Government Transformation and the Future of Public Employment

The Impact of Restructuring on Status Development in the Central Administration of the EU-27
1 Introduction

Generally, politics should not try to form the character or cultivate the virtue of its citizens, for to do so would be to legislate morality\(^2\). Therefore, government should provide a neutral framework of rights within which people can choose their own values and ends. Most political parties share the modern idea of a neutral state that protects individual rights although they may disagree about what rights are fundamental and what political arrangements the ideal of neutrality requires. Still, liberals invoke more strongly the idea of neutrality when attempts are made to bring more morality in the public sphere.

Things are different as regards state employment. Here, for a long time, all political groups shared the idea that government should not be neutral, but, instead, interfere strongly in employment issues. State employment as such was loaded with moral discussions and the need to have neutral, loyal and impartial state servants.

In fact, governments’ employment frameworks are very ambitious\(^3\). They want employment systems that guarantee observation of the fundamental values, administrative law principles and ensure a focus on effectiveness, efficiency and accountability. The government policies must ensure equal treatment and fairness while also rewarding individual efforts. The government employment structures should be diversified and representative while ensuring the merit principle and the equality of chances. The governments’ employment policies must be attractive and competitive with respect to the private sector policies while managing taxpayers’ money as prudently as possible\(^4\). Is this ambitious undertaking feasible at all?

Over the past decades, the public employment policies have changed tremendously. More and more, government is withdrawing from interfering in public employment issues. This can be seen best in trends towards the alignment of working conditions between civil servants, other public officials and employees in the private sector. Today, public employment is increasingly underlying the influence of the market, individual interests and the social partners. This trend is consistent with other trends, for example, in the fields of education or medicine in which - as Sandel claims – money can buy almost anything\(^5\).

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Should the market rule public employment, too? Are we heading towards a privatisation of government? Or, have the governments become too ambitious in their efforts to reach all of the above mentioned conflicting objectives? Has one target become more important than others, for example, the need to manage the public employment policies as efficient as possible? Is public employment still different from the private sector employment? Should it be? And if so, which human resource policies, sectors and which categories of staff are concerned? Do we still need a broad definition of civil service and specific working conditions for many employees or is a narrow definition sufficient, and specific employment features are only needed for those public employees who interfere in the human rights (for example judges) or carry out important government policies of the day? And how important is (administrative) law as such in the future?

Discussions on the importance of (administrative) law did not play a major role during the heyday of New Public Management reforms. The New Public Management theories were dominated by the economic, political and organisational discussions. One reason for this may be that although administrative law was mostly seen as a constraint that blocks policy choices and reform policies, the reform of the public law status was seen as a complicated issue and the need to reform was never seen as a political priority (with some exceptions such as in the Netherlands). However, despite all reforms that were taking place, nobody was really interested in discussing one of the cornerstones of the classical public service – the public law status. In fact, the public law status remained one of the core principles of all administrative systems in Europe.

In the meantime, the concept of New Public Management has lost a lot of its appeal as the focus on “too much” managerial thinking (and a too strong focus on rational choice theories) is also revealing many negative effects. Still, after the New Public Management euphoria there is as much disagreement about the successes and failures of New Public Management reforms. According to Pollitt, “NPM is neither a general panacea nor a general failure”\(^6\). The Coordinating for Cohesion in the Public Sector of the Future (COCOPS), a public management research consortium grouping eleven universities from ten different countries, made a meta-analysis of all the academic empirical data evaluating the impacts of the NPM reforms in Europe.

COCOPS concern is that, highly surprisingly, many academic writings, governmental works or consultancy evaluations do not focus on the outcomes obtained by the implementation of NPM reforms. Most of them consist of a description of the reforms implemented and the impact on activities and processes.

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Only 27% of the studies referred to outputs and outcomes and less than 9% analysed the final outcomes of the reforms engaged. Notwithstanding that it is highly unwise of having spread those kinds of reforms through most of the OECD countries without having a clear understanding of their impact, it is hard to assess the results today due to the lack of empirical analysis. Pollitt discusses the "difficulties around the attribution of outcomes to particular reforms, i.e. a particular effect (let us say reduced waiting times for services) might have been caused by a given reform; or they might have been caused by something else (more staff and resources) or by some combination of both". Political time is not fitting with the reform life-time: while a NPM reform was introduced by a government, it is highly possible that some years after the reforms a political change will occur which modifies some elements of the reform.

