THE HISTORICAL EVOLUTION OF THE POSITION OF THE USER OF PUBLIC SERVICES WITHIN THE TRANSFORMATION OF PUBLIC SERVICES MANAGEMENT REGIMES

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The evolution of the public services users' legal position has always been accompanied to that of the corresponding sector and that of the Public Administration. In particular, it entered in the long process of development that led to the birth of the so-called Result Administration, in which what is important is not only (and not so) formal observance of the law, as the actual pursuit and the actual achievement of certain specific targets. In the public services field, we have moved, then, from an administration interested in providing a service in compliance with the law, to one determined to give greater importance to the need of users to achieve a high quality service, suitable to satisfy their actual needs. At the same time, users' legal position has evolved from being an interest of a mere fact (not worthy of protection) to being qualified such as legitimate interest (legally recognized and protected). However, it is necessary, a new transformation of the users location, which takes account of the physiological changes that it has had over the years and that is constantly changing.

INTRODUCTION.....	103
I. THE USER BETWEEN EVOLUTION OF THE PUBLIC ADMINISTRATIONS AND EVOLUTION OF PUBLIC SERVICES	104
II. THE TRADITIONAL REGIME OF PUBLIC SERVICES	106
III. THE MODERN REGIME OF PUBLIC SERVICES	107
IV. THE EVOLUTION OF THE PUBLIC SERVICES USER'S POSITION: FROM THE SUBJECT ADMINISTERED TO THE USER	109
V. PUBLIC SERVICES USER'S NEW POSITION	112
CONCLUSION.....	116

INTRODUCTION

This work aims to investigate about the link within the position of the Public Service beneficiaries and the Public Administrations and also the way Public Administration organizes the supply of public service¹. This

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particular aspect was chosen as object of this paper because Public Administration has influenced (and still now influences) the evolution of the position of the Public Service beneficiaries and the instruments that beneficiaries can use to defend and protect their position.

This influence is due to the circumstance that public services changes during the pass of years and, at the same time, the manners in which they are supplied change as well. The management, the supply, more generally, the organization of public services, in fact, is closely connected to the structure of a legal system which exists in a specific historical moment and on a specific region. The organization of public services is influenced by the cultural system as well.

All that has consequences on the position of the Public Service beneficiaries because the manners in which they benefit from public services, the claims that they can boast on the ways public service are supplied, the instruments they can use to defend their legal positions, all of this depends on how the public services are organized.

This paper aims to answer a simple question: Are beneficiaries' needs adequately satisfied? The answer is in the position of the Public Service beneficiaries.

So, Part I is dedicated to a brief introduction about historical evolution of Public Administration and Public Services. Part II and Part III analyze the two public services management regimes used in the past century. Part IV investigates specifically on the historical evolution of the position of the Public Service beneficiaries. Part V explains which is (or should be) the brand new position of Public Service beneficiaries in the contemporary world.

I. THE USER BETWEEN EVOLUTION OF THE PUBLIC ADMINISTRATIONS AND EVOLUTION OF PUBLIC SERVICES

When tackling the issue of public service users, it is clear that we are dealing with a topic at the same time complicated and delicate as well as of fundamental importance. This is because it is necessary to face issues which relate to those who use public services, to be considered as those services, those activities, which aim to satisfy the “*basic needs of the community*” and therefore, necessarily must evolve with them².

² Napolitano G., *I servizi pubblici*, in *La nuova costituzione economica*, at 131 (Cassese S. ed., Laterza, 2011). Among the traditional public services and the most important ones, we can remember the long-distance transport, long-distance communication, postal services, those of production and supply of energy. This doesn't change the fact that other services exist and new services can born.

This study, in particular, has the aim to focus the position that the public service user holds within the related sector. The use of the special word “user”, instead of more common words as, for example, “consumer”, “client”, “beneficiary” or similar, is not accidental, but it is the result of a conscious decision. The reason behind this decision is that the position of people using the public services has evolved over the years and therefore it is not simple (maybe not even possible) to give a unique and unambiguous definition to frame this position, especially if you want to describe it in its historical evolution through the years. The word “user” has to be considered neutral enough to allow the identification of the class of persons which we want to speak of, without describing it in details. In this way, it is possible to avoid the identification of the user with the elements that characterized it in a specific historical period and, therefore, to decrease the range of the research.

