside the concerned administration.[23] The only case for an external appointment is the absence, in the concerned administrative body, of skills for a specific office to cover.

This new legislation has been preceded and accompanied by a very clear jurisprudence, in the same direction, of the Constitutional court[24].

[23] See art. 40 of the Legislative Decree n. 150/2009, modifying art. 19, paragraph 6 of the Legislative Decree n. 165/2001.

[24] See the following sentences: n.9/2010 (annulling an act of the Piemonte Region for avoiding the principle of the public competition to accede to public offices); n.161/2008 (annulling the spoil system applied to appointments of dirigenti coming from other administrations, on the ground of an alleged fiduciary relation); n. 81/2010 and 124/2011 (annulling the spoil system applied to appointments of dirigenti coming from the private sector, on the ground of an alleged fiduciary relation)

As the third point is concerned, decisive has been the role played by the Constitutional Court to progressively limit the use of spoils system in the recent legislation, either at central state level or at regional level.

This impressive jurisprudence[25] can be summarized as follows:

a) The distinction among competences of political bodies and competences of *dirigenti* introduced in the ordinary legislation in 1992-93, in the form of an exclusive competence for administrative action recognized to the *dirigenti*, has a constitutional value: the principle has to be considered as a direct application of the constitutional principle of impartiality (art. 97 Cost.);

b) The *dirigenti* have the obligation of acting impartially;

c) The impartiality of the *dirigenti* decisions must be assured trough specific guarantees of their position towards the political bodies who have the appointing powers;

d) Among the guarantees of the position of *dirigenti* one of the most important is the non application of the spoils system;

e) Each administration has to distinguish between the area of *dirigenti*, that are chosen and nominated on professional and not fiduciary basis, and the area of the more strict and "political" collaborators of political bodies;

[25] See the following sentences: n. 233/2006 (authorizing the spoils system for a large series of tasks assigned on fiduciary basis at regional level, including the position of the "dirigente generale", considered as a "summit" one); n. 103/2007 (prohibiting the spoils system for the dirigenti, including the dirigenti generali in the central state administration); n. 104/2007 (prohibiting the spoils system for positions previously considered as fiduciary at regional level); n. 34/2010 and 224/2010 (prohibiting the spoils system in some summit position in public bodies at regional level); n. 304/2010 (admitting the spoils system for the members of Ministerial Cabinets, called by the law –Legislative Decree n. 165/2001, art. 14 - "uffici di diretta collaborazione")

f) In order to distinguish the two areas the criterion is twofold: an organizational criterion (the Constitution Court seems to consider as fiduciary all the "summit" positions); a functional criterion (when the competences imply impartiality there's non space for any fiduciary relationship; when the competences imply a political support to political bodies there's room for a fiduciary relationship).

The Constitutional Court's jurisprudence has been very useful in clarifying the necessity of coping very carefully with the different aspects of the personal independence of the *dirigenti*, in order to assure their impartiality in the administrative decision making. The theme of spoils system proved to be more easily attacked by a Court that has prevailing negative powers (the declaration of constitutional illegitimacy of a legal norm). The Court's position has nevertheless produced a renewed attention on the instruments necessary for a positive guarantee of the *dirigenti's* personal independence.

7. THE LEGAL STATUS OF DIRIGENTI TO ASSURE THEIR IMPARTIALITY

The major items relevant for personal independence of *dirigenti*[26] are:

a) The regime of incompatibility; this is a point not in depth considered in the Italian legal discipline, generally for all the civil servants and particularly for the category of *dirigenti*. The starting point is the regime of total engagement of a civil servant recruited by a public administration; this regime should preserve the civil servant from being conditioned by external interests (economic or political); the principle is weakly

[26] For an organic vision of the actual discipline and its implementation problems in order to assure the impartiality of all public officials (civil servants and other officials, like political bodies) in Italy see F.MERLONI, R.CAVALLO PERIN (a cura di), *Al servizio della Nazione. Etica e statuto dei funzionari pubblici*, F.Angeli, Milano, 2009.

