Annex B.

The Spanish decentralisation model[1]

Background: The territorial organisation of the State in Spain

In just thirty years, Spain has evolved from a state with a highly centralised territorial model to a multi-layered state that consists of the national government, the autonomous communities and local government. This state structure founded upon autonomous communities was established in 1978. Certain elements may be in need of adaptation to reflect the historical, political and economic evolution that Spain has undergone since then (including alterations in matters such as the definition of autonomous communities' powers and changes in how they are financed, and the institutional design of local government). However, some instruments within this state system have proven themselves effective in the process of decentralisation.

Article 137 of Spain's Constitution defines the territorial distribution of public power in the country, and provides for the establishment of a state with three levels of government:

- National government.
- Autonomous communities: 17 autonomous communities and 2 cities, Ceuta and Melilla, with autonomy statues.
- Local government: including municipalities, provinces and islands.

The analysis below focuses on the local government level, although there will be numerous references to the system of autonomous communities. First, it reviews the historical evolution of the decentralisation process in Spain. Second, it takes a close look at the defining tenets and phenomena that shape the institutional profiles of local government: the principles of local and democratic autonomy, the fragmentation of the types of local government that exist in Spain and the practices of infra-municipalism and inter-municipality. Third, it discusses the regulation of local governments from a three-fold perspective, examining the national level, autonomous community level and local legislation. Fourth, it offers an account of the local electoral system, including the electoral rules governing city councils and provincial councils. Fifth, it analyses the institutional system of municipalities and provinces; and sixth, it looks at the model for the exercise of local power and government financing, which has undergone significant legal reforms as a result of the economic crisis that began in 2007-2008. For example, the national government enacted laws such as 27/2013, passed on 27 December 2013, which called for the rationalisation and enhanced sustainability of local governments, and the Organic Law 2/2012 on Budgetary Stability and Financial Sustainability. Both of these measures were met with widespread rejection by Spanish municipal governments, autonomous communities and a range of organised social groups, who have filed as many as 10 lawsuits branding the laws unconstitutional. To date, this has led the courts to declare a significant portion of the local government reform measures carried out in 2013[2] as unconstitutional.

A review of the historical evolution of decentralisation in Spain

Although Spain is one of the oldest states in Europe, tension between the centre and the periphery has been constant throughout its history. The rule of the Catholic Monarchs saw the conquest of Granada in 1492 and of Navarra in 1512, which represented the beginning of the Spanish state. The marriage of two rulers, Isabella of Castile and Ferdinand of Aragon, resulted in the union of kingdoms that brought together the territories that now make up Spain.

This personal union meant that the institutional and legal peculiarities of each of the kingdoms immediately vanished. They remained formally intact throughout the rule of the Hapsburg dynasty and disappeared only with the ascendency of the House of Bourbon to the Spanish throne under Phillip V. He issued the *Nueva Planta* Decrees of 1707 and 1714, which abolished the self-government rights of the territories of Catalonia, Aragon, Majorca and Valencia, all of which had been loyal to the other pretender to the throne, the Archduke Charles of Austria.

However, the Basque Country and Navarra were allowed to maintain their rights to self-government in gratitude for their loyalty to the French monarch. Spain took shape as a legally and institutionally integrated state with the issuing of the *Nueva Planta* Decrees and the import of the French organisational model by the House of Bourbon, which marked the centralisation of power.

The 19th and 20th centuries saw new outbreaks of tension between the centre and the periphery, as the balance of power swung back and forth. The constitutional texts from this period traced a general trend towards a greater concentration of power in central government, with the fleeting exception of the draft constitution for the First Republic, written in 1873. Later, the 1931 Constitution of the Second Republic enshrined an integrated state model that allowed regions and municipalities some autonomy. Under the auspices of this Constitution, Autonomy Statutes were passed in 1931 for Catalonia, and in 1936, after the start of the Spanish Civil War, for the Basque Country. The Autonomy Statute for Galicia was approved in a referendum in 1936, but it was never passed by Parliament. The end of the Civil War prompted the annulment of the Catalan and Basque Autonomy Statutes, as well as the special self-government arrangements of Guipúzcoa and Vizcaya. Only Alava and Navarra were able to retain these privileges, thanks to their loyalty to the victorious side in the Civil War.

The Political Reform Law, passed on 4 January 1977, brought about the unusual transition away from the Franco regime. Spanish voters gave this law their approval in a referendum, paving the way for the general election that was held on 15 June 1977 and the subsequent passage of the Constitution on 27 December 1978.

It was taken for granted that the new Constitution of 1978 would set up a system of autonomous regions, and this idea was among the few principles, along with the notions of a democratic state and the monarchy, that were resolved at the time with little debate.

Catalans and Basques pushed for a larger degree of regional autonomy, and from the very beginning incorporated calls for more regional power into their political platforms. The reasons for this can be found in the distinctive characteristics of these regions, where there were deeply rooted political traditions of autonomy.

Unlike in the past, however, at the time of drafting the new Constitution, all of the country's political parties endorsed the principle. Other regions at the time also experienced pro-autonomy movements. However, the predominance of these proposals

was driven namely by a wish to do away with the centralist nature of the old regime, whose political identity had been marked by the political and administrative dominance of the central government. Added to this was a desire to connect political decentralisation with democracy. A concern that would remain at the forefront of the process of planning for political autonomy, was opposition to offering greater autonomy to Catalonia and the Basque Country than to other regions, which was seen as potentially discriminatory.

It is clear that there was an overall consensus on the introduction of a system of regional autonomy, however the basic framework of such a system was not explicitly provided for. Instead, this consensus was built upon more general principles, which made it easy to maintain the agreement while leaving questions of content to be resolved later on by the individual autonomy statutes and the practice of constitutional law.

Local governments in Spain

General characteristics

Local autonomy

Article 137 of the Spanish Constitution grants municipalities, provinces and islands the right to manage their respective interests. This proclamation is viewed as an "institutional guarantee" of local autonomy. Along these lines, the Spanish Constitutional Court, in one of its first decisions, established that this clause means that for certain institutions, such as municipalities and provinces, "the setup of the institutions is the responsibility of the ordinary legislator, constrained only by the indispensable core principle of the essence of the institution guaranteed by the Constitution". However, "the institutional guarantee does not provide for any specific content or any permanently determined sphere of power, but rather for the preservation of an institution in a form that is recognisable in terms of the image of such an institution, as defined by society at any given time and in any given place".

Local autonomy can thus be shaped and designed by the ordinary legislator, with the proviso that the "essential content" or the "core" idea of local government is always respected. Applying this perspective, "essential content" represents a baseline that all laws much respect in order to ensure the "recognisability" of local institutions.

This view of local autonomy as an institutional guarantee is reflected in Law 7/1985, passed on 2 April 1955, which establishes the framework for local government. However, the principle has been the subject of widespread criticism due to its negative perspective on the definition of local autonomy, a state of affairs that has caused "local autonomy" to be defined at various times as either a constitutional guarantee, an optimisation command, or a constitutional principle.

The democratic principle

The democratic principle is explicitly recognised and enshrined in Article 1.1 of the Spanish Constitution, which states that "Spain is hereby established as a democratic state". The contents of the principle are dual in nature, connecting with both the notion of procedural democracy and that of material democracy, although the two concepts are difficult to separate. With procedural democracy, the Constitution itself acts to guarantee democracy via mechanisms including the rules that regulate the election of officials to representative democratic institutions, such as Parliament, autonomous community legislative assemblies, city councils and provincial councils. Meanwhile, in material

democracy, the Constitution also guarantees democracy through its explicit recognition of material rules, such as those that provide for fundamental rights.