The evolution of the legal position and therefore the protection designated by the legal order of the public services users has always been related with that of its corresponding sector and that of the Public Administrations. Thus, the first one has been an element added within the long process of development which has led the birth of the so-called Result Administration³, in which what is relevant is not only (and not so) the formal observance of the law, as the real pursuit and the effective achievement of certain specific targets. So, in the public services field, it has moved from an Administration interested in providing a service in compliance to the Law, to one determined to accord a higher importance to the need of the users to achieve a high quality service, suitable to satisfy their actual needs. For this reason, the analysis of the public services user and that of the protections assured to it must necessarily be preceded also by an historical framework of the public service sector and with the Public Administration as well.

³ It is obvious that in this evolution The European Law has had a fundamental role. In particular, this Law has a significant effect on the public service sector. About the subject of Result Administration, see, *ex multis*, Calandra P., *Il buon andamento dell'amministrazione pubblica*, in *Studi in memoria di Vittorio Bachelet* (AA. VV. ed., Giuffrè, 1987); Andreani A., *Il principio di buon andamento della pubblica amministrazione* (CEDAM, 1979); Cammelli M., *Amministrazione di risultato*, in *Studi in onore di Giorgio Berti* (AA. VV. ed., Jovene, 2005); Fidone G., *Efficacia ed efficienza nella riforma della Pubblica Amministrazione. Dalle misure per l'ottimizzazione della produttività del lavoro pubblico all'azione per l'efficienza*, in *Foro Amministrativo TAR*, X, at 2180—2197 (fasc. 6/2011); Fidone G., *L'azione per l'efficienza nel processo amministrativo: dal giudizio sull'atto a quello*.

II. THE TRADITIONAL REGIME OF PUBLIC SERVICES

To understand the organization that the public services sector had during what may be defined as the so-called traditional regime⁴, it is necessary to remember how the Italian State was built at that time and therefore the Public Administration operating. With the expression “traditional regime” it is meant to refer to the arrangement of public services from the early years of the Kingdom of Italy until the second half of the 20th Century when, thanks to the intervention of the then Community Law, we have witnessed important revolutions in the field. This means that, at least during the first years of the so-called “traditional regime” we were before a new-born State, which arose from the unification of many different states⁵, which also was leaning out into a world in which the first ideas and theories about the Welfare State began to assert themselves, and that will find their consecration during the 20th Century.

During the so called “traditional regime”, public services were based on two essential characteristics: on one side, the reserve or exclusivity of the field; on the other, the public management of services⁶.

The reserve system of public services consists in preventing private individuals, who should be permitted to do so, to take on the role of employer in the area that is precisely restricted. In other words, through the exclusivity institution, the Legislator reserved to the Public Administration the execution of the delivery of the public services, deleting, in fact, competition in the reference market⁷.

Moreover, the activity of providing public services was not only reserved in a monopoly that was inaccessible to free private economic initiative, but it was also entrusted to the exclusive management of the

⁴ The expression used is taken from Napolitano G., *I servizi pubblici*, in *La nuova costituzione economica* at 131—134 (CASSESE S. ed., Laterza, 2011).

⁵ Something that remains in many ways.

⁶ On public services during the so-called traditional regime, see, *ex multis*, Cattaneo S., *Servizi pubblici*, in *Enciclopedia del Diritto* (XLII, 1990); Miele G., *Scritti giuridici* (Giuffrè, 1987); Orlando V. E., *Primo trattato completo di diritto amministrativo italiano*, Società editrice libraria (1908); Piras A., *La municipalizzazione*, in *I Comuni* (Giannini M.S. ed. Neri Pozza, 1967); Pototschnig U., *I pubblici servizi* (CEDAM, 1964); Zanobini G., *Corso di diritto amministrativo* (Giuffrè, 1958).