Nonetheless, in almost 50% of the cases the NPM reforms improved the situation of the reformed services, a significant amount of NPM reforms did not had the outcomes expected or worse, the situation deteriorated. This result is interesting as such as many Member States implemented NPM like reforms throughout the last years.

So, what are the effects of public management reforms on the public employment apart from popular wisdom that the number of bureaucrats is getting less? And what are the effects of public employment restructuring policies? As regards the efficiency of national public budgets, on good governance policies, ethical government, motivation and commitment of employees, the degree of politicisation within the government apparatus? These questions are highly sensitive for many Member States.

In all Member States opinions that public management differs from the private sector management are widespread. The ongoing discussions about the existence of a specific public sector motivation and a public service ethos also imply the existence of differences between work in the public and private sector. Moreover, the importance of administrative law and administrative principles are unquestioned as one important role of administrative law is also to protect citizens and public employees against unlawful state practices. Thus, the concept of administrative law is linked with the idea of democratic values protection. On the other hand, many claim that the public employees should not be treated differently to private sector employees, and the public administration and administrative law as such are easily identified as having perverse consequences. Also all Member States share the opinion that the concept of the state and democracy as well as values, principles and the role of law as such are changing.

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7 Ibid., p. 4.
Today, discussions about the differences between public and private sector management, public and private employees and public and private sector motivation are entering into a new phase. In all Member States a traditional government is transforming into “governance”, although this concept does not necessarily mean that we are taking a step forward towards solving problems and offering better solutions\(^8\). In fact, the term governance is as vague as the term New Public Management\(^9\). Furthermore, the “evolving models of government are not intrinsically liberal or conservative, effective or not effective – they are simply different and new and thus require some careful thought on the part of those who care about good governance and well-functioning public administration”\(^10\).

One effect of public management reforms, so far neglected during the last years, is that the national administrations have no longer a single, coherent paradigm or conceptual framework. Two concepts central to the traditional public administration are now disappearing. First, government acts as a single, unified employer, and secondly, the idea of a unified civil service. Whereas once the same statutes and working conditions applied to perhaps 80 to 90% of national public employees, today this percentage is declining. Generally, these changes may have a number of positive effects after all; “the problems of the old one-size-fits-all approach are well documented and real. However, they will also fundamentally alter the concept of civil service and further fragment government”\(^11\). No doubt, the future will see the emergence of a growing paradox. On the one hand, various factors (e.g., growing financial and demographic pressures as well as value changes) will continue to put pressure on the national public administrations to continue with radical reforms. On the other hand, the pace of change and growing uncertainties about the reform results will generate more discussions on the need to preserve traditional values, to keep the identity and the status of civil servants and to maintain some specific features that are different to the private sector. Moreover, Member States will be asked more frequently about the effects of the reforms in general.

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During the last years, reforms were implemented everywhere and at great speeds. Portugal is one of the most recent examples (after the reforms implemented starting in 2008) where indefinite period employment contracts or fixed term contracts have become the common pattern of public employment. Moreover, lifetime employment was restricted, career structures modified, remuneration systems altered, recruitments “frozen” and public employment drastically reduced. However, despite all drastic changes, there was no transition to a system based on labour law. All employment contracts are still concluded under public law and are subordinated to the public interest, to the constitutional principles of equal access to public administration, merit and impartiality. Consequently, administrative courts are responsible in cases of disputes.

Overall, the current reform process in the national civil services can be identified as a change and opening-up process of the national public administrations. Instead of being separated from the society and citizens, there is a trend towards blurring the boundaries between public and private spheres as well as between civil servants, public employees and private sector workers. Physically, the walls between the civil service and the labour market are also coming down. Almost all Member States have started to facilitate recruitment procedures, reform or even abolish careers, reduce internal hierarchies, support more mobility, delegate more responsibilities to the line managers and align the working conditions between civil servants and other public employees. The public tasks are increasingly carried out by non-state bodies and more tasks, which have traditionally been performed by the civil servants, are carried out by other public employees or private service providers.