According to the concept of municipalities and provinces, which the 1978 Constitution defines as basic and necessary organs of local government, the democratic principle, understood in both material and procedural terms, is imbued with the function of transforming local organisation into something different from what it had been before. A joint, systematic reading of Articles 1.1, 23, 137, 140 and 141 of the Constitution would seem to lend itself to this interpretation, given that democracy is herein defined as a form of organisation in which the will of the people is the source of legitimacy for political power and those who reach and exercise this power. From such a premise, it can be argued that from the beginning the democratic principle transformed the nature of local autonomy. The preamble of the Local Government Framework Law is more explicit, saying that local government should be understood in light of this principle, and from the perspective of the core Constitutional principles that shape the state as a whole.

From these premises, it is possible to arrive at the following systematic list of the characteristics of local governments:

- Local governments, and especially municipal governments, are set up to be a model of representative democracy, under which council members have direct democratic legitimacy, according to Article 23 of the Spanish Constitution.
- The democratic constituencies of local representatives have a direct influence on the legislation passed by these officials, especially when it comes to municipal ordinances and regulations.
- As citizen participation is the direct source of local officials' democratic legitimacy, it is thought to provide additional legitimacy to decisions taken by plenary sessions of local councils, although participation is not an autonomous mechanism for the legitimacy of these decisions.

Types of local governments

Municipalities

Municipalities are the basic entities of the territorial organisation of the state and the most direct channels for citizen participation in public affairs. They serve as an institutional outlet for the autonomous management of the interests of their communities. Their existence is explicitly enshrined in Articles 137 and 140 of the Spanish Constitution, which define the essential characteristics of municipal governments.

There are currently 8 124 municipalities in Spain, of which about 85% have fewer than 5 000 inhabitants and 11% have between 5 000 and 20 000 inhabitants, the remaining 4% have a population of over 20 000.

Municipalities are not evenly distributed throughout the various autonomous communities, owing to the distinctive style of settlement that has been present throughout Spanish history. The country's central plateau has the greatest number, but the least populous municipalities. For example, the autonomous community of Castile and León boasts 2 248 municipalities, 2 000 of which are less than 1 000 people.

Provinces

Article 141 of the Constitution defines provinces as local entities made up of groups of municipalities and serving as territorial divisions for the purposes of carrying out the activities of the state. Provinces are autonomously governed and administered by the provincial councils, which must be democratically representative.

Spain currently has 50 provinces, groups of which make up the country's autonomous communities. Castile and León has nine provinces, more than any other autonomous community; Andalusia is next with eight. In the autonomous communities made up of a single province, namely Asturias, Cantabria, Navarra, La Rioja, Madrid and the Region of Murcia, there is no governing body in the form of a provincial council, and these functions are taken on by the corresponding autonomous community governments, as will be discussed further below.

There is a specific regime for the islands: for the Balearic Islands, the Consells insulars of Majorca, Menorca, Ibiza and Formentera take responsibility for the administration of the island whereas in the Canary Island the Cabildo Insulares of El Hierro, La Palma, La Gomera, Tenerife, Gran Canaria, Fuerteventura and Lanzarote are responsible of each territory.

Other local governments

a) *Comarcas* (counties)

Along with provinces (Article 141.1) and islands (Article 141.4), the Constitution also allows for other possible types of government entity spanning multiple municipalities. Article 141.3 establishes the possibility of creating groupings of municipalities other than provinces. Article 152.3 states that "by grouping bordering municipalities together, the [Autonomy] Statues may establish their own territorial divisions, which will enjoy full legal status". Founded upon this explicit Constitutional provision allowing for the creation of *comarcas*, the Autonomy Statues of all the autonomous communities, except the Canary Islands, the Balearic Islands, the Basque Country and Navarra, make mention of these entities.

The Local Government Framework Law (referred to by its Spanish initials, LBRL) was drafted in light of these Constitutional provisions and the Autonomy Statues, and devotes two of its sections to the discussion of *comarcas*: Article 42 and Additional Provision 4.

Under Article 42, *comarcas* can be created under two conditions. First, there must be a minimum degree of consent from the municipalities involved. A *comarca* cannot be created over the objections of at least two fifths of the municipalities that are to make it up, provided that these municipalities account for at least half of the area's population. Second, the assumption of responsibilities by the *comarca* must not bring with it any loss in the abilities of the municipalities involved to provide the minimum services required of them by Article 26 of the law, nor must it strip said municipalities of their roles in the areas set out in Article 25.2. The makeup and operation of the governing bodies of the *comarcas* are also required to be representative of the city councils involved.

Elsewhere in the law, Additional Provision 4 grants the Catalan parliament permission to divide the whole of the territory of Catalonia into *comarcas*, without regard to the consent of individual municipalities. The reasons underlying this exception to the specific provisions outlined in Article 42.2 are specified in the text of the Additional

Provision itself: first, the fact that Catalonia "had in the past organised its territory as a whole into *comarcas*," and second, because the autonomous community's statute "called for the division of the territory as a whole into *comarcas*".

Despite the legal provisions discussed above, only three autonomous communities have made use of *comarcas* in the organisation of their territories. In order of increasing importance they are: in the autonomous community of Castile and León, Law 1/1991, passed on 14 March, created the *Comarca* of El Bierzo.[3] In Aragon, Law 10/1993 on the creation of *comarcas* in the region, passed on 4 November, a process of dividing the autonomous community's territory into *comarcas* was begun, culminating in the passage of 32 laws providing for the creation of the 33 *comarcas* that were originally envisioned in the passage by the Aragon government of Legislative Decree 1/2006 on 27 December, replacing the previous law from 1993.[4] Finally, in Catalonia, Law 6/1987 on the *comarcas* of Catalonia passed on 4 April, and was followed on 16 December 1987 by Law 22/1987. These set up and organised the division of Catalonia into *comarcas* and provided for the election of *comarca* councils. These laws were implicitly replaced by Legislative Decree 4/2003, passed on 4 November, which represented the approval of a new text of the Catalan *Comarca* Organisation Law.[5]

b) Metropolitan Areas

The LBRL defines metropolitan areas as "local entities made up of the municipalities located in large urban areas with various population centres that are economically and socially linked in such a way as to render necessary joint planning and co-ordination of certain services and activities".

The existence of an inter-connected metropolitan area does not necessarily lead to the founding of a metropolitan governing body to provide services or manage general interests. However, it is becoming increasingly common for such areas to make use of other legal formulas that do not bind cities together in the same way as an official metropolitan area. They may take forms such as *mancomunidades* (inter-municipalities), consortia and inter-city agreements, all solutions that apply associations or voluntary agreements in order to meet metropolitan-level service provision needs in urban areas.

This type of local entity is governed by regular autonomous community legislation, under the provisions of Article 43 of the LBRL, which says that these corresponding laws are to determine the form of the individual government and administrative bodies, provided that within these institutions "all the municipalities in the area are represented". The economic setup and the sphere of action of these institutions must also guarantee "the participation of all the municipalities in the decision-making process", as well as a "fair distribution of the financial burden". This legislation must list the services the institution will offer and the other work it will carry out, as well as the procedures through which this will be done.

Due to the political disagreements that tend to predominate, the history of metropolitan area institutions in Spanish cities has not been particularly positive, which has given rise to mutual suspicion between member municipalities and between the cities and their autonomous communities. There are some historical precedents in local Spanish law for this kind of entity, namely the prior existence of bodies such as Greater Valencia, the Metropolitan Corporation Greater Bilbao, COPLACO in Madrid and the Barcelona Metropolitan Corporation. Currently, the country has only four entities of this sort. In Catalonia, Law 31/2010, passed on 3 August, created the Barcelona Metropolitan Area[6],

while Law 2/2001, passed on 11 May, provided for the founding of the Metropolitan Waste Treatment Agency and the Metropolitan Hydraulic Service Agency in Valencia.[7]

c) *Mancomunidades* (commonwealths)

Although the Spanish Constitution does not explicitly recognise the existence of commonwealths, it does contain several provisions that provide an implicit basis for their existence. Among these Constitutional passages are the following: the recognition of the right of association in Article 22, which also applies to legal public entities, and the language in Article 141.3 that allows for the creation of groupings of municipalities distinct from provinces. This freedom of association was significantly strengthened when Spain ratified the European Charter of Local Self-Government in February 1989. Article 10.1 of this agreement states that "Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest".

The 1985 Local Government Framework Law builds upon these precepts and recognises commonwealths of municipalities as local entities. Article 3.2 (d) states that municipalities may exercise their right to "associate with other municipalities in commonwealths in order to join together for the purposes of carrying out tasks and services for which they are responsible". Elsewhere, Article 44 grants them status as legal entities and endows them with the capacity to carry out their specified tasks, all under the legal auspices of individual statutes that are subject to the approval of the city councils involved.

These commonwealths of municipalities are contingent local entities, and as such they feature a series of institutional and structural characteristics that have caused Spanish municipalities to frequently make use of them to offer services. There are now 983[8] such entities in the country. Some of the defining characteristics are listed here:

- Commonwealths are the result of voluntary associations that arise from the willingness of municipalities to take part.
- Unlike comarcas and metropolitan areas, these organisations are flexible in terms of their creation and elimination, which can be accomplished without autonomous community legislation.
- As these entities are created through association, they are by definition endowed with the power to organise themselves, in line with the very concept of local self-government guaranteed by the Constitution.
- These local entities are legally recognised bodies, independent of and distinct from the municipalities from which they are formed. This implies the existence of separate governmental structures, as well as of a budget distinct from those of the member municipalities.
- They are entrusted with a series of tasks, such as the provision of services and the carrying out of public works. However, they remain flexible to the extent that their founding objectives can be expanded or reduced through the modification of their statutes.

d) Sub-municipal territorial entities

Law 27/2013 on the rationalisation and sustainability of local administration contained a modification of the older provisions of Article 3 of the LBRL with the effect of eliminating sub-municipal territorial entities from the list of local authorities. The legal

status of these bodies was therefore modified as they were no longer considered to have their own independent legal personalities, but instead were defined as separately managed branches of the larger municipal government. This legislative measure was ratified by the Constitutional Court in a decision criticised by municipal governments.

The practical consequences of this change are outlined in an explanatory note written by the Ministry of the Presidency and Territorial Administration for the purposes of explaining the content of the local government reform law. Under Law 27/2013 on the rationalisation and sustainability of local government, sub-municipal territorial entities can now be created only as decentralised agencies of the central municipal government, and do not have the status of independent legal entity.[9] The entities that already existed prior to 31 December 2013 retain their status as local entities with independent legal status, but must present their accounts to the state and the autonomous community or face the possibility of being dissolved. The country currently has 3 170 sub-municipal local entities with independent legal status distributed among the autonomous communities.[10]

Infra-municipalism

The map of Spanish municipalities shows a large degree of fragmentation, which indicates that Spain is a country of small towns, at least in terms of population. As already mentioned, the data show that:

- Of Spain's current 8 124 municipalities, 6 899, or 85%, have fewer than 5 000 inhabitants.
- Some 877 municipalities, or 10.81% of the country's towns, have populations of between 5 000 and 20 000.
- The remaining 339 municipalities are home to over 20 000 people, which are further broken down into the following population ranges:
  - 207 with between 20 000 and 50 000 inhabitants
  - 74 with between 50 001 and 100 000 inhabitants
  - 56 with over 100 001 inhabitants
  - 2 with over 1 million inhabitants.
- In short, 95.81% of Spanish municipalities have fewer than 20 000 inhabitants, and only 4.19% have more. In addition, 5 892 municipalities, or 72.62% of the total, have fewer than 2 000 inhabitants.

This leads to the conclusion that most Spanish municipalities are local entities with limited capacity to manage their own affairs as they fail to meet one of the criteria for the granting of power to local authorities established in Article 2 of Law 7/1985 on the Framework of Local Government, passed on 2 April.

Several contradictory suggestions have been made as to how to deal with this fragmented municipal map. Some are in favour of maintaining the current number of municipalities and argue for a broad interpretation of the democratic principle. Whereas others have proposed a drastic reduction of the number of local governments and appeal to the constitutional principle of effective administrative organisation.

The provisions of Articles 137, 140 and 149.18 of the Constitution grant the state the power to regulate its own structure. These passages formed the constitutional basis for

Article 13.3 of the LBRL, which outlined measures designed to promote the merging of municipalities. However, these measures have yet to be applied throughout the more than two decades that this legislation on local government has been in force. The same applies to the power granted to the autonomous communities under Article 148.1-2(a) of the Constitution. With the exception of the thorough analysis of the status of municipalities in Catalonia conducted in 2001 and published in the Roca Report (whose proposals were met with vehement rejection), the autonomous communities have failed to carry out a single effective measure to reform their territorial structure.

Inter-municipality

In light of the data on infra-municipalism (the existence of local governments in very small towns) and the tendency to maintain the number of municipalities, some have argued for a need to promote ways for municipalities to join together in associations in order to better carry out their responsibilities and serve their local communities. The aim here would be to make use of certain institutional instruments, including those that are flexible (such as consortia) and others that arise from municipalities' authority to form organisations (such as commonwealths) to help meet citizens' basic needs, regardless of the specific territory in which they reside.

Beyond these relationships between local governments, an inter-municipality can take on still other forms, such as a province, which is explicitly referenced in the Spanish Constitution. The constitutional structure of provinces guarantees the presence of an intermediate entity in all autonomous communities that have more than a single province. The relationship between municipalities and provinces does not follow a single, uniform pattern. The realities of public administration in Spain have given rise to the following range of models for these relationships:

- The standard model for autonomous communities with more than province.
- Autonomous communities with a single province in which the usual functions of provincial councils are carried out by the autonomous community governments.
- The Basque Country model, where the county councils have special charters and their own distinct legal status, founded on the first additional provision in the Spanish Constitution.
- The model in the autonomous community of Navarra, which operates in a similar fashion to that of the Basque Country.
- The models of the islands, with island councils that are distinct from provincial councils. This was first underlined in the case of the Balearic Island councils, with the passage in 2000 of the Island Council Act and later with the new Autonomy Statue for the Balearic Islands.

There are differences in terms of public administration between the various autonomous communities. They vary in the strength of their provinces and their governing bodies, provincial councils. For example, the Catalan *vegueries*, the region's traditional administrative jurisdictions, which date from the Middle Ages and whose borders were ratified by a Constitutional Court decision on 28 June 2010. Another example is the expansion of the system of *comarcas* to cover the whole of the territory of the autonomous community of Aragon.

This constitutional model of territorial division of power has brought about a dynamic in which the relationship between autonomous communities and provincial councils can sometimes be a challenge. For example:

- Some autonomous communities have legislation in place to transfer power and financing from their deputation to the autonomous community government.
- A broad interpretation has been made of the co-ordination of activities of the autonomous communities regarding provincial responsibilities.
- With few exceptions, the autonomous communities have made use of the legal instruments at their disposal to devolve powers to their provincial councils.

In addition to the sources of conflict highlighted above, the recent economic crisis has sparked numerous calls for the elimination of the provincial councils in order to cut government spending. It is clear that this debate is far from resolved, and it is impossible to predict its outcome. There is no doubt, however, that it can only be successfully managed with the right attitude of reserved reflection.

Regulations applied to local government

The Constitution

The Spanish Constitution devotes a small number of articles to local government. In addition to the above-mentioned Article 137, Article 140 establishes the following regulations for municipalities:

> *"The Constitution guarantees the autonomy of the municipalities, which shall enjoy full legal personality. Their government and administration shall be incumbent on their respective Town Councils, consisting of Mayors and Councillors. The Councillors shall be elected by the residents of the municipalities by universal, equal, free and secret suffrage, in the manner laid down by the law. The Mayors shall be elected by ten Councillors or by the residents. The law shall regulate the terms under which an open council system shall be applicable."*

Article 141.1 refers to the province, defined here as "a local entity, with its own legal personality, determined by the grouping of municipalities and by territorial division, in order to carry out the activities of the State." Perhaps in order to ensure the stability of the provincial borders, the Article goes on to say that: "any alteration of the provincial boundaries must be approved by the *Cortes Generales* by means of an organic law." Section 2 of this same Article provides that "the government and autonomous administration of the provinces shall be entrusted to Provincial Councils or other Corporations that are representative in character." Section 4 establishes that "in the archipelagos, the islands shall also have their own government in the form of Councils." Meanwhile, Section 3 of the Article allows for the creation of "groups of municipalities other than provinces", which, as explored below, makes possible the formation of super-municipal entities, such as *comarcas*.

Finally, Article 148.1 lists the following among the powers that can be assumed by autonomous communities: "changes in the municipal boundaries within their territory and, in general, the functions appertaining to the State Administration regarding local Corporations, whose transfer may be authorised by legislation on local government".

National legislation

Constitutional jurisprudence states that the tasks of the legislator in the Spanish parliament regarding local government are twofold. First, the legislature must specify "the essential content of local self-government, as explicitly guaranteed under Article 137 of the Spanish Constitution" (STC 148/1991). Second, the parliament is endowed with the power to expand or deepen this "Constitutionally required content" of local self-government by incorporating additional guarantees. The courts have observed that "beyond this minimum content, local self-government is a concept imbued with legal content and thus one that allows for multiple conceptions, all of them valid as long as they respect this institutional guarantee" (STC 46/1992, F.J.2º).

The dual nature of the legislature's duties regarding the laws affecting local government is further explored in Constitutional Court decisions 159/2001 and 240/2006. Here, the Court held that the law on local government:

> *"…may, a priori, contain on the one hand the defining characteristics of local self-government (giving form to the provisions in Article 137, 140 and 141 of the Spanish Constitution, while on the other hand providing legal regulations on the functioning, organisation and structure (among other issues) with regard to local entities. The only elements of local self-government that are explicitly guaranteed by the Constitution can be found in those provisions of the LBRL that are wholly founded upon the Constitution's Articles 137, 140 and 141, with the Law merely acting to make manifest these founding principles. Meanwhile, most of the provisions of the LBRL falls outside the purview of this institutionally guaranteed core, with these sections of the law finding their legal justification in Article 149.1.18(a) of the Constitution, making them distinct from a Constitutional and structural perspective."*

The LBRL operates under Article 149.1.18 of the Spanish Constitution to regulate the structure, functioning and powers of local governments. This law forms the basis for local authority throughout the country, along with the Merged Text on Local Self-government. The legislation that governs local elections, as well as issues regarding no confidence votes on the local level, is under the Organic Law on Electoral Regime (LOREG, Titles I, III, IV and V).

The predominant legislation in the economic and financial sphere is Royal Decree 2/2004, passed on 5 March, which ratified the merged text of the law that regulates local government treasuries. Also relevant in this area are an extensive series of other regulations that touch upon this issue, including: the law on budgetary stability, Law 18/2001, passed on 12 December of that year; Royal Decree 835/2003, issued on 27 June, which regulates the national government's contributions to the investments made by local authorities; Royal Legislative Decree 1/2004, of 5 March, which granted approval to the Merged Text of the Real Estate Registry Law; Order EHA/4040/2004, of 23 November, which approved the basic guidelines for local government accounting; and Order EHA/4042/2004, also of 23 November, which approved the guidelines for the simplified model of local government accounting.

Issues such as legal reform, contracting, management of public assets, and public employment are provided for within the framework of European Law, the Constitutional distribution of powers and the legal evolution and development of the autonomous communities. Among the specific Spanish laws that are based on this foundation are Law 30/1992, of 26 November, on the legal framework for public administration and common

administrative procedure; Law 33/2003, of 3 November, on the management of assets on the part of the public administration; Law 30/2007, of 30 October, on public sector contracting; and Law 7/2007, the basic statute governing public employment, among others.

Autonomous community legislation

In the statutory realm, the most recent series of autonomy statues have been characterised by the large degree of attention they pay to the regulation of "local administrations", "local government", etc. To a greater or lesser extent, the autonomy statutes of the Valencian Community, Catalonia, Andalusia, the Balearic Islands and Castile and León all go into some detail when discussing their powers regarding local governments.

This choice of autonomous communities is the result of a series of factors, including the increasingly complex nature of local regulations, the lack of legal means to defend local self-government, and a deficit regarding the participation of local authorities in the decision-making processes of autonomous communities. In recent years, legal scholars have argued for what has come to be colloquially referred to as the "internalisation" of local authority. At its heart, this doctrinal debate is driven by disagreements as to the proper role to be played by the central government legislature in shaping local government and in defining the legal status of local entities, and especially municipalities, in Spain.

Along these lines, the Constitutional Court issued decision 31/2010, of 28 June, which addressed a challenge to the constitutionality of Catalonia's Autonomy Statute. In this decision, the Court placed an emphasis on the "twofold nature of local authority". In practical terms, the Court found that:

> *"…no objection can be made in principle to the inclusion within the Autonomy Statute of an autonomous community, with its role as a foundational institutional law, of fundamental outlines or essential regulations that bind the autonomous community legislature in terms of activities regarding local authorities within the territory of said autonomous community, provided that any such measures are in compliance with statutory provisions, including of course the basic powers reserved for the central government in this area stemming from Article 149.1.18 of the Spanish Constitution, to the extent to which the expression 'the foundations of the legal framework of the public administration' includes local authorities."*

The Court then adds that this leads to the conclusion that it is difficult to argue for the end of the twofold nature of local authority, given that it arises from "the concurrent activities of the central government and the autonomous communities" (Constitutional Court Decision 84/1982, 23 December, F.J.4), such that "in addition to the direct relationship between the central government and local authorities, there is also a relationship, one that is even more natural and closer, between local authorities and their corresponding autonomous communities" (Constitutional Court Decision 331/1993, 12 November, F.J.3). It is inevitable that this situation of concurrent activity is maintained to the extent that the powers exercised by autonomous communities over local authority must comply with the power reserved for the central government in this area under the Spanish Constitution. Thus, any regulation of local authority provided for by autonomy statutes cannot be understood to come at the expense of the relationships that the central government may legitimately establish with all local governments (F.J.36).

The individual autonomous communities exercise their powers in this area through their own laws on local government, which complement the national framework, the LBRL and help ensure that its provisions are carried out. Nearly all of the autonomous communities have their own laws on local government. The exceptions are Asturias and Cantabria, where legislation on local issues can be found in a number of sectoral laws that regulate a range of areas of administrative activities, such as the environment, urban planning, and housing.

Local regulations

The constitutional basis for the regulations that can be issued by local governments can be found in the guarantee of local self-government in Article 137, which is given full expression in Article 4 of the LBRL, the section touching on regulatory powers and self-organisation. There are three key manifestations of this power. First, organic regulations shape the functioning and structure of local governments. Second, local ordinances aim to regulate areas that fall under local authority, as well as local economic and financial matters. Finally, local regulations govern the management of public services for which local authorities are responsible.

It should also be noted that this issue of local regulatory authority has in the past few years taken on a central role in the debate on inter-governmental and intra-governmental relations. Many of the local government reform processes that have been undertaken are intended to confront this issue, as is apparent in the publication entitled White book on the Local Governments reform in Spain (*Libro Blanco para la reforma del Gobierno Local en España).*

The electoral system

Municipal elections

Local elections in Spain are held every four years, using a system in which each municipality is a single electoral district and the number of council members is determined by population, as follows:

City councillors	
Up to 100 residents	3
From 101 to 250 residents	5
From 251 to 1 000	7
From 1 001 to 2 000	9
From 2 001 to 5 000	11
From 5 001 to 10 000	13
From 10 001 to 20 000	17
From 20 001 to 50 000	21
From 50 001 to 100 000	25

In cities with more than 100 001 inhabitants, another council member is added for each additional 100 000 residents, or fraction thereof. One more council seat is included when this yields an even number. The right to active suffrage in municipal elections can be exercised by:

- Spanish adults provided that they are listed on the current electoral census. This rule is subject to three exceptions:
  - Those who have been convicted in a final judicial decision wherein the main or an additional sanction consists of the loss of voting rights during the period of the sentence.
  - Those who have been declared incompetent by a final judicial decision, provided that said decision explicitly states that the incompetence extends to the right to vote.
  - Patients committed to psychiatric hospitals by judicial decree, during the period of time in which they are committed, provided that the judge's ruling explicitly declares them incompetent to exercise the right to vote.
- Residents in Spain whose countries of origin allow their Spanish residents to vote in similar elections, under the terms of a treaty.
- All residents in Spain who are not Spanish citizens but who:
  - Are citizens of the European Union under the terms of Paragraph 2 of Section 1 of Article 8 of the European Union Treaty.
  - Meet all the requirements to become voters under Organic Law 5/1985, of 19 June, on Spain's general electoral framework, and express their desire to exercise the right of active suffrage in Spain.

The following individuals are endowed with the right to passive suffrage in Spanish municipal elections:

- Spanish adults who are of voting age and are not subject to any of the causes of ineligibility set out in Chapter II of Section I of Organic Law 5/1985, of 19 June, on the general electoral regime.
- All residents in Spain who are not Spanish citizens but who:
  - Are citizens of the European Union under the terms of Paragraph 2 of Section 1 of Article 8 of the European Union Treaty, or are citizens of countries that provide their Spanish residents with the right to passive suffrage in their municipal elections under the terms of a treaty.
  - Meet the eligibility requirements under law for Spanish voters.
  - Have not been stripped of the right to passive suffrage in their countries of origin.

Provincial elections

The number council members that correspond to each provincial council is determined by the population of the province, according to the following criteria:

Members	
Up to 500 000 residents	25
From 500 001 to 1 000 000	27
From 1 000 001 to 3 500 000	31
Over 3 500 001	51

When the city councils of the province have been sworn in, the Regional Electoral Board immediately moves to formulate a list of all the political parties, coalitions, federations and other groups that have obtained at least one seat in any jurisdiction. These groups are ranked in order of total votes received.

When this has been done, the Board then assigns seats to parties, coalitions, federations and other groups that have obtained representation by applying the procedure set out in Organic Law 5/1985, of June 19, on the general electoral regime. These seats are assigned according to the number of votes obtained by each political group or other grouping of electors.

The municipal and provincial electoral systems have remained largely unchanged since 1985. However, there have been some proposals to move towards direct mayoral elections by instituting a system with two rounds, similar to the one used in France. There have also been suggestions that the indirect election of provincial council members could be replaced by direct election by citizens. However, these proposals only have minority support, and are yet to be taken up in serious legal reform efforts.

The institutional structure of municipalities and provinces

The organisation of municipalities

In the wake of the reform of the LBRL brought about by the Local Government Modernisation Law 57/2003, of 16 December, there are three possible types of local government: 1) cities subject to the legal regime for municipalities considered to be of large population; 2) municipalities subject to the standard legal regime; and 3) those that are subject to the open council legal regime.

Municipalities with large populations

The "Legal Regime for Municipalities with Large Populations" (Article 121.1 of the LBRL) includes the following categories or types of municipalities:

- Directly, under the provisions of the LBRL itself: municipalities with over 250 000 inhabitants, as well as those provincial capitals that have over 175 000 inhabitants.
- Via an act of the corresponding legislative assembly, at the request of the city council in question: applicable to municipalities that are provincial capitals, autonomous community capitals or the home of autonomous community institutions, as well as those with a population of more than 75 000 inhabitants and that display special economic, social, historic, or cultural circumstances.

Table B.1 describes the list of Municipalities.

Table B.1. List of municipalities with large populations

Autonomous communities	Municipalities with populations over 250 000
Andalusia	Córdoba, Málaga, Seville
Aragon	Zaragoza
Asturias	Gijón
The Balearic Islands	Palma
The Canary Islands	Las Palmas de Gran Canaria
Castile and León	Valladolid
Catalonia	Hospitalet de Llobregat
Galicia	Vigo
Murcia	Murcia
The Basque Country	Bilbao
The Valencian Community	Alicante, Valencia
	Provincial capitals with populations of over 175 000
Andalusia	Almería, Granada
Asturias	Oviedo
Canary Islands	Santa Cruz de Tenerife
Cantabria	Santander
Castile and León	Burgos
Galicia	A Coruña
Navarra	Pamplona/Iruña
The Basque Country	Vitoria/Gasteiz, Donostia/San Sebastián
	Provincial capitals, autonomous community capitals or the homes of autonomous community institutions
Andalusia	*Cádiz, Huelva, Jaén,*
Aragon	*Huesca, Teruel*
Castilla la Mancha	Albacete, Ciudad Real, Cuenca, Guadalajara, Toledo
Castille and León	*Avila, León, Palencia, Salamanca, Segovia, Soria, Zamora*
Catalonia	*Girona, Lleida, Tarragona*
Extremadura	Mérida, *Badajoz, Cáceres,*
Galicia	Santiago de Compostela, Lugo, Orense, Pontevedra
Murcia	Cartagena
La Rioja	Logroño
Valencian Community	Castellón de la Plana
	Municipalities with populations of more than 75 000 inhabitants, and that display special economic, social, historic, or cultural circumstances

Table B.1. List of municipalities with large populations *(cont.)*

Autonomous communities	Municipalities with populations over 250 000
Andalusia	Jerez de la Frontera, Marbella, Vélez-Málaga, *El Ejido, Roquetas de Mar, Algeciras, Chiclana de la Frontera, El Puerto de Santa María, San Fernando, Mijas, Dos Hermanas*
Asturias	*Avilés*
The Canary Islands	Telde, San Cristóbal de la Laguna, *Arona*
Castilla La Mancha	Talavera de la Reina
Catalonia	*Badalona, Cornellá de Llobregat, Manresa, Mataró, Sabadell, Sant Boi de Llobregat, Sant Cugat del Vallés, Santa Coloma de Gramenet, Terrasa, Reus*
Galicia	Ferrol
Community of Madrid	Alcalá de Henares, Alcobendas, Alcorcón, Fuenlabrada, Getafe, Leganés, Móstoles, Parla, Pozuelo de Alarcón, Torrejón de Ardoz, *Coslada, Las Rozas de Madrid, San Sebastián de los Reyes*
Murcia	Lorca
The Basque Country	*Barakaldo, Getxo*
Valencian Community	Elche, Orihuela, Torrevieja, Gandía, Torrent

Note: The municipalities that appear in *italics* meet the requirements under Law 7/1985, of 2 April, The Local Government Framework Law, to be considered municipalities with large populations, but they have yet to be granted that status, either because they have not begun the corresponding process or because they have yet to complete it.

Source: INE (n.d.), National Institute of Statistics, www.ine.es.

Governmental bodies

Municipalities with large populations have the following governmental bodies: the city council, the mayor, deputy mayors and the local government board. Their powers are as follows:

The city council

The city council is made up of the mayor and the rest of the council members, and plays a role as the supreme political body representing citizens in local government. It is presided over by the mayor, who may delegate this responsibility to another council member when he or she deems it necessary. The city council may form committees, which are made up of council members selected by political groups in numbers that are proportional to each group's percentage of seats on the council. These committees carry out studies, issue reports and offer guidance on issues up for debate before the council. Provided that they are delegated with this authority by the council, they may also carry out tasks regarding the approval and modification of city ordinances and regulations (just as committees in the Spanish parliament are able to pass certain legislation). Committees may also be empowered to take action in the management of public services and in the creation of public companies, among other areas.

The mayor

The mayor is the supreme representative of the municipality and exercises a series of functions and powers of a strictly political nature. These duties include the political leadership of the municipal government and public administration, the establishment of guidelines for government activity, the taking of steps to ensure government continuity,

the naming and termination of lieutenant mayors, and the publication and enforcement of municipal measures and agreements.

Deputy mayors

They are nominated and can be freely terminated by the mayor; they are chosen from among the ranks of council members. They may also stand in for the mayor in case of vacancy, absence or illness.

The local government board

This body is headed by the mayor and works with the mayor in tasks of political management. One controversial new element of the regulations applied to these bodies is the ability of the mayor to name individuals to the board who are not council members. Local government boards therefore seem to have taken on a character similar to central government cabinets, where ministers are often not members of parliament.

The Spanish legislature enacted this change to local government in order to remake these boards in the image of institutions that exist at higher levels of government (the autonomous community and central governments). The idea was for the board to report as a whole to the city council. For this purpose, the role of board secretary was created. This position must be occupied by a council member, whose tasks include drafting minutes for board meetings and the certification of agreements.

To even further underline the parliamentary nature of local government, the government board is endowed with a lengthy list of executive and administrative functions. Some examples of these tasks include the approval of proposed ordinances and regulations, the approval of budget proposals, the granting of licenses, the approval of job descriptions, and the payment of public employees.

Districts

Districts are established as decentralised public management bodies whose purpose is to improve the management of public affairs and to encourage and further develop processes of citizen participation in municipal issues. However, municipal governments remain single legal entities and are centrally managed. Council members serve as district presidents and are able to use a small percentage of the council's financial resources.

Administrative structure

Among the most noteworthy elements of the regime governing municipalities with large populations is a requirement that has been in place since the modification made to Title X of the Local Government Framework Law via Law 57/2003, of 16 December. Under this provision, municipalities subject to this regime must create a complex series of interlocking institutional bodies, including the following:

- A public legal counselling service.
- A city council for social affairs.
- A body tasked with defending the rights of local residents.
- A body responsible for economic, financial and budgetary issues.
- A body responsible for tax issues.
- A body responsible for internal auditing.

- A body responsible for addressing complaints of an economic or administrative nature.

Standard regime municipalities

Municipalities under the standard regime are subject to a series of regulations:

- The mayor, deputy mayor and city council must exist in all municipal governments.
- The local government board exists in municipalities with populations of over 5 000. This body may also exist in smaller towns as provided for by their respective organic regulations or agreed upon by their city councils.
- Other government bodies, which complement those mentioned above, are established and regulated by the municipalities themselves via their individual organic regulations. Also included here would be any body established under the corresponding autonomous community laws on local authority that may touch upon the creation of organisations in addition to those identified in the LBRL. Special attention was paid to this autonomous community power in the process of the reform of the autonomy statutes, as illustrated by Article 160.1(e) of the Catalan Autonomy Statute, and Article 60.1(e) of the Statute for Andalusia.

Government bodies and their powers

The city council

The mayor heads the city council, which is made up of all the council members, acts as a budgetary body, and exercises oversight of the mayor and his or her collaborators. The council acts in matters that require a quorum or a supermajority, and is also responsible for debating and voting on motions of no confidence in the mayor, should they be put forward.

The government board

This board is made up of the mayor and a number of council members. It is not to exceed one third of the total number of members. They are named and may be terminated by the mayor, upon notification of the council as a whole.

The board's duties consist of supporting the mayor in carrying out his or her responsibilities. Some of these responsibilities may be delegated to the board.

Deputy mayors

They replace the mayor when the mayor's office is left vacant or when the mayor is absent or ill, with the order in which they were named determining the order of succession. The mayor may freely name and replace deputy mayors, choosing from among the members of the board or from among the members of the council if no such board exists.

The mayor

The mayor is the central figure in Spain's current municipal government scheme. He or she acts as the president of the corresponding local government and is elected by the members of the council under the terms set out in the Organic Law on the General Electoral Regime. Current legislation allows for the termination of a mayor through a motion of no confidence, as long as an absolute majority of council members vote in

favour of the motion. Because of the key nature of certain municipal government activities, a no confidence vote can also be proposed in connection with the passage or modification of the municipality's annual budget, organic regulations, fiscal ordinances or measures that bring an end to the local processing of zoning instruments.

The reforms were instituted under Law 11/1999, of 21 April; and Law 57/2003, of 16 December, and served to significantly strengthen the role of the mayor, making this figure the central element of municipal government activity. The office is endowed with a series of important powers, and is also assumed to have all other powers, whether of an administrative or a political nature, which are not explicitly assigned to other municipal bodies. With this in mind, and although it may seem like a paradox, it can be observed that in municipalities under the standard regime, the mayor takes on a greater role than in municipalities with large populations.

The open council regime

This regime is a specific instance of direct democracy in which all the residents of a municipality serve as members of a resident assembly (Article 140 CE).

The general norms that apply to this sort of arrangement can be found in Article 29 of the LBRL, which allows for this unusual governmental and administrative regime in municipalities that traditionally and voluntarily employ it, and where such an arrangement is desirable due to geographic location, the requirements of improved public management, or other circumstances. The tasks of local government and administration are the responsibility of the mayor and the resident assembly, which are allowed to operate in accordance with local practices, customs and traditions. Otherwise, they are subject to the provisions of the LBRL and the applicable autonomous community legislation on local government.

Provincial governmental structure

The provincial council is composed of the president and the provincial council members. The government board is headed by the president and a number of council members (not exceeding one third of the total). These members are freely named by the president, who may also replace them at will.

The provincial president is subject to the same rules as the mayors of municipalities under the standard regime, including executive functions, how the president is chosen and terminated, and the mechanisms for no confidence votes.

Vice presidents replace the president when the president's office is left vacant or when the president is absent or ill, with the order in which they were named determining the order of succession. These vice presidents are chosen at the discretion of the president from among the members of the government board.

There is a specific provision in the case of the islands. Each of the Canary Islands features one of the governmental and administrative bodies known as *Cabildos*. The archipelago also has Inter-island provincial commonwealths, which act as instruments for the representation and expression of the interests of the provinces, as established in Article 41 of the LBRL.

In the Balearic Islands there are Island Councils, which are subject to the same dictates under Article 41 of the LBRL as provincial councils in other autonomous communities.

Local government powers

The legal framework governing local government power was subjected to new regulations through the local regime reforms instituted under a measure for the rationalisation and sustainability of local authorities, Law 27/2013, of 27 December.

Below is a summary of the general framework of local government power:

- Section 1 of Article 25 of the LBRL contains a general clause that is phrased in similar terms to those of the original precept. This clause is somewhat more restrictive, however, in that it limits the possibilities for local authorities to carry out activities and offer public services that contribute to meeting residents' needs regarding the terms set out in Article 25 itself.
- Section 2 of Article 25 of the same law features a list of areas for which the Spanish legislature and the autonomous community legislatures are charged with identifying powers to be set aside for municipalities. This new list no longer features some issues that had previously been included, such as consumer defence. This means that municipalities can only act regarding these issues under the following circumstances:
  - When the central government or the corresponding autonomous community government delegates them such responsibility under the terms of Articles 7.3 and 27 of the LBRL.
  - When these activities do not put the overall financial sustainability of the municipal treasury as a whole at risk; when the activity does not amount to an instance of simultaneous execution of the same public service with another part of the public administration; and when the corresponding binding reports are gathered from the relevant administrative body in the area with financial control over the area of new activity, as set out in Article 7.4 of the LBRL.

Articles 148 and 149 of the Spanish Constitution set out the model of the distribution of powers. With these provisions in mind, it is evident that there is nothing to stop autonomous communities in their own sectoral legislation from identifying certain powers that can be set aside for municipalities among the legislative powers reserved for them in their respective autonomy statutes (Sections 1 and 2 of Article 7 of the LBRL).

- Sections 3, 4 and 5 of Article 25 of the LBRL provide municipalities with the following guarantees:
  - The principle of legal reservation, with the legislature having the sole authority to attribute power to municipalities.
  - A mandate for the sectoral, Spanish and autonomous legislatures that requires them, when it is time, to attribute responsibilities to municipalities and to assess the feasibility of providing services at a local level, while bearing in mind the principles of decentralisation, efficiency, stability and financial sustainability.
  - An additional mandate requiring sectoral legislators to include economic reports in any legislation that determines local responsibilities.
  - The requirement that said laws provide for the granting of sufficient resources to guarantee the financial solvency of the municipalities, as long as this does not imply increased expenditure on the part of the public administration.

  - The requirement placed upon sectoral laws to determine the precise municipal power to which they refer, thus guaranteeing that the same power is not also attributed to another part of the public administration, in order to avoid redundancies in powers.

- There are two new elements in the legal regime governing the delegation of powers, as set out in Article 27:
  - The new law includes a guarantee that powers must be delegated when doing so represents an improvement in the efficiency of public management, contributes to eliminating redundancies and is in compliance with legislation on budgetary stability and financial sustainability.
  - The law also links the delegation of powers with the requirement to provide the financing necessary to carry out the activity or service in question.
- Article 7.4 recognises that local bodies can exercise powers beyond those which normally pertain to them or that have been delegated to them, provided that a series of material and procedural requirements are met. The material requirements are as follows:
  - The financial sustainability of the overall municipal treasury, as defined by the provisions of legislation on budgetary stability and financial sustainability, is not to be put at risk.
  - The activity may not amount to an instance of simultaneous execution of the same public service with another part of the public administration.

The procedural requirements consist of the need to issue a series of binding reports prior to undertaking the activity. This is to be done as follows:

- A mandatory, binding report must be issued by the part of the public administration responsible for the area. This report must certify the absence of redundancies.
- A mandatory, binding financial sustainability report must be issued by the part of the administration with responsibility for the financial oversight of the area addressed by the new powers. This report must also be issued prior to the undertaking of any activity, as indicted above. In the case of the autonomous communities of Andalusia, Aragon, Asturias, Castile and León, Galicia, Navarra, the Basque Country, La Rioja and the Valencian Community, the drafting of this report is the responsibility of the autonomous government ministry responsible for the financial oversight of local bodies. For municipalities in the rest of the autonomous communities, the report is drafted by the Ministry of Finance and Public Administration of the Spanish government.

The relationship between municipalities and provinces

Inter-governmental relationships, or relationships between the various levels of government, are a characteristic part of the workings of composite states. These relationships are seen as the foundation of modern public governance and are based upon the principles of collaboration, co-operation and co-ordination.

By way of definition, the principle of co-operation can be said to be at work when various parts of the public administration jointly exercise their powers in spheres of

common interest. In Spain, much more than in other European states, references are often made to the phenomenon of "co-operative federalism". This expression conveys the fact that the defining characteristic of the principle of co-operation is that it involves the "joint exercise of powers" by various parts of the administration to resolve a common problem.

In general terms, the defining characteristics of the principle of co-operation are twofold. First, it implies a will to co-operate, as it involves an accord reached between two or more parts of the administration of their own free will. This does not mean, however, that there are not sometimes instances of forced co-operation. Second, it implies the inalterable nature of the control and exercise of the powers of the parts of the public administration that have entered into the relationship.

Based upon this premise, and upon the phenomenon of infra-municipalism described above, in Spain there is an ever more central role to be played by the mechanisms of co-operation between the country's provincial governments and the smaller municipalities within their territories. Thus, the theoretical concept of "local self-government" as the "power of participation" of local bodies in decisions on issues that are relevant to their interests has had certain practical implications. Since the passage in 1985 of the law regulating the structures of local government, the influence of provincial councils has expanded in two distinct directions. First, there has been a new guarantee of a core area of minimum guaranteed powers reserved for provincial governments. Second, there has been recognition of the provincial government's right to act on issues that directly affect its interests.

By way of further definition, part of this "core area of minimum guaranteed powers" set aside for the provinces consists of the ability to lend support to the municipalities located in their territory. This practice takes the shape of economic co-operation in the carrying out of municipal activities and services. The provincial council contributes in these cases by helping to attain financing or employing its own financial resources.

When the Spanish legislature defined the framework of local government in 1985, the core responsibilities of the province were expressed only in terms of the functions of these governmental bodies. This has meant carrying out tasks where the aim is to support other entities and to co-operate and co-ordinate with them, with special attention paid to smaller municipalities. With this function-oriented design of the powers of provincial governments, legislators have strived to accomplish three different objectives:

1. Provincial councils are the governmental and administrative bodies of their respective councils. As such, they act as the ultimate guarantor that municipalities will provide legally mandated basic services. Provinces achieve this aim by acting to address any deficits in the provision of services to residents. They offer municipalities a range of different kinds of support to ensure that everyone in the province has access to these basic services.
2. Provincial councils also act to guarantee the principles of solidarity and fairness between municipalities. They accomplish this through the implementation of public policies designed to guide the processes of economic and social development in their provinces. These policies tend to be planning oriented and include operational plans, special plans, etc.
3. Provincial governments also engage in the provision of public services on the trans-municipal or trans-county level. They do so by creating and carrying out sectoral policies that address certain municipal issues, with a firm emphasis placed upon improving citizens' quality of life.

Bearing in mind this understanding of the objectives that underlie the granting of certain functional powers to provincial governments, the LBRL endows provincial and island governments with the authority to provide municipalities with legal, economic and technical assistance and co-operation. This applies especially to those with greater economic difficulties or with a lesser capacity for public management. The law also specifies that this co-operative function granted to provincial governments means that they must take steps to guarantee "town clerk and magistrate services to municipalities with less than 1 000 inhabitants".

The powers set aside for provincial governments are more clearly outlined by provisions within the local government law itself. The legislation gives provincial governments the task of guaranteeing that city councils are able to effectively carry out their responsibilities. To this end, provincial councils help municipalities with personnel recruitment and training, although the central and autonomous community governments may also provide support in these areas. Upon the request of municipalities, provinces may also assist municipal governments in handling administrative procedures and in conducting their material and management activities.

Provincial governments' co-operative functions are founded on the legal premises above, and their effects are felt in three different spheres of municipal activity: the legal, technical and economic domains.

- Provincial governments may offer the following kinds of legal co-operation measures:
  - Drafting of legal reports and memos in response to questions posed by municipalities with regard to their areas of responsibility.
  - Representation of municipalities in the province before the court in defence of their assets, rights or interests.
- The technical co-operation instruments that provincial governments have at their disposal are as follows:
  - The ability to carry out projects, studies, processes and inquiries touching on municipal responsibilities, all with the aim of helping to improve the functioning of municipal services.
  - Technical assistance in the drafting of language for legal documents, such as regulations and ordinances.
  - Technical assistance with the process of awarding public contracts.
  - Drafting of advice, legal opinions and technical reports with regard to public works, constructions and services that fall under municipal responsibility or are municipal property.
  - Drafting of technical plans for architectural projects, management and closure of public works and facilities, assessment of the technical, human and economic resources that are available, and conducting of feasibility studies.
  - Technical assistance with regard to classified activities.
  - Appraisals, assessments and the corresponding technical reports.
  - Consulting and technical assistance with regard to the municipal census, and sometimes the regular management of census data by the provincial

government when municipalities lack the necessary technical, economic or management capabilities.

  - Participation of provincial officials in tribunals or assessment committees engaged in selection processes, and the direct supply of candidates for job vacancies when municipal governments cannot find qualified personnel to fill positions.
  - Fielding of requests to nominate magistrates and clerks in disciplinary procedures involving municipal employees, with the exception of national civil servants.
  - Online publication of up-to-date information on zoning and urban planning policies, announcements of the opening of these policies to public comment and any public documents that are relevant to the approval or alteration of these policies in municipalities with fewer than 5 000 inhabitants.
  - Support in the submission of documentation relevant to areas of municipal responsibility to other public agencies.

- Provincial governments also carry out the following economic co-operation activities:
  - Assistance in tax collection services, in the voluntary and executive periods.
  - Assistance in financial management services to municipalities with fewer than 20 000 inhabitants.
  - Economic and financial consulting via response to requests for assistance, communication, informative visits, and the drafting of reports, opinions and, if necessary, the relevant proposals for resolution.
  - Supplying of information with regard to any questions on economic and financial management submitted by municipalities.
  - Training and consultation on accounting practices for members and employees of local governments.
  - Consultancy on the implementation or modification of local taxes or public fees.
  - Calculation of the financial burden to be incurred when requesting loans.
  - Issuing of economic and financial diagnoses.
  - Drafting of financial rationalisation plans.
  - Carrying out of audits.

When the co-operation functions explicitly recognised in tenets of positive law are put into practice, they can then be subdivided into a wide range of actions that provincial governments are empowered to take on behalf of municipalities.

Thus, from a structural and organisational perspective, there are no universally applicable, uniform rules that apply equally to all provincial governments in Spain. Instead, the principles of self-organisation and financial self-sufficiency are fully on display. It is possible to observe a range of different organisational models regarding the services provided by provinces to municipalities. Although they all comply with basic

legislative norms in areas such as contracting and administrative procedure, they vary in terms of the sorts of activities and tasks that they carry out, as can be seen through the examples of the provincial governments of León,[11] Granada[12] and Valencia.[13] This characteristic of the Spanish system has given it a degree of flexibility that has allowed it to be successfully imported to other countries, such as Jordan, which has a multi-layered governmental system and where the municipal level is marked by the geographical dispersion of towns, the concentration of the population in urban areas and the lack of population density in rural areas, and a scarcity of material and bureaucratic resources, etc.

Local government financing

Under Article 142 of the Spanish Constitution, "local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Self-governing Communities". With regard to this precept, and in relation to Article 137 of the Spanish Constitution, the Constitutional Court[14] has found that this self-government is constitutionally protected both in terms of revenue and public spending. This was taken to mean that local governments must have the overall capacity to determine for themselves their priorities when it comes to public spending. Thus, the concept of local self-government includes full control over local revenue, which may not be subjected to any undue restrictions.

It is clear that the constitutional precept quoted above can lead to certain conclusions about the mechanisms of local government financing. Local authorities are able to raise revenue through their own fiscal initiatives, but they also receive a share of their funding from the central and autonomous community governments. Royal Decree 2/2004, of 5 March, represented the approval of the Merged Text of the Local Treasury Law. This piece of legislation deals with local taxation and central government financing of local entities, providing comprehensive regulations on the resources of local entities and on the system of sharing in central government revenue.

The sources of financing for local treasuries can be broken down as follows: revenue gained from assets and other private law sources, and locally collected fiscal revenue (consisting of fees, special contributions, surcharges applied to autonomous community taxes and other locally applied taxes [real estate taxes, economic activity taxes, road taxes, taxes on the appreciation of the value of urban real estate, and building, facilities and construction taxes]).

More specifically, local governments partly receive their share of central government revenue through the transfer of funds collected via central government taxes. The Spanish government distributes the money it has gathered from income taxes, value added taxes and special manufacturing taxes (on products such as beer, wine, fermented drinks, intermediate products and alcohol and alcoholic drinks). These funds are distributed according to the percentages and mathematical formulas set out in the Local Treasury Law. The Spanish government also divides among local authorities their shares of the Complementary Financing Fund.

In addition to the financing mechanisms mentioned above, the central government uses a variety of other instruments to contribute to local budgets. An example is the Spanish National Economic Co-operation Programme for investment in local entities. Operating under the legal authority of Royal Decree 835/2003, of 27 June, later modified by Royal Decree 1293/2005, of 21 October, this programme finances the following

activities: provincial and island co-operation plans for co-operation on local public works and services (whose aim is to collaborate with the creation and improvement of municipal infrastructures, services and facilities); local administration modernisation projects (which are aimed at co-financing local public administration modernisation projects by encouraging the use of information technology in order to improve public management and citizen services and to simplify administrative procedures); and civil society participation projects (whose aim is to bolster the participation of civil society in the improvement of local services).

Other significant sources of investment in local government include the Royal Legislative Decree 9/2008, of 28 November, which created a Nationwide Local Investment Fund and a Special National Fund for the Revitalisation of Local Government and Employment. These funds were provided with a budget of EUR 8 billion, which was to be used to finance urgent activities at the municipal level, with a focus on investments to generate jobs. The Royal Legislative Decree 13/2009, of 26 October, created a Nationwide Employment and Local Sustainability Fund with a budget of EUR 5 billion to be used to finance local government investments in the generation of employment, as well as actions undertaken on a municipal level to contribute to economic, social and environmental sustainability. All of these measures were part of the Spanish government's efforts to combat the economic crisis.

Regarding municipal governments receiving a share of autonomous community tax revenues, despite references (some of which are unambiguous) to this issue in the autonomy statutes, there was no real world precedent for this practice until recently. Only Andalusia has acted in this regard, via the passage of Law 6/2010, of 11 June, which regulates the sharing of local governments in the autonomous community's revenues.

This brief account of the regulatory framework of local government financing in Spain has afforded a glance at the situation on the ground, which has deteriorated in the wake of the 2008 economic crisis. One of the long-standing demands that Spanish municipal governments have made has been for the reform of the model of financing for local authorities that was instituted under Law 39/1988, which regulates local treasuries and remained largely intact when updated in 2004. At the core of the grievances aired by local governments are the "unreserved powers" (*competencias impropias*) and the question of how they are financed. A report on this topic by the local government association, the Spanish Federation of Municipalities and Provinces (Federación Española de Municipios y Provincias -FEMP), estimated that over 30% of the powers exercised by municipalities fall into this category. This means that they are activities and services that should, in theory, be covered by other parts of the public administration, but that in reality are addressed on a local level, even though localities do not receive clear or sufficient financing to carry out these tasks.

The economic crisis has encouraged a new debate regarding the desirability of maintