



## The obsolete management role in the Spanish Public Administration and its relationship with a “common regulatory framework?”

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**Abstract:** The management role in the Public Administration is one of the least evolved Spanish public management areas. The attempts made to professionalize this role have been unsuccessful or ineffective. This deficiency has acquired, if possible, more importance in a moment such as the current one dominated by the search after transparency, closeness to the citizen and the improvement of the quality of the public actions. In this regard, Spain's case corresponds to a multicausal approach. This report will only centre upon one of its aspects: the determining factor that regulations or legislation are on this matter and their evolution. All things considered, it aims to shed light on whether the little, ambiguous, or faintly coercive current legislation on public management could be due to the lack of evolution of the model or at least be a contributing factor to such lack of evolution. Additionally, inquiries will be specifically made into whether a legislative compendium that could be identified as common regulations has existed or not. The methodology used, essentially qualitative, was fundamentally based on the historical and political analysis as well as on the legal analysis of the main regulations on the subject. All the sources that provided this information were exceedingly curated. They all possess a high academic standard.

**Keywords:** Public Direction; legislation; evolution; professionalization and Spain.

**Summary:** 1. Nature of the current public management role. 2. Governance and management role in Europe. 3. Origin and evolution of the Spanish public management model. 4. Common? legal context of the public management role in Spain. 5. Future prospects. 6. Conclusions. Bibliography. Regulations.

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## 1. Introduction

The professional management role in the Spanish Public Administration (from now on, public management role) constitutes one of the areas of the country's public management most distinctly referred to as deficient, from a perspective of comparison with Europe (Longo, 2003; Moreu et al 2012, 2005; Jiménez, 2015).

With this baseline, the purpose of this investigation is to analyse whether the Spanish common regulatory framework on the public management role, if any, may be relevant in the lack of synchronisation with the much more developed prevailing model of the European countries. Bearing in mind the massive weight of the lack of political will as a key factor for the model not to change, the following study will take a closer look at the impact that the regulatory framework that comprises the public management role in Spain could have had.

This investigation is justified through the "scientific validity" criteria summarized from Ackoff's (1967) and Miller's (2002) contributions to, on the one hand, discover the reasons behind the public management role being held up, and on the other, to unveil the relevance of the public management role as a contributing factor to the emergence of defects in the political and institutional framework.

The sources used for the aim of this investigation were fundamentally secondary sources that allow the analysis of the state of the different indicators of the management role in European public sector organs, and primary sources of legal and jurisprudential analysis, which have helped unveil the question that has given rise to this article: does a common legal framework on the management role in the Spanish Public Administration exist or not?

Within said qualitative approach based on a regulatory and jurisprudential analysis, the mining of data obtained from secondary sources, fundamentally from international organisations such as the OECD, the IMF, or the EU, has acquired special importance.

The impact of this investigation currently seems to be a priority, precisely at a moment where in-between the multi-causes of the deep economic and institutional crisis that Spain is suffering, the "strange couple" (Ramió, 2013) that politicians and high-level civil servants that currently uphold most management positions make is being peremptorily pointed at.

If the investigation produces the results expected, questions of the following kind can be answered: Has the legal framework had an influence on the "poor health" of the public management role? Are we just facing a single cause of the lack of evolution founded on the lack of political will? Who is interested in this deficient situation of the public management model?

## 2. Nature of the current public management role.

Far from the classical Weber paradigm where the political and administrative spheres were clearly divided, an issue has recently arisen in the discussion forums about the public sector: the pressing need of improving the figures that connect these two fields. It is precisely in that space of difficult delimitation (CEBEP, 2005), in between this "dualism", where the management role should be installed (Longo, 2003). In that respect, throughout this specific analysis of the management role, a common treatment of the management role and leadership will be used, as both these concepts separated would be hardly understandable (Parrado, 2001). Following that same line, Kotter (1990) considers the ideal formula to be a strong leadership at the core of a highly developed management, as a strong leadership without management would become a sort of not very practical "messianism". Whereas management without leadership causes the non-attainment of the fixed goals.

The arrival of the New Public Management (NPM from now on) and its strengthening of the management functions (Echebarría and Mendoza, 1993: 20) has occurred in all countries (Arenilla, 2005: 49), in this way relaunching the figure of top public managers up until today. One of the basic principles of the New Public Management, the "free to manage" that Hood (1991: 5) already mentioned, tries to transform high-level management personnel into true managers. This principle has been commonly included in the reforms of the functions of the public service of the developed countries (OECD, 2001; 2003) -mostly in the European context-, up to a point where it now constitutes a modern Administration premise (Sánchez, 2001: 92; CEBEP, 2005: 64; Ministère, 2005: 8). This insertion however has not been uniformly carried out, as it had substantial nuances that will be tackled below. It can be stated that at least a certain consensus on the need for improvement of

the public management role does exist, through its professionalization, as a requirement to improve the public action (Coleman, 2003: 69; Oltra, 2008).

The strengthening of the figure of the top public manager has been fundamentally carried out in two dimensions:

- As "leaders of organizational change" (Parrado, 2001; United Nations, 2009: 11; Núñez, 2012), who motivate the human resources of public organizations (Mc Gregor, 1960). In this aspect, the participation of the leader in the definition of the mission, planning and definition of strategies (CEBEP, 2005: 66), team motivation and the vision for future regarding the position the organization would like to hold in the long run is essential. At the same time the managerial competencies seem to have, if possible, an even bigger spotlight with the arrival of the digital Administration and the new ways of technological interaction between the Administrations and the citizens (Baz, 2015).
- As agents directly responsible for the achievement of specific results that they have committed to fulfil, and therefore as introductory agents of a new public administration culture (Ramió, 2008). It is in this second dimension where the perspective of the "leader-manager" or "transformational leadership" to which Parrado (2001: 129)<sup>1</sup> referred to can be located. He mentioned how important the function of bearing in mind the best possible arrangement of resources to achieve better results is. This mission, which can almost be defined as "logistics", is carried out from a strategic point of view: it does not go into details regarding the specific implementation of technical or human resources.