reinforced by a regime of individual authorization which has to be given by the concerned administration for any employee's external activity. The authorization is allowed only when these activities don't reduce the fulfilment of the duties included in the public work relationship. An insufficient attention has till now been paid to other issues, decisive in particular for *dirigenti* (as they take important administrative decisions): the right to join a political party, the undertaking of tasks in the private sector, in firms subject to the administrative power of the concerned administration, during and immediately after the limits of his mandate;

b) The duties of declaration of potential conflicts of interest and of abstention from taking the decisions conditioned by an existing conflict; these duties have been affirmed in some acts and assumed as general principles in the jurisprudence of the administrative courts, but still remains without a positive, clear and procedural discipline;

c) The standards of conduct in public life. The Italian discipline in this matter is largely poorer than the French or the German ones. The problem is complicated by the privatisation of the work relations in public administrations. On one hand the list of positive duties of behaviour is now contained in a "code" adopted by a public regulation and inserted in the collective agreements (which have a private law nature). On the other hand the weakness of the legal value of such duties has produced a practical absence of disciplinary responsibility (see Bernardo Mattarella contribution). This negative trend is now opposed by the recent "Brunetta legislation"[27] and by the promotion of Codes of conduct (having more an ethical nature than a juridical one)[28].

[27] See the Legislative Decree n. 150/2009, art. 69, which has introduced a new legal discipline of the disciplinary procedures in the decree n. 165/2001 (the new articles from 55-bis to 55-nonies). The major limit of this discipline is the absence of independent bodies charged with the application of the new system; the independence should be assured either towards the political bodies or towards the civil servant trade unions of the same administration.

[28] The Codes are adopted either by single administrations (bur in this case one could suppose the aim of adopting a juridical set of behaviour's duties) or by categories or groups of civil servants.

8. THE "DIRIGENZA" AT REGIONAL AND LOCAL LEVEL

At regional and local level there are some important differences in the legal regime of *dirigenza*.

Firstly, the Constitution recognizes to regional and local authorities a large autonomy in regulating their own organization, autonomy including the discipline of offices structure, the discipline of competences of different office at decentralized levels, the discipline of *dirigenti*'s powers [29]. The recent tendency of State legislation is to limit that autonomy, trying to impose a new uniformity. In the "Brunetta legislation" large is the use of different techniques, like the declaration of some central state dispositions as general principles directly coming form a constitutional one, or as minima levels in providing services that have to be assured for all the citizens in the whole territory of the State[30].

Secondly, the creation of the category originally came from some provisions of the collective agreements on civil servants and only later has been provided by the law[31].

Thirdly, not in each administration is possible to find a *dirigenza* (or a *dirigenza* organized into two levels): it depends on the size of the administration. Almost in all the

[29] On the breaking of the uniformity principle in favour of a larger differentiation of the organizational models as consequence of the reform of the Title V of the Italian Constitution see E. CARLONI, *Lo stato differenziato*, Torino, Giappichelli, 2004.

[30] See the Legislative Decree n. 150/2009, art. 16, 31 and 74. The power of fixing minima standards for service delivering is recognized to the central state legislation by art. 117, paragraph 2, point m) of the Italian Constitution.

[31] See the Act n. 142/1990 and the present Legislative Decree n. 267/2000, both providing for the principle of reserve of administrative competences to the dirigenza.

regional administrations there are the two levels, while in the smallest local authorities there isn't any kind of *dirigenza*.

The organization issues coming from the size of the administrative apparatus imply a differentiated application of the principle of distinction between political bodies' and *dirigenti*'s competences even though the Constitutional Court considers the principle as a direct application of a constitutional one (the principle of impartiality) therefore applicable in every public administration. In the smallest communes the law[32] authorises the political bodies to adopt administrative acts, with the assistance of the non-*dirigenti* employees of the commune.

Other principles aimed to assure the quality and the impartiality of *dirigenti* have to be applied also in regional and local authorities: the access through a public competition[33]; the procedural guarantees necessary either in nominating and revoking tasks of *dirigente* or in evaluating outputs and results[34].

[32] See Act n. 388/2000 art. 53, paragraph 23. The exception concerns the communes with less than 5.000 inhabitants.

[33] The principle is directly fixed in Constitution. See art. 97, al. 3.

[34] This principle is recalled by the Constitution Court, for justify the prohibition of spoils system for the dirigenti. The only way to remove a dirigente form his office is a public and guaranteed procedure, no automatic removal is possible.