In the field of public employment, it is useful to distinguish between the different reform motives, reform priorities and reform pressures: in most of the Member States, there is a “primary budgetary motive, with the need to cut public expenditure; second, an economic motive with the aim of making public services more modern and efficient, also with greater mobility between the public and private spheres; third, a political motive within the debate on redesigning the role and size of the state and privatization/outsourcing of public utilities; and finally, we might mention a demographic motive given the emerging population pressures. Other motives may also be discerned. The global context and the role in particular of international organisations, such as the IMF but also the EU and the European Central Bank should also be taken into account and may explain national differences currently observed throughout Europe”\textsuperscript{12}. Finally, in the

media and at the political level the public services are reported to be too expensive, inefficient, too big, over-regulated, and ineffective.

The downside of the present situation is that the discussions about the need to preserve distinctive features of the public sector are not satisfactory and the public employees are perceived as cost factors rather than positive contributors to effective public organisations. In all Member States, accusations that the public services are not innovative, not ready to reform and suffering from reform inertia are clearly wrong. On the contrary, the reforms have led to many changes.

However, despite the many changes that are taking place in numerous countries, in the public opinion the civil servants work in an environment which is definitely separated from the private sector. In some countries the civil servants are perceived as a protected group apart from the outside world. Actually, the customer and citizen orientation has increased, and working conditions have been aligned with those in the private sector. Nowadays the differences between public and private employees in terms of their status, working time, pay, pensions, holidays, recruitment and competency requirements are lesser than they were previously.

If the traditional bureaucracy is slowly disappearing, what will happen to the bureaucrats, the civil servants? The decline of classical bureaucratic systems and the changing values and societal norms in the European societies reveal the urgency of a new discussion: How is public employment changing in times of government restructuring and changing into Governance? What are the effects of changing employment patterns? Is a specific public law status still needed? Should there be fewer differences between public and private sector employment? If not, for whom and in which sectors should distinctions be upheld? Do we live the emergence of an entirely new European public employment model?

As we will see later on in this survey, the study of the “status” is not a purely technical and legal issue as it seems for many observers. It is rather a fascinating quest for what is likely to emerge in the future. The changing concept of State, Democracy, Government and Public Management raises the question about the legitimacy of the classical “statute” and the role, tasks, ethos and employment conditions of the state employees. Today, the central administrations are under pressure to change and they seem to be evolving – but into what? And where are we going? These are just a few questions that will be addressed in this study.

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Methodology

The fact that 25 Member States and the European Commission contributed to the study, confirms a great interest in this subject. However, a number of limitations should be taken into account when interpreting our findings.

Comparative Public Administration research is indeed difficult\(^\text{13}\). As such, the public administration is complex and the public employment is becoming ever more fragmented and diverse (see Chapter Six).

Even if there is basic agreement on dependent variables in the field of public service and public employment reform, they are not easily researched in different languages and administrative cultures. Moreover, the existing national arrangements are in a constant process of change and it seems that change is happening at ever faster speeds. If, decades ago, public administration was a synonym for stability, today it is a symbol for hasty change.

During the last five years we have analysed this change process from three perspectives. In each case we focused on the effects of public management reforms. The first study was carried out in 2008-2010, and it compared and analysed the national civil services and the effects of most important HR reform trends in the 27 Member States of the EU. It also debated the future development of the civil service as such. Our second volume, which was accomplished between 2011 and 2012, compared the effectiveness of national ethics policies and rules for public employees and analysed the impact of public management reforms on workplace behaviour. The third and present study, conducted between 2012 and 2013, compares public employment in central administration and analyses the effects of governmental reforms on the future development of public employment with a focus on civil service employment\(^\text{14}\).

All three books are interrelated. Consequently, we have quoted and referred to those issues which are linked to each other and where we develop arguments.

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\(^{14}\) This study is part of a total of three studies for the EU Presidency and the EUPAN-network: Christoph Demmke & Timo Moilanen, *Civil Services in the EU of 27: Reform Outcomes and the Future of the Civil Service*, Peter Lang, Frankfurt am Main, 2010; Christoph Demmke & Timo Moilanen, *Effectiveness of Public-service Ethics and Good Governance in the Central Administration of the EU-27: Evaluating Reform Outcomes in the Context of the Financial Crisis*, Peter Lang, Frankfurt am Main, 2012; Christoph Demmke & Timo Moilanen, *Government Transformation and the Future of Public Employment: Restructuring and the Impact on Status Development in the Central Public Administration of the EU-27*, Peter Lang, Frankfurt am Main, 2013.