We should highlight however the existence of a trend that demands not to overestimate the abilities of these profiles. It defends that the proper way to proceed is to focus on the improvement of the management system itself, so that public leader and manager ends up being not relevant if a good bond between the employees and the goals of the organisation within a specific field, its conditions and expectations is achieved.

In any case, management personnel have become a main issue in political agendas (Cardona, 2006: 8). It has been its definition and the establishment of its own policy what has been tackled in all developed countries (Sánchez, 2001: 92; 2007: 103). In this regard, Spain is one of the few exceptions on this subject (Longo, 2003; Catalá, 2005: 211) and is now on the "caboose" in relation to the surrounding countries, although the incorporation of managers was easier in the case of public agencies and companies (Arenilla, 2005: 47). Top public managers have particularly received, something that will be tackled in detail in the next chapter, a specific treatment<sup>2</sup> in many countries, where they have their own training, selection, and career system (Kuperus et Rode, 2016).

It should be noted that this guidance towards the understanding of top public managers as essential key figures for the modernization of the public organisations (Catalá, 2005: 212; Monereo and Molina 2008: 183; explanatory memorandum of the Basic Statute of Public Employees) was strongly tempered by the regulatory model of juridification in which this figure has had to historically develop. In that sense, Anglo-Saxon and Nordic countries have transitioned more easily, as they have managed to swing without excessive problems towards a more managerial model, which confers a higher degree of autonomy to managers in exchange for the fulfilment of goals and results.

On the contrary, the mainland legal tradition, which stems from the French model based on codes, which Spain shares and which has become the so-called career-based model or "closed" model, has made it impossible for that switch towards a new management model to be as quick and

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<sup>1</sup> For Parrado (2001: 130) precisely these two facets of the top public manager and leader have a certain chronological sequence. If the leadership studies during the eighties centred upon the idea of the leader-manager that transacted with its employees to reach their goals, the current leadership studies focus mainly on the facet of the leader as someone who motivates its employees.

<sup>2</sup> For an analysis of the specific training and the shape of the management model in other countries, reading on the vocational training system of top public managers in France is recommended. In this regard, Jean-Pierre Ronteix's article (1995) or its analogue written for Canada by the Treasury Board Secretariat are very interesting. Both appear in the compilation book of the MAP (Ministry of the Public Administrations) (1995) *Flexibilidad en la Gestión de Personal en la Administración Pública* ("Human resources flexibility in the Public Administration"). Sue Richards also dedicates a chapter of that same book to the specific vocational training system of top public managers (1995: 20-21).

intense as some expected it to. As others have pointed out, such as Eliassen y Kooiman (1987), business management techniques were adjusted for them to be implemented into the public sector. The biggest effort made was adapting the role of the manager to the public sector, due to its specificity and the cultural values and the administrative systems that underlie in many developed countries. It is also important to note here the precaution that Ramió (2009: 31) pointed out. He warned that any introduction of business world values into the public administrations requires a setting in which the public values are solidly institutionalized. This is an aspect that must be considered in each specific case.

However, it is not our intention to present these constrictions of the legal model exclusively as deceleration elements. We could even see them as the safeguard of a series of equality values, legal security, merit, and capacity that are completely established in many of the mainland European societies and certainly in the Spanish too. Similarly, there is a doctrinal tendency that, faced with the change of the public management model, defends an adaptation of the Weberian model, specially to the new digital scene, as, even with all its shortcomings, it continues to provide extremely solid values to the meaning of the public service.

Alongside the leadership and management duties, the professional management role must act as if it were the joint in-between two muscles: on one side, politics, and on the other, the public service and civil servants. The professional top public manager must be able to connect these two worlds with a high-level competence, letting politicians know where the limits of the Public Administration for the execution of their public policies are and explaining to the public service and civil servants how the goals or the assigned public policies must be settled.

To sum up, a certain consensus within the positions that advocate for taking steps forward towards the strengthening of top public manager figure can be said to exist. This would mean that top public managers would be specifically responsible for the results obtained. As is only natural, this strengthening would include the professionalization of the public manager in terms of knowledge, competencies, skills, and attitudes.

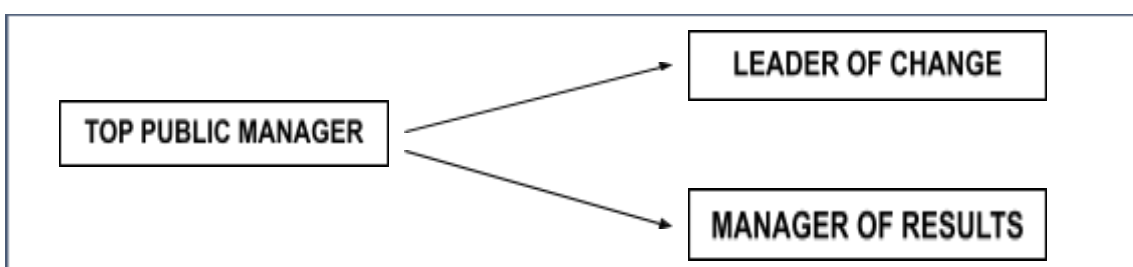
The complexity could therefore lie on how to find a balance between this change of model and the public values previously mentioned (equity, legal security, or merit) and thus a cultural model that shares those values for the most part.