⁷ This exclusive regime finds its confirmation and its consecration in art. 43 of the Italian Constitution. In fact, this instruction allows the law to reserve “*certain enterprises or categories of enterprises*” in order to pursue general interest objectives. Art. 43 of Constitution was implemented, in particular, with the establishment of ENEL. The constitutional provision, has also been used to ensure the reserve to support the Ente Nazionale Idrocarburi (ENI) of hydrocarbon reservoirs, their research as well as their collection (l. 10.02.1953, n. 136); again, always in accordance of art. 43 Cost., had been created a monopoly in broadcasting, with also the exception of Corte Costituzionale (sentence 13.07.1960, n. 59).

Public Administrations, both directly and indirectly.

III. THE MODERN REGIME OF PUBLIC SERVICES

The so-called modern regime of management of public services⁸ characterized Italy during the second post-war. At that time, among other things, the Italian State joins Europe, no longer conceived only as a geographic region, but as a new juridical reality and, in some ways, political, that gains more and more relevant powers and is therefore able to influence more and more lives and legal systems of Member States. A Europe which was born, above all, in the commercial field, as a union of markets for a common development of them until the achievement of the aim of European Single Market.

Also in relation with the public services area during the so-called modern regime, a complex and detailed phenomenon is analysed which, for convenience only, we try to attribute to a unitary model. After all, the transformation from the so-called traditional regime to the so-called modern regime is still in progress in many areas of public services and it is not yet fully realized. Without forgetting that it is a process that, even though it is concentrated during the period from the eighties and the nineties of the last century until the following years, it is realized with different timing and ways according to the type of the public service and the relative market considered.

Such modern regime is characterized by phenomena of liberalization and privatization⁹.

In general, privatization must be interpreted as the “transfer of ‘property and management rights’” that Public Administrations boasted on

⁸ Like the previous one, the definition of modern system is only suggestive and it is used to refer, even this one, to a complex phenomenon with multiple facets, which has evolved in the course of several decades, and that is still undergoing a full implementation. Even the word “modern” needs to contrast the new regime, of private mould, to the one previously examined “traditional” of public matrix.

⁹ On the subject of public services in the so-called modern system, *see, ex multis*, Arruzza C. & Oddi C. (eds.), *15 anni dopo: pubblico è meglio. Indagine sulla trasformazione dei servizi pubblici, del lavoro e della partecipazione democratica*, at 37 and following (Ediesse, 2007); Carpanini M., *I servizi pubblici tra ordinamento nazionale, comunitario ed internazionale: evoluzione e prospettive*, in *Il diritto amministrativo dei servizi pubblici tra ordinamento nazionale e ordinamento comunitario*, at 23 (Massera A. ed., PLUS, 2004); Napolitano G., *Servizi pubblici e rapporti di utenza* (CEDAM, 2001); Napolitano G., *I servizi pubblici*, in *La nuova costituzione economica*, at 135 (Cassese S. ed., Laterza, 2011); Trento S., *Privatizzare le aziende pubbliche locali: perché e come*, in *Dai municipi all'Europa: la trasformazione dei servizi pubblici locali*, at 277 and following (Termini V. ed., Il mulino, 2004).

the providers of public services in the so-called traditional regime¹⁰. They support, and much more often they are a consequence of liberalization phenomena, intended as a reduction and removal of those regimes as well as those tools designated to limit competition in markets of the public services sector.

In fact, once markets opened to the free entry of private traders, Italy, like other European states, proceeded with privatizing those public providers already operating within them under a monopoly. Initially, they fulfilled them with a corporate mould (so-called formal privatization) and then, later, proceeding to their actual privatization, transferring on the market of shares of public interest or, at least, of those of majority and control (so-called substantive privatization).

This sector revolution has led to the radical transformation of public administrations and also, in particular, of the way in which they relate to the world of public services.

In fact, even though with different timing, there has been a transition from the so-called model of State manager¹¹, which directly or indirectly, supplied public services, to the so-called Regulatory State¹², which, abandoned the production and the distribution of services, instead, merely regulates its markets.

