

## **Debating local public services**

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There is currently a broad discussion amongst politicians and scholars from all over Europe about the organization and management of local public services. Remunicipalization of local public services is one of the many different matters that are being discussed: it refers to the possibility and convenience of recovering, or setting up for the first time, the public management of a local service. This phenomenon of European dimension has been subject to several referendums at local and even at national level. In Italy, for example, a referendum held in 2011 resulted in a strong opposition to water management privatization.

Another debate focuses on the optimal level at which these public services should be managed in terms of both territorial dimension and population. It also tries to determine the most appropriate local government (the municipality, the province, an association of these, the metropolis?) and the need to seek economies of scale for a more efficient service planning and provision.

Finally, the role of regional authorities is also debated, as proved by the recent Judgment of the Italian Constitutional Court No. 251 (2016) declaring unconstitutional the Madia Law, a law deciding upon the local services given the lack of involvement of the regions. Or another example, Judgment of the Spanish Constitutional Court 41/2016 on the unconstitutionality of specific provisions of the Law on the Rationalization and Sustainability of the Local Administration.

Public service management systems, particularly regarding municipal services, have evolved like a pendulum in the last centuries. As mentioned by Hellmut Wollmann, “the provision of public services has gone from private to public hands, first at local and then at national stage, followed by a comeback to the private sphere. This looks like a pendulum: it goes from the private to the public sphere, swinging back again to private hands [...]. For some years now, the pendulum seems to have swung back again: some facts suggest that private actors and the market have lowered their involvement in the provision of public services in favor of the public/municipal sector”.

The legal and political framework, which is undergoing profound changes, makes the decision-making process on the provision of public services much more difficult, as the following examples prove. Firstly, the political party system in Spain and its representation at municipal level has experienced great changes since the 2015 local election. Secondly, the laws are constantly changing concerning both the different sectors and the diversified lines that affect the position of local councils. We are referring, in the first place, to the Law on the Rationalization and Sustainability of the Local Administration (some provisions of which have already been interpreted and declared void by the Constitutional Court). Secondly, the 2014 EU Directives on public contracts and concessions and their direct implementation after the transposition deadline have resulted in a number of instructions and interpretations by the several competent authorities. Also the Spanish 2013 Transparency Law and subsequent

regional laws require now transparency and good governance, and Law 40/2015 on the legal system of the public sector regulates management delegations ('encargos de gestión') and the use of own resources ('medios propios') for service provision. And competition authorities have already interfered in the field of public services supported, amongst others, by the Law on the Rationalization and Sustainability of the Local Administration mentioned above.

Decisions are already being taken in all fields: from the most personal matters (education, social services, nursery schools etc.) to the most classic economic services (water, waste management, transport, energy). It is important to bear in mind, firstly, the constitutional determinants – in the sense of both authorizations and limits: the recognition of social rights and their effectiveness, the safeguards of expropriation, the acknowledgement of public economic initiatives in the context of a social market economy, financial sustainability, local autonomy, and so on.

In the second place, the connotations of the decisions on the public service management systems are not to be neglected either: economy, efficiency and sustainability in the service provision and impact on the user rights; legal and economic effects on the service provider and impact on the free competition; impact on the legal and labor situation of the provider's employees; changes in the nature of the compensation (taxes, tariffs etc.)...

There is no doubt that this matter is subject to the deep social and institutional transformations that have been shaping European politics in recent years. It is indeed a clearly political matter which, articulated around legal instruments, expresses the different ideological choices beyond the strict technical assessment that aims to be neutral. "The increasing preference for the public sector as service provider is also reflected in the choice of the citizens/clients, that is, in the shared values of the so-called political culture" (Wollmann). The strength of social ethics behind these kinds of decisions is becoming without a doubt more and more perceivable.

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