The importance of the setting, systematized by Núñez (2012), also contributes to the increase of this model complexity. Núñez (2012) points out that this setting is much more complex than the one in private organizations due to multiple participants being involved in the decision-making processes, the fact that this setting is more vulnerable to short term political pressures and that in this setting political rationality is valued above economic rationality. On top of that, there are few internal pressures promoting efficiency and scarce management indicators. At the same time, this is a setting that is subject to a larger pressure due to transparency and where the management of human resources is more conditioned (Hernández, 2013).

This scene of uncertainty has also been affected by the development of the governance paradigm, which settles on the fact that the current historical moment is marked by the essential nature of the participation of social, economic agents and the citizenry (social collaboration) in the public action, beyond the political majorities obtained from the ballot boxes, therefore implying a certain centrality loss of the governments in the public action.

This way, the management role becomes of even greater importance, and consequently the attempt at professionalizing it too, from the moment in which the context is marked by the need of any government to reach broader consensus, negotiate, persuade, or communicate acceptably. All of these are typical skills of a professionalized and well-trained public service.

Image 1. Main aspects of the top public manager

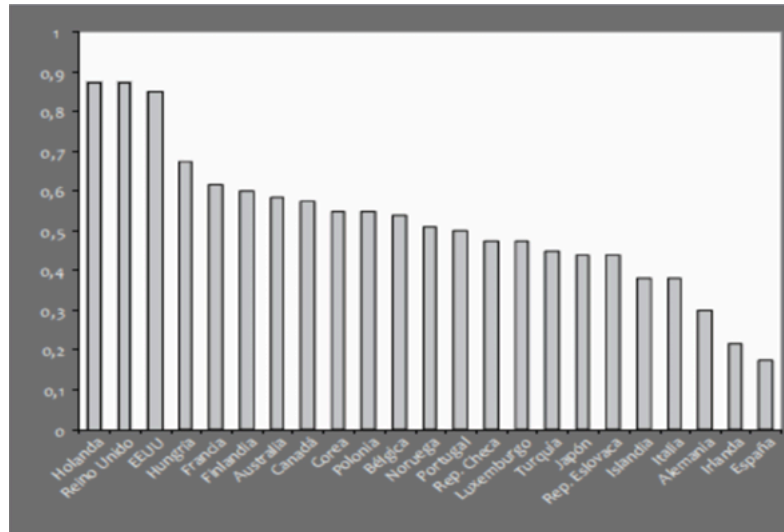


Source: Author's creation.

### 3. Governance and management role in Europe

As can be seen in the table above and in a context currently identified through the label of governance, the European management model has been developing at an uneven pace depending on the country we focus on. In fact, a definition of a European model of the public management role does not seem correct. It would be more appropriate to talk about a set of characteristics included by scientific literature in a sophisticated and modern pattern of public management role.

Image 2. Degree of structuring of the public management role.



Source: OECD 2006. Survey on Strategic Human Resources Management in Government.

The speeds of the management role in Europe have not been homogeneous<sup>3</sup>. Among other aspects, this has been due to the different administrative cultures existing in each country. However, when referring to Spain, as can be seen in Table 1, this State has always been placed last in line for the development of a professional public management model. It occupies place 29 out of 34 on the OECD report (2011) and shares with Italy the fundamental shortcoming of responding to an excessively discretionary management model (*Dirigenti pubblici*). Germany also shows this shortcoming, although it does have a more limited discretion, as it requires to possess the political civil servant qualification (*politische Beamte*). Spain's low qualification on the OECD index (Graph 1) responds to the lack of a specific system for top public managers and to shortcomings in the manager selection and competencies verification systems.

Although we will not go into detail about the public management models of the different European states, as it is something that would exceed the aim of this article, we can point out the countries that have promoted the professional management model the most. The United Kingdom has a specific statute for managers (Senior civil service), a common system of performance assessment, and neutrality and impartiality criteria in the manager selection systems, as well as a talent management programme. Then, Belgium's (*hauts fonctionnaires*) or France's<sup>4</sup> model is based on a training school of excellence for high-level civil servants and top public managers (*École nationale d'administration*). This model has established meritocracy as a criterion for the selection of managers, a common training, and in practice the creation of a common logic or an organizational culture shared between those who aspire to be or already are top public managers (in spite of the fact that there has been a

<sup>3</sup> Kuperus and Rode's updated study (2016), which is included in the bibliography of the present article and was written by authors as an update of the previous one published in 2008, is indispensable for the comparative analysis of the public management role.

<sup>4</sup> To read about the French model: G. Marcou, La función pública directiva de la Administración del estado en Francia, in M. Sánchez Morón (coord.), *La función pública directiva en Francia, Italia y España*, Madrid, INAP, 2007.

gradual opening-up to candidates who do not hold the civil servant status, as stated by Kuperus et Rode, 2008: 9).

The modernizing boost that Portugal has had during the last decade is also worth highlighting (Kuperus et Rode, 2016). The country has promoted a highly developed model within the management competencies verification phase of the eligible candidates for management positions. It has done so by putting the selection phase in objective terms, which is a very interesting approach to the professionalization and improvement of the public management model (Baz, 2015).

The characteristics of an evolved public management role model always necessarily include the two facets of a top public manager: manager of results and leader or guide of its unit or department. The competencies of the manager are of particular importance to that effect. Their traditional categorization is split between cognitive competencies (knowledge, mastery of the technique and the epistemological background of the subject, design, and planning abilities, among others) and competencies related to the management personality (skills, abilities of internal and external relations, and negotiation, motivation, or persuasion abilities, among others).

These managerial competencies are starting to become more frequent in formal training programs of numerous public Administrations, even in Spain<sup>5</sup>, where, as we will see later, the weakness of the management system is rooted in its own foundation or entry system, which is stuck in recruitment and co-option systems of which most are clearly politicized and far from the managerial competencies system.

A good deal of European countries has taken the leap, a difficult step from a partisan politics perspective due to the implied loss of power, towards shrinking the management role as an area of power or influence for politicians. Instead, a new manager selection system that varies from one country to another has started to appear. However, all forms share a common element: the assurance of the possession of managerial competencies through objective elements of verification. This keeps those who do not accredit a high level of managerial competencies, in both the static (verification of competencies and accreditations) and the dynamic sense (verification of such competencies through their display in ad hoc pretences) from entering the system.

The European model of top public managers is not indifferent to the fact that this figure is located halfway between the public and the political role and that the bureaucratic level cannot take precedence over the public policies that are legitimately intended to be deployed. The system therefore requires an extremely high level of managerial competencies. However, when it comes to selecting the manager, the system usually settles upon one of the lofty candidates making use of strategic affinity criteria. That is to say that, among the best, it chooses those who share most the strategic and political course of action that the system intends to deploy. This combined model of high managerial capacities and strategic affinity seems to be the consensus model on the way forward. It is true, then, that managers that share a space with the politician will hardly be able to do their most technical and professional job if they do not share, or even if they are against, the strategy or specific public policies of their department.

#### 4. Origin and evolution of the Spanish public management model

Table 1. Stages of the evolution of the contemporary Spanish management model.

Stage 1: 1978-1997	The continuity of the full politicization model or the "open circuit model".
Stage 2: 1997-2005	Emergence of the "closed circuit model". Political decentralization and the scatter of the management model.
Stage 3: 2005-nowadays	The institutionalization of the scatter of the management model and the lack of movement towards the managerial professionalization.

Source: Prepared by the author.

<sup>5</sup> The General State Administrations, and Autonomous Communities such as Galicia, Catalonia, or the Basque Country, are a good demonstration of it in changes of the civil servants training programmes of the last decade.



## **1st Stage 1978-1997: The continuity of the full politicization model or the "open circuit model".**

On the historical basis of Spain's transition to a democratic State -in line with the aim of this research<sup>6</sup> - that started off with the adoption of the Constitution in 1978 and in order to correctly locate the space and context of the management role, it is important to note that the traditional categorization of top public managers in Spain stems from a politicized model known as the "layoffs system" in the years following the constitutional event (1978) (Jiménez, 2006: 92; Villoria, 2000: 282). It is along this line of full politicization, which may have been understandable during a moment of political transition in which the main goal was to stabilize the institutions, where the first twenty years of the 1978 democratic regime unfold.

## **2nd Stage: Emergence of the "closed circuit model" alongside the political decentralization and the scatter of the management model.**

The management role model -politicized and obsolete- ran smoothly until a regularization attempt was made with the Law 6/1997 on the Organization and Functioning of the General State Administration (LOFAGE from now on), which constituted, as Catalá (2005: 215) recalls, the reference regulatory element for the definition of the public management role scope. This paved the way -or so it seemed at the beginning- for the creation of a professional management team (Sánchez, 2001: 93).

This regulation established the rudiments of a professionalization within the General State Administration, a supposed "merit system", whereby the "Management Bodies" (Section III Articles 15 to 19), meaning Secretary-Generals, Under-Secretaries, Technical Secretary-Generals, Director-Generals, and Deputy Director-Generals, were positions with managerial responsibility and were to be appointed from civil servants who are required to have a higher education qualification. Furthermore, section 10 of article 6 of the LOFAGE stipulated that members of the management bodies should be appointed based on professionalism and experience criteria. Despite this, one of the flaws has been and is that these professionalism criteria have never been controlled with objective elements of verification (CEBEP, 2005: 66). This is due to several reasons, one of them being that bodies or commissions on specific assessment, as well as certified technical criteria for assessing those management abilities, are non-existent (Galindo, 2005: 239).

However, for the most part, LOFAGE's impact has "closed" the system to the corps, something that helps professionalization, certainly, more than a fully politicized model. Nevertheless, it does not guarantee that candidates possess the competencies the manager position requires, only the typical competencies of a high-level civil servant, who may be an extraordinary public employee, but that does not mean that they possess specifically managerial abilities such as motivation, negotiation, and management of human resources.

Given the almost exclusive restriction of the regulation to the civil servant field, a sizeable amount of the managerial staff went on to be recruited, at the State Administration level, among civil servants belonging to Sub-Group A1, who sit at the apex of public organisations and are in direct contact with politics (Arenilla, 2005: 47; Salvador 2005: 139), not including members of governing bodies nor strictly political selection staff. As Jiménez (2006) or Ramió (2008) have pointed out, at a state level, the system went from being an "spoils system" open circuit to a "civil servant system" closed circuit (Maeso, 2010: 75; Kuperus et Rode, 2008: 9), which is characterized by the requirement of being a high-level civil servant (qualifications and membership of certain civil servant groups are required).

This new functioning framework has had palpable consequences that explain the hundreds, if not thousands<sup>7</sup>, of dismissals in management positions in the State Administration when government changes.

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<sup>6</sup> The Spanish Administration Model of the 19th century could be synthetically labelled as a client-based or nepotism administration system that in an apparently more sophisticated way was followed by Civil Administration Technicians and special Corps holding responsibility positions within the Administration as of the Law on State Civil Servants of 1964.

<sup>7</sup> In 1996, for example, there were more than 3000 dismissals in managerial positions when the Popular Party rose to power, according to data of the MAP (Ministry of the Public Administrations).

The LOFAGE gathered a large amount of the significant characteristics of a professional public management role. However, as it often occurs in Spanish legislation, good principles were announced, but they did not undergo a practical realization in the end. The "professionalization" of the management role and the selection of managers based on competence and experience was mentioned in this regulation (in the explanatory memorandum), but with no foresight to a verification system of said requirements.

Article 6 also mentioned the professional responsibility for the management, control, and assessment of results. It ended up establishing a closed system of manager co-option almost exclusively from the civil servant field, with some Secretary- and Director-Generals exceptions.

Additionally, there are no official announcements nor tests for appointments; these are "free", even "open" appointments to any official of the public field, or of the private field in the case of state-owned corporate entities.

Lastly, one of the definite characteristics of a not very developed management model is the fact that politicians continue to retain the discretion to dismiss managers, though a subjection to the outcome is mentioned in several points and does not materialize in the end.

This regulation, LOFAGE, is no longer applicable, although the articles of the Law 40/2015, of 1 October, on the Legal Regime of the Public Sector that are set to replace it in the section concerning top public managers (more specifically, articles 61 and ff) follow the footsteps of their legal precedent, and thus carry no improvements that allow us to talk about evolution in the professionalization of the management model (selection of managers among Group A1 civil servants, or when open to the private sector, competence and experience requirements without a clear, objective verification system).

### **3rd Stage: The institutionalization of the scatter of the management model and the lack of movement towards managerial professionalization.**

Although a figure commonly referred to as top public manager does seem to exist, the truth is that, behind that term, the development of conditions, assessment, selection, or control of the managerial work has not been carried out. Therefore, it cannot be properly stated, as many consulted authors agree, that a professionalized public management role has been built or "institutionalized" (Monereo and Molina, 2008; Jiménez, 2006: 61; 83; CEBEP, 2005). In any case and at most, it is a corporatist public management model (elite Administration corps) with strong politicization traits (Villoria, 2000: 287; Larios, 2008: 126; Bouzas, 2011; Ramió, 2008: 6) what has been enforced, thus getting a supposed "professionalization" mixed up with what really is a transformation of the Administration management positions from contractual to statutory posts.

This State regulation, which left a not excessively clear legal regime for top managers (CEBEP, 2005: 51), alongside the management personnel treatment in the Law 28/2006, of 18 July, on National Agencies (definitely abolished with the new Law 40/2015 concerning the public sector), has shaped the parameters of the model that other regional administrations, such as the Autonomous Communities administrations of the local administration, have been developing. It has done so along with some other regulations developed based on the state regulation, like for example the Law 57/2003 on Modernization of Local Government<sup>8</sup>, which refers to top managers, or article 23 of the University Organization Law, where managers also appear. In any case, Monereo's and Molina's (2008: 189) illustrative conception should be echoed, for whom these new "manager" designations brought in many cases "management styles" and traditional performance modes into conflict, as well as they created a larger legal confusion (Ramió, 2008: 9, Maeso, 2010: 79). Nonetheless, authors such as Ramió have described the institutional performance of this management model in local administrations as positive (Ramió, 2008: 10).

The profiles of top public managers have not been defined clearly. A good demonstration of this is the fact that management functions are often entrusted to politicians, and ever more often to managers that come from the private sphere. However, this is something that normally happens in administrations that are more distant from the State law, among which we specially highlight spheres, (Arenilla, 2005: 47), such as the local sphere at regional level and the health sphere at functional

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<sup>8</sup> Carles Ramió (2008: 7) criticizes the local sphere for having allowed people who are not city councillors to be part of the governing body, supporting the incorporation on "managers" into the political body.



level. In both these spheres there is a multiplicity of species that live together under the generic denomination of top public manager (Catalá, 2005: 218). With these examples that usually avoid the "managerial-civil servant" model of free appointment as the generic model, manager figures (Jiménez, 2006: 46) can be frequently observed in what the administrative doctrine calls "Institutional Administration", which would comprise, among others, autonomous organisms, agencies, universities and even foundations. These bodies have had the opportunity of incorporating management personnel from outside the civil servant scheme, as they have enough legal means to do so. As several authors have stated (Arenilla, 2005: 47; Larios, 2008), this has led to management personnel nowadays being recruited from personnel with high-level manager contracts and personnel from special services who have managerial functions (CEBEP, 2005: 64 and ff).

In short, in recent years, we have been witnessing a mixed model in which managers recruited from the civil servant sphere through a free appointment established by the regulations are those who prevail. Therefore, it has a high degree of politicization, as has been occurring ever since the arrival of democracy (Parrado, 2000: 2; Kuperus et Rode 2008: 14) and although (not controlled) professionalization has been brought up. With this managerial-civil servant system, a sizable number of managers from the private sphere with a fully discretionary and political appointment has emerged with strength and an unchallengeable legal coverage.

The important piece of information to withhold, nonetheless, is that these managerial figures have had a specific development with their own planification, selection, training, and career systems, and not so much that the definition of top public manager is still unclear. In this regard, the outlook is rather negative, and we could say that what all authors (Férez, 2006; Jiménez, 2018) consider to be common ground is the specific development of the managerial profile being considered deficient, with some exceptions that there may have been, usually due to personal will rather than due to the system forcing the onset of said development. As Jiménez (2006: 46) summarizes, regardless of the management role designation, the management role characteristics that we can find in the new homonymous positions are scarce.

## **5. "Common?" legal context of the public management role in Spain.**

To continue with the legislative item from the last chapter, with the prevailing parameters set by the LOFAGE, the following pages will expand on the updated legal context in which the public management role is set in Spain. To start with, it is important to thoroughly study the effect of the Basic Statute of Public Employees (BSPE from now on) on the management role, in which its explanatory memorandum -of the original 2007 version- already advocates the recognition of the management role as the main factor of modernization, in line with the rest of the European Union countries, albeit necessarily subject to criteria of effectiveness, efficiency, responsibility and control of results in line with the goals. These are hardly ever verified aspects that continue to be more respected in position-based or open systems than in career-based systems such as the Spanish one (Cardona, 2006: 8). Management personnel is laid out in the updated version of the BSPE 5/2015<sup>9</sup>, in article 13. However, it does not appear at the core of the articles strictly dedicated to the types of public employees, but in a separate sub-chapter of a single article. What this seems to say is that the top public manager does not necessarily need to match with any of the types of public employees mentioned in the BSPE. Also, its definitive configuration is left to a subsequent legal development, which after more than 10 years since its original publication in 2007 seems to not have arrived, or if it has in fact arrived -at an autonomous level, it has done so through the imitation of the state model (Hernández, 2013) with more sophisticated formulas, complying with the superficial treatment announced by Sánchez (2007: 105).

BSPE's conception of top public managers, which required a modification of the public service model (Jiménez, 2006: 30), ended up being, for many authors, as it occurs with many aspects of this regulation, extremely short or poor (Larios, 2008: 126; Moreu et al 2012), if not excessively broad or deficient (Jiménez, 2007; 2006: 139), indicating at the beginning of article 13 that, apart from the

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<sup>9</sup> It is important to mention the update of the BSPE published in 31/10/2015, which numbers all over again the articles of the regulation based on the legal alterations that have appeared on the matter. However, regarding our matter at hands, the management role, article 13 is translated literally into the consolidated text, thus novelties only affecting other public employment areas.

government, the autonomous communities will be able to establish this type of personnel<sup>10</sup>, its specific legal regime and the criteria to determine its condition. The employment conditions of the management personnel will not be subject to collective bargaining (Art. 13.4.), which can make the access to information on how it will be remunerated difficult, although, as Monereo and Molina (2008: 185) note, this limitation does not imply that certain aspects of their regime cannot be decided through mutual agreement.

The opinion of the previous CEBEP report (2005) is contrary to this last opinion of deficient or extremely loose regulatory materialisation. Building off that CEBEP report, it is that slackness that allows a later legislative development precisely what creates the aspect and effect that the BSPE should aim at (CEBEP, 2005: 64-68). The governing bodies of each administrative field will be the ones to determine the criteria to shape the managerial profile positions, thus fulfilling the line of argument that the socialist group held for its amendment in the Senate, where the group clarified that there would be no place for a further regulatory restriction as it is a self-organization and management jurisdiction of each public Administration.

As far as we understand, regarding the debate on the degree of slackness of the BSPE and the management personnel, we are facing a two-sided debate. On the one hand, the debate is settled in the legal field of the distribution of competences between territorial areas; on the other, we are witnessing a more far-reaching debate on the conception of the relation between the coercive-regulatory authority of the State and the rest of territorial legislative spheres. In relation to the first side of the debate, we should ask ourselves whether the state regulations have enough scope to regulate an autonomous or local management role. This is a question that the authoritative voice of Rafael Jiménez has answered, for whom this law must be of minimum density, as article 149.1 of the Spanish Constitution does not give enough support to centrally regulate the management role, due to the weight that the self-organization principle of the autonomous and local spheres has (2006: 154). The second side of the debate obviously corresponds to a political and ideological debate that completely surpasses the aims of this paper.

Therefore, it can be stated that the BSPE, from our point of view and many authors' (Sánchez, 2007: 104; Moreu et al, 2012, Jiménez, 2015), did not come to enrich the model, but to broaden even more the debate on the top public manager figure, as it has almost completely resigned to regulate the regulatory framework of the management role, which consequently continues to be very permeable to politicization, and to elaborate a true Top Public Manager Statute, a statute that already exists in foreign legislation (Kuperus et Rode, 2016): senior<sup>11</sup> civil service (UK), senior executive Service (USA), *haute fonction publique* (France), *dirigenza* (Italy), *politische Beamte* (Germany). Nonetheless, as we have concluded, it was this indifference what many Autonomous Communities hoped for, as they would rather regulate this figure themselves (Catalá, 2005: 225).

The BSPE complied with what the CEBEP report laid down: the characteristics and conditions of the management role are not, nor can they be homogeneous within all public Administrations (Larios, 2008: 126) due to the different rhythms and maturing states of each of the Administration's institutional evolution (CEBEP, 2005: 67). However, it seems objectively clamorous (Sánchez, 2007: 106-107) that no references are made to the local sphere, something that causes an even greater confusion within said territorial-administrative sphere.

A similar reference to the later regulation is made regarding the properly managerial functions, which article 13.1 of the BSPE does not limit either, something that the previous regulation did not achieve either (Monereo and Molina, 2008: 189). However, it does clearly opt for not facilitating the creation of a managerial body aimed at developing such functions. Rather, making use of a system of specific positions, it opts for the creation of a catalogue -it seems to suggest- or a similar instrument

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<sup>10</sup> Within that same line, the BSPE literally establishes that the professional management functions will be the ones labelled as such in the specific regulations of each Administration. With this scheme, it can therefore be stated that, on the one side, the Autonomous Communities are under no obligation to create new formulas for the management personnel. On the other, that, in case they decided to create such formulas, they have a wide room for manoeuvre to design their profiles.

<sup>11</sup> Professor Manuel Villoria dedicates a very specific section to the Senior Executive Service model in the second edition (2000) of his human resources management guide, prepared with Eloísa del Pino (*Manual de Gestión de Recursos Humanos*). The management role from a comparative point of view as it appears in Francisco Longo's (2003) work *Institucionalizar la gerencia pública: retos y dificultades* ("Institutionalizing the public management: challenges and difficulties") is also very illustrative.

that determines which positions require the possession of managerial competences for their carrying out (Sánchez, 2007: 108-109). This happens to fulfil Cardona's (2006: 8) thoughts. He recalls that we are facing an element that comes from position-based systems and not career-based systems, which means that it tends to deviate, in a comparative perspective, from the established civil service promotion ladder.

Moreover, it is important to bear in mind that, despite the reference to the later legislation, there is previous legislation still currently in force, both at state level and autonomous level, that has affected how those management functions are determined. As a result, this future reference must be fit with the non-repealed respective precepts.

Regarding the appointment of top public managers, who can be civil servants or contractual workers, when linking what article 13.2 of the BSPE states ("They will be appointed based on merit and ability principles and suitability criteria through processes that guarantee disclosure and competition") with the intentions of the CEBEP report that Sánchez (2007: 108-109) interpreted, it seems that the BSPE has attempted to introduce professionalism and merit criteria, even if this has had to be compatible with a certain degree of political trust. This would appear to be an attempt to temper the solely political appointment that is so frequent in Spain and that has given rise to the term "political-public manager" pointed out by Sánchez (2007: 109), and which has been made by means of the introduction of the "suitability" concept. In any case -and we would say once again-, this concept is overly "philosophical" because it will hardly be able to have an impact on such a solidly deep-rooted politicization of the management role (Kuperus et Rode, 2008: 14). What stands out in this article is the fact that the suitability of concepts such as competition, which could excessively slow down the appointment of key positions if understood properly, as it occurs in ordinary selection processes for the public sector (imagine the pull effect of the massive top public manager selection processes), is solidly prescribed, when in fact these same principles are not so clearly present in the free appointments of personnel for positions of lower hierarchical level and responsibility (Sánchez, 2007: 109). The BSPE definitely deviates from the implementation of strict, not necessarily civil servant, professionalism criteria recommended by the expert report (Larios, 2008: 131). Instead, it largely incorporates -or rather just enunciates them knowing that they will not be applied- the logic of the general principles of access to public employment established in article 55 of the BSPE.

The section that article 13.3 dedicates to the assessment criteria of the management role (efficacy, efficiency, responsibility, and output control) should also be mentioned. Once again, it does so without detailing the how or where, although it can be inferred, as Sánchez (2007) noticed, that an assessment being prescribed must mean that a certain room for manoeuvre and competence in the effectuation of the management role exists, and that this role is not a mere execution of the direct instructions of the politician.

This slackness of the model set by the State in line with the decentralized public management model in Spain described by Kuperus et Rode, 2008: 16 has resulted in a lacking legislative development of the Autonomous Communities, if there has been any. The Autonomous Communities have barely improved the management model set by the State, which lacks the level of refinement needed to talk about a professionalized management model in line with most European countries. Selection, establishment of a management logic of its own, effective subjection to the outcome or restraint of dismissals away from political discretion have not brought important advancements at the autonomous or local level.

Table 2 below presents features of the management role of some of the most important Autonomous Communities -using the largest population criteria- to demonstrate the mimetic character of the model and the scarce registered advancements.

Table 2. Features of the management model in the Autonomous Communities.

ITEM	ANDALUSIA	CATALONIA	MADRID
<b>SEPARATE LEGAL STATUTE</b>	NO	NO	NO
<b>SELECTION PROCESS</b>	Exclusive to civil servants for the most part and with slim impartiality guarantees.	Exclusive to civil servants for the most part and with slim impartiality guarantees.	Exclusive to civil servants for the most part and with slim impartiality guarantees.
<b>ACCREDITATION OF MANAGERIAL COMPETENCIES</b>	Barely developed.	Barely developed.	Barely developed.
<b>DISMISSAL OF THE MANAGEMENT PERSONNEL</b>	Discretionary	Discretionary	Discretionary

Source: Prepared by the author.

At local level, the management model has been conditioned by the emergence of regulations on big cities, whereby an attempt was made to improve the management model through the sophistication of the stages of selection or accreditation of competencies. The management model in this case has slightly improved in terms of having a more favourable and serious context, basically copying the State model of management role appointments. There are very few guarantees nonetheless and it is unlikely to prevent managers that do not possess the minimum managerial competencies<sup>12</sup> from holding such positions. In municipalities with a common regime -not considered big cities- managerial functions continue to be handled almost exclusively by the political sphere in an even more primitive model that confuses managerial and political functions.

Therefore, this confusion of the model also exists at the local level, with the impact of a dialectic towards the figure of the "manager", but without correctly specifying the general guidelines of this figure whose position often ends up being held by high-level civil servants who are qualified but lack managerial background.

In light of, as we have seen, the lack of institutionalization of the public service (Longo, 2003; Jiménez, 2006), the current debate, which stems from the attempt to implement a culture targeted at the achievement of results (Cardona, 2006: 8), essentially centres on which must be the profile and the liaison of the top public manager and on the need for them, due to their specificity, to have their own legal statute and regime (Sánchez, 2001: 93; Catalá, 2005: 213; CEBEP, 2005: 51; Jiménez 2006), something that would imply the definitive and completely necessary (CEBEP, 2005: 64-66; Cortés 2001: 48) institutionalization of the professional top public manager, and consequently its treatment as a separate personnel category<sup>13</sup>. However, there are authors that do recognize that, although such statute of its own is necessary, it must be scantily unitary because the conditions of managers in the different public Administration are not and cannot be strictly homogeneous (Longo, 2003; Larios, 2008: 126).

## 6. Future prospects

This negative outlook regarding the evolution of the model towards a professionalized public management role that has a legal statute of its own, like the prevailing tendency in the rest of Europe (Kuperus et Rode, 2016), does not seem to be affected at all by the current legislative tendencies. And only the political will mostly driven by the pressure of the European Union will be able to achieve the evolution of the model.

<sup>12</sup> This does not mean that the model has not improved after deciding in numerous assumptions that the top public manager should be at least a public employee. The problem is that being a high-level civil servant or public employee does not mean having managerial competencies. In fact, it is possible to be an excellent public employee and at the same time be incompetent for public management due to this being a completely different area.

<sup>13</sup> This managerial statute proposal was already put forward in the *Proyecto de Estatuto de la Función Pública* ("Public Service Statute Bill") of 1999 that, as we know, was never passed.

In addition to the purely legislative aspect (usually result of the debate around the main ideas), the debate on the management model is practically missing in political agendas, although mass media are constantly emphasizing the deficient top manager profiles and the prevailing excess of politicization,

Despite the impact that the countless cases of public corruption have had on the political and administrative model, the solutions have focused on the possible changes that could be made to the criminal justice system or the codes of ethics. The protection of a professional management sphere and the strengthening of the civil service protection in the face of the politician (for example, questioning or perfecting the figure of free designations) have been excluded from the debate.

Once again, the "political" or "partisan" logic seems to not want to give in to the creation of spaces for the professionalization of the management role, as these definitely are important spaces of power that they would have to give away; and that is a debate that no political party appears to be interested in.

The rhetoric political parties use in their programmes continues to talk about the improvement of the public management model, but the truth is that they have barely seriously moved ever since the top public manager statute bill of 1999 that resulted in precisely that, a bill not legislatively validated.

The popular parliamentary group has recently put forward a motion urging the government to study the necessary procedures for the passing of the Statute of the professional Top Public Manager of the General State Administration (Proposal 162/000627, Official Gazette of the Spanish Parliament, Serial D, of 7 May 2013, No. 265).

On their part, the Government announced in 2013 a new Public Service Law and Top Public Manager Statute that never saw the light<sup>14</sup> of day and that was announced as key for the modernization and reform of the Administration.

Politically speaking, there are no doubts that political parties agree on the diagnosis, but the problem is its legal implementation or the government action, which never comes to fruition. The programmes of the main political parties in 2008 read:

(Socialist Party): ...We shall regulate the manager statute to broaden their capacity and professionalism and guarantee that the manager possesses the experience required to manage the allocated resources with autonomy and responsibility. We commit ourselves to strengthening the professional public management.

(Popular Party): ...We commit ourselves to improving the professionalization of the public service and to implementing a not-politicized management role in which access to management positions is given after proving training, merits, and previous experience. A management role that is responsible with its management and is subject to assessment.

## **7. Conclusions**

In the first place, it should be noted that the regulations regarding the management role continue to be vague and even confusing in terms of basic managerial concepts such as management model, selection and dismissal formulas or objective elements of verification of managerial competencies.

Secondly, the specific sectorial, or autonomous in this case, regulations have had a mimesis process -as shown in previous chapters- and have not questioned the flaws of the basic characteristics. This process was marked by the management model of the State Administration, which is a crude, behind the times and excessively permeable to politicization model.

In addition to all the factors above, Autonomous Communities have not taken advantage of the poor coercive ability of the management model marked by the State to sophisticate their management role model. Instead, they have developed nothing, or they have developed it perpetuating a politicized and barely evolved management model.

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<sup>14</sup> Economy newspaper *Expansión*, 18 July 2013, <http://www.expansion.com/2013/06/18/funcion-pública/1371547467.html>.

Among the causes of the lack of evolution of the model, even though it is a factor that seems to be of enough identity for a further thorough investigation, it is the lack of political will to change a model that, in exchange for more professionalism and impartiality, would demand from the political sphere the loss of a traditional space of power and placement of political cadres the one that stands out with crystal clarity. This absence of courage evidences the survival of a public administration model that has had an institutional development and is now clearly underdeveloped. Yes, it is to some extent a matter of the technical sphere winning power over the political sphere, but this does not mean that the new path should lead towards technocratic governments, but towards the increase of the transparency, professionalism, and impartiality dose of the political-administrative model.

In conclusion, we confirm the absence of something that could be called "management model", which has been replaced by classic solutions that fluctuate between the bureaucratisation and politicization of the model, without taking steps in the direction of the European Union on its way to an existent third model: a "managerial or professional model" that guarantees a more professional and impartial management role.

The regulations or legislative variable, which as we have witnessed is still deficient and does not constitute basic legislation, is definitely not the main variable, but rather a repetition of the lack of political will to start a true modernization of the public management role in Spain.

In this sense, from our point of view, one of the most advisable prevailing tendencies is the one in which the management personnel consist of professionally valid people with whom a certain degree of confidence or strategic affinity is shared with the aim of achieving the execution of policies. However, and this is the most important point and the biggest challenge, their dismissal cannot be due to fully discretionary political or personal disagreements, but due to the observable fact that they are not meeting the objectives previously established as results of their management.

Lastly, the following personal proposal is suggested: an advancement on this matter guided by the firm and purposeful will of political parties to legislate a true statute of the top public manager, as a legal regime of its own, that confers a patina of professionalisation to the public management role, in this way protecting from political whims the different crucial stages of the management role development, such as the selection on the basis of competencies and objective elements of verification, the autonomy of the management personnel for their activity, and the dismissal, which has to be bound mainly by the attainment or not of the planned results.

In the management model also lies the trust in the democratic model of a country, as well as in the very consolidation of the basic institutions of a state. Therefore, through the refinement of the management model, we improve the quality of a country's democracy. Political agendas should never lose sight of this goal.

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