It is necessary to underline that the State does not abandon the field of public services by the mere fact that it ceases to reserve to itself and therefore to manage those activities, in the name of liberalization and privatization. On closer inspection, probably, the presence of the State, *rectius* of the public authorities within the area of the public services is essential and therefore unavoidable. On the contrary, even more so within a free competitive market, the intervention of the regulatory state is required to act as a guarantor of the interests of stakeholders, balancing the needs of all.

Thus, there is a general openness to competition in the public services markets. Opening investing also prices for the supply of services, mainly left to the free game of supply and demand in the market, though subjected to careful inspections by the Authority. Even in this case, however, with the aim of ensuring a greater protection of the users.

¹⁰ Trento S., *Privatizzare le aziende pubbliche locali: perché e come*, in *Dai municipi all'Europa: la trasformazione dei servizi pubblici locali*, at 278 (Termini V. ed., Il mulino, 2004).

¹¹ It is typical of the traditional system of the public service management.

¹² Characterizing element of the modern system of public service management.

IV. THE EVOLUTION OF THE PUBLIC SERVICES USER'S POSITION: FROM THE SUBJECT ADMINISTERED TO THE USER

In the light of the historical evolution of the public services area briefly exposed, it is necessary to analyse the figure of the public services user and see how it has evolved at the same speed with the field in question.

During the period when it is possible to bring the so-called traditional regime of public service management, the individual user was in the position of ordinary citizen before the Public Authorities dispensers. In other words, this user was to be considered as a mere administered subject, holder of simple interests. Within the public law system of management of public services, the user's position was not held in high regard. This is because they were the same Public Administrations to provide, directly or indirectly, public services¹³. The old system of the so-called traditional regime, therefore, was based on the presumption—obviously wrong—that the public nature of the manager was in itself likely to provide them with appropriate protection of users.

Actually, it was not only a wrong statement, somewhat short-sighted because it was based on considerations of users' protection of pure formalistic mould that did not contemplate the possibility to provide for effective and concrete protection of them. On closer inspection, the very public nature of the dispensers was, if not the main cause, one of the major reason of limitation of protection for the benefit of users, which ended up being, in fact, influenced in the name of the public interest pursued by the dispensing Administration and, therefore, by the requirements of which this was made bearer.

Instead, with the advent of the so-called modern regime the Legislature began to focus on the aim of ensuring greater protection to the needs of the users, in order to overcome the widespread dissatisfaction among them due to inefficiency and poor quality of public services.

Through the increasing and improvement of instruments of protection on the users hand, has been recognized more and more importance to their protection needs, of protection in general, of satisfaction of their needs, along with the statement of an increasingly active role by the users themselves in the organization and management of public services. In this way, the subjective position of the users, no longer framed in the category of mere interest fact, has assumed particular legal qualifications until becoming

¹³ It is obvious that, in such a context, the public interest pursued by dispensing administrations did not coincide with that of the community of public services users. In other words, the first one didn't have as ultimate aim the satisfaction of needs and the requirements of the second ones.

a legitimate interest. At the same time, on the basis of this evolution achieved during the so-called modern system, the public service user started to be increasingly seen as a user¹⁴ of them and not a simple administrated subject¹⁵.

Thus, they have tried to create an equal relationship between the public service user and the operator itself, relying on the now acquired private nature of it. In other words, the aim pursued has been to transform this relationship of subjection of the first against the second, into a consumption relationship between subjects even¹⁶. Despite the basically equal relationship that came to arise, the legal position assumed by the user in the course of the so-called modern system can still be qualified as a legitimate interest¹⁷.

In the first place, this one is because the public service to which the users relate can be configured as an exercise of administrative activity, because it is an activity that answers or should respond to public-law requirements, which go beyond interests of the person individually considered, and, therefore, to be reconnected to the exercise of an administrative task, which corresponds to the legitimate interest of beneficiary.

Secondly it is difficult to qualify the relationship between providers and users of public services such as the bilateral relationship strictly considered, referring to what concerns the method of delivery and, in

¹⁴ There are many who consider the public service users as “customers”, who take advantage of the services realized by the dispensing enterprise. Among others, in this sense, see Ragionieri M. P. & Maresca M., *Servizi di interesse generale, diritti degli utenti e tutela dell’ambiente*, at 142 (Giuffrè, 2006); Rusciano M., *Le garanzie e i diritti degli utenti*, in *Convegno di Varenna 21-23 settembre 1995 su Servizi pubblici locali e nuove forme di amministrazione* (AA. VV. ed., Giuffrè, 1997); Zucchetti A., *Tutela non giurisdizionale dell’utente dei servizi pubblici*, in *I nuovi procedimenti amministrativi. Commento alla legge 18 giugno 2009, n. 69*, at 330 (AA. VV. ed., Giuffrè, 2009).

¹⁵ Briefly, we can say that the subject administered can be considered as subordinate to the Administration dispensing the public service, which only indirectly pursues the interests of the collectivity of individual. The user, instead, deserves recognition of a highest important role because it is not just “one who uses the service”, but also and above all “the one who must be served by it” (Arena G., *L’utente sovrano*, in *Studi in onore di F. Benvenuti*, at 147 and following (AA. VV. ed., Mucchi Editore, 1996).

¹⁶ Certainly, not always the Legislature adequately succeeds to achieve this goal. In many cases, moreover, such privatization is not even complete, as, for example, for the step of choice of the dispensers in certain markets. At the same time, however, as was previously done, we must emphasize that, in some ways, the public service sector also confirms that probably, this constant presence of the “public” in this sector is, at the same time, positive as necessary to ensure full protection of public services users.

¹⁷ To complete, it is necessary to point out that there are many who claim that the individual legal status of the users may be reconstructed even as a full personal right, guaranteed by the Constitution and implemented by the proper public service delivery (Rinaldi R., *La posizione giuridica soggettiva dell’utente di servizi pubblici*, at 92 (CEDAM, 2011)).

particular, the respect of standards of service, with the consequence that the users' position does not seem to be qualified as an individual right.

The user's figure, therefore, is to be put the centre of attention in the public services sector, at the very moment when "the State" leaves the management of them to private and, as it were, it withdraws from the field, reserving for itself a function of control and regulation of the activities of dispensers. In those circumstances, however, it is necessary to highlight that, even today, publicists profiles—which, in part, continue to characterize the public service sector¹⁸—are seen as potential limitations to the full development of the forms of users' protection¹⁹. In other words, the public element, today, is no longer seen as a form of security for the users, but as a cause of restriction to their protection²⁰.

Even though the user's position of public services has evolved, so much that the interest of these to take advantage of a qualified public service of narrow self-not worthy of protection has become legally qualified interest, and recognized by the law, the same has not yet reached the necessary qualifications to ensure the adequate protection of substantial interests of users. For this purpose, it appears necessary a transformation of the legitimate interest conception, which will have to abandon its purely

¹⁸ Actually, public intervention in the utilities sector is, in some ways, essential, particularly so in liberalized and privatized markets, where there are greater risks for users. Public Authority's presence, then, seems unavoidable, but needs to be located and made more efficient. In this sense, "*an updated definition of the citizen-public relationship management thus passes by rethinking the powers of the latter, because in parallel to recessivity phenomenon (quality and quantity) of the administrative action of dominion has been gradually multiplying an actions of the public powers turned to provide services to citizens generality*" (Stefanelli M. A., *La tutela dell'utente di pubblici servizi*, at 57 (CEDAM, 1994)). Even more explicitly we can say that "*If, therefore, the Authority's main task is to operate so that gradually there is no more need of its business, through the creation of effective market opening conditions, you cannot indeed forget that even the highest degree of liberalization will hinder the necessity of regulation turned to the care of the interests of users, in terms of access to the service or of quality control*" (Merusi F. & Passaro M., *Autorità Indipendenti*, in *Enciclopedia del Diritto*, agg. VI, 2002).

¹⁹ We can cite the example of the administrative court, which, too often in the sight of disputes concerning public services, limits himself (or rather has to limit himself) to an evaluation of the formal legality of the measures taken, without checking the effectiveness of the same, also in terms of user's protection and satisfaction. Probably, even in this respect, important reform measures are required.

²⁰ Among the factors that have led to similar considerations, there is certainly one of the strong mistrust that, today, citizens have in public Authorities. It makes thinking that already more than twenty years ago, in the early period of liberalization and privatization of the public services sector, there were those who claimed that "*the general gap between the base and institutional leaders is a proper demonstration of the crisis of dominion powers whose exercise arouses impatience in the city against the owners of them, those political representatives, in which it does not recognize and that he believes they act on the base of mechanisms that he does not share, in the name of a general interest totally unrelated to its values*" (Stefanelli M. A., *La tutela dell'utente di pubblici servizi*, at 57—58 (CEDAM, 1994)).

individual connotation to assume the necessary profiles plurality that characterize the users' community.

V. PUBLIC SERVICES USER'S NEW POSITION

It has been understood the above, the legitimate interest figure is not fully appropriate to the needs of users' protection because it still remains a legal position on merely individual character that badly fits to frame a position as those of users that, however, maintains an extra-individual character.

When speaking about public services and user protection, it is necessary to properly take account of both the individual as well as the community of which the first is part of. Thus, we have to understand how it is possible to recognize a plural nature to an interest that is individual in its own nature, which is the legitimate interest.

This is because the interest to take advantage of an efficient and qualified public service is equal to the community of users: a similar need does not only refer to the individual user, but it is uniform to all who are part of the reference community. At the same time, however, we cannot disregard the individualistic nature of that interest, otherwise there is the risk of identify it as a widespread interest that would deprive its owners of validity to take legal action to protect it, except in exceptional and extraordinary cases provided by the Legislator.

In other words, the interest of users in question is an individual juridical situation that allows an individual user to use all the tools that the law makes available for protecting him, but which has, at the same time, a particular nature of plurality and community, because it is similar to the entire category of users of that specific public service.

This new type of interest can be qualified as a "isomorphic legitimate interest" already emerged from the tenet after the introduction of the action for the efficiency of Legislative Decree no. 198/2009²¹.

A similar interest enjoys a supra-individual dimension in the strict sense since it is not to be considered as a simple sum of isolated individual interests, but it is an interest that differs from these and relates to a common

²¹ Cfr., *ex multis*, Cacciavillani C., *Sull'azione per l'efficienza delle amministrazioni e dei concessionari di servizi pubblici*, (GiustAmm.it, 2011); Clarich M., *Appunti per le lezioni di diritto amministrativo*, Facoltà di Giurisprudenza, LUISS "Guido Carli", a.a. 2009-2010, in www.luiss.it; Condello M., *La Class Action Pubblica* (2010), in www.foroeuropeo.it; Cudia C., *Il ricorso per l'efficienza delle amministrazioni: l'interesse diffuso (finalmente) si 'concentra' sull'individuo* (in margine a T. A. R. Lazio, Roma, 20 gennaio 2011, n. 552), in GiustAmm.it, 2011; Fidone G., *L'azione per l'efficienza nel processo amministrativo: dal giudizio sull'atto a quello sull'attività*, Giappichelli, 2012.

benefit of life—the efficiency and quality of public service, in the present case—which is similar and homogeneous for the entire category of users.

The isomorphic interest is an individual interest with a collective dimension, because it is known to be common to the plurality of users who forms the reference community, each of which, however, still remains owner of an individual subjective legal situation. In other words, it's true that it relates to an asset of life that is common to all persons involved, but, at the same time, this benefit is also adequate to be exclusively enjoyed by each of them because it is distinguished for each of them in order to satisfy their individual needs.

In the case of public services, the object of interest consists in taking advantage of public services that are of quality and are delivered in an efficient way. The object, reconstructed in this way, matches in a basically similar way in each of the member of the category of the reference users, all of whom benefits from the service, although every one of them individually does it, exclusively enjoying for their own needs and without such operations may affect the position of other users like him, in any way.

Thus, the individual user acts in his own interest, which he owns, in order to satisfy his own personal need to benefit from a high quality public service.

Such a requirement however, is analogous, homogeneous to that of other subjects, other users, who, evidently, are jeopardized in their interests in the same way, if malfunctions or inefficiencies are detected, in general, in the public service.

For these reasons, more than one single common interest is fractionated into many parts assigned to each member of the reference category, in the case of public service users, it seems more correct to speak of many legitimate interests which are homogeneous in the content, and which every individual user is owner of, at the same time.

It's true that these users' interests adhere to the same benefit of life that, in a certain way, can be defined collective, that is to say the efficiency and quality of public services supplied. However, at the same time, it is necessary to avoid a simple confusion between the individual interest of the single user and the general one, collective of the entire reference category²².

After all, the interest of the individual and that of society generally considered have some contact points coincident who, although not lead to confuse each other, they can still provide some identification between the interest of users and the public that the Administration would be required to

²² In this sense, see Fidone G., *L'azione per l'efficienza nel processo amministrativo: dal giudizio sull'atto a quello sull'attività* (Giappichelli, 2012); Sorace D., *Diritto delle amministrazioni pubbliche*, Il Mulino, 2007.

pursue in the public service sector.

Only in this way, through this new user interest reconstruction, it is possible to ensure effective protection for them, which is suitable not only to satisfy the need of the individual but in the name of the satisfaction of the reference community needs allows to directly affect the public service to improve it. It is obvious, in fact, which is correct and proper to ensure the personal protection of the individual, however, at the same time, it is necessary to effectively correct the detected fault and, thus, the public interest in the provision of quality public services.

In conclusion, the interests of users are homogeneous with each other as they all derive from a plurality of equivalent reports that individual users have with the providers of public services, who risk of being jeopardized by the same behavior of them in the activity of the service itself.

However, the homogeneity is irrelevant for the qualification of the individual legal status which the claimant owns, which qualification is an interest naturally individual²³. Briefly, we can say that the public service user's interest is an individual interest that, however, interacts with an activity that, by its very nature, has a multi-person character, as meaning that it is addressed to a plurality of subjects, that is to say, the users. Thus, even inefficiencies, malfunctions and, in general, the poor quality of delivery of public services not only affect the individual user's position, injured in his own right to use the service, but similarly other users who are in the same condition, as well.

Thus, we must ensure that the activity with which the individual intends to exceed the claimed malfunction is aimed, ultimately, to ensure the intervention on the dispenser of the service in order to exceed completely the inefficiency found and, thus, also repair other users' prejudices and to prevent the realization of further injuries. This is why, the individual nature of interest must necessarily also accompany the recognition of a collective and multi-persons nature²⁴.

²³ In this sense, "*the condition of the homogeneity of interest of the claimant to the one of the other users has no qualifying character of the legal legitimizing position*" (Fidone G., *L'azione per l'efficienza nel processo amministrativo: dal giudizio sull'atto a quello sull'attività*, at 221 (Giappichelli, 2012)).

²⁴ With specific reference to the action for the efficiency, it can be said that the interests of those who propose it are individual, but "*due to the multi-subjective nature of the acts that affect them or the general nature of the dysfunction that characterizes the harmful action, they are objectively relevant to a plurality of administrative authorities, so that the individual ... [acts]*" (Veltri G., *Class action pubblica: prime riflessioni*, in LexItalia.it, 2010). It is interesting to observe that the author, actually, concludes his argument by stating the nature of widespread interest of that at the basis of action for efficiency, so much to consider the applicant as a kind of representative of the category to which it belongs.

Clearly, such a supra-individual character must not affect the differentiated nature that must be accorded to the users' interest, because it is crucial to ensure them an adequate juridical protection. In other words, it must be ensured that the interest in question cannot be claimed by whomever, from *quisque de populo*, but only by those who fall into the category of reference users.

In other words, the user must be taken into account both as a single public service user and even as a member of interested users' community. And in ensuring this double individual and widespread nature of the protected interest, it must ensure at the same time not only the legal qualification of that, but also its differentiation. In fact, only a qualified and even differentiated interest is considered truly deserving of protection by our legal system and, therefore, can be enforced by those who are the owners against other subjects, in and out of court.

In order for an interest to be considered differentiated, it is necessary that the owner is a person, or at least a well-defined and well recognizable plurality of people, who differ, in each case, from the majority of citizens.

In other words, it is necessary to ensure that the legal position intended to be protected is differentiated in the hand of a specific collectivity, as that one constituted by users who benefit from the public service.

To identify this community of users, in order to differentiate it from other citizens who only have an interest of a purely factual nature and not protectable to the correct supply of the service, instead, it is possible to refer to the criterion of "vicinitas", taking into account, therefore, the relationship existing among the public service, the regulators, the users and, above all, the territorial area in which the service is provided.

It is obvious, in fact, that a public service, beyond which is specifically taken into account, is intended to satisfy the demands and the needs of a group of users that are established on a given territory. This may be more or less extensive, depending on the service considered and the type of that, but it is on this territory that the economic operator performs its activities for providing the service to users. These factors also allow to actually differentiate user's interest in the area from that of other persons who, though occasionally interested to avail the same service, cannot boast similar claims with those which it is specifically directed.

Such an interest, however, remains the same for all those users who are rooted in the reference area. In this way, the interest served maintains at the same time both an individual dimension in the hands of the individual user both a multiple dimension, because it is analogous to all interested users that are still differentiated, because it is headed only to those users identified in a

specific way territorially²⁵.

Consequently the category of users who recognize the ownership interest to a quality service does not coincide with that of anyone that, even occasionally or only potentially, could benefit from that particular service, but rather comprising the set of users permanently connected with the reference territory, who constantly benefit from it.

The service is directed to this group of users, it must satisfy their needs in a specific way, in the final analysis, they are the ones who justify the prediction, the organization and the service delivery. This is because their homogeneous interest can be considered supra-individual, but at the same time differentiated from those compared to who do not fall within the reference category.

CONCLUSION

The definition of the “isomorphic legitimate interest” as the new position of the Public Service beneficiaries represents a new phase in the historical evolution of public services. Even if this phase concerns only the position of the beneficiaries, it is very important and can be defined as the modern regime of management of public services 2.0: It is not an independent phase of historical evolution, but it represents a new segment, a new “version” of the modern regime, that is evolving still now.

So this 2.0 version has to boost a new theoretical reconstruction of the whole sector of the public services. This reconstruction should be focused on the fundamental element of the sector: the user.

That is why some of the comments of this paper deserve a new development also due to the technological evolution of the sector.

For example, as seen, to identify and differentiate the community of users it is possible to refer to the criterion of “vicinitas”, taking into account, therefore, the relationship existing among the public service, the users and the territorial area in which the service is provided. The Jurisprudence confirms this idea.

²⁵ The reconstruction exposed even finds a basis in administrative law. To decide the dispute in some judgments, Consiglio di Stato and Tar of Lazio in Roma have based their decision on the link between the relevant stakeholders and the territory of realization of administrative activity (*See, ex multis*, CdS, IV, 17.09.2013 n. 4635; Id., V, 2.03.2000, n. 1075; Tar Lazio, Roma, II, 31.07.2014, n. 8433). Those decisions had as their object instances of citizens before the exercise of an administrative function, but, *mutatis mutandis*, similar considerations can be made with reference to the users of public services. In this case, what is important is the stable connection between the users and the territory in which the service must be provided, which can be more or less extensive according to the type and characteristics of the service itself.

But, nowadays, there are some public services that can be supplied not in a specific and physically identified territory. Due to the technological evolution, more and more public services will acquire this particular feature. So the criterion of “vicinitas” must be rethought.

This example serves to demonstrate that the new position of Public Service users has to become the beginning of a new historical phase of evolution of the sector with a rethought about more efficient ways to protect this position and about the role that Public Administrations and dispensers have to play in the public service sector.

In this new evolution is important to remember that users are the core of public service sector and so both Public Administrations and dispensers must act to assure the supply of a high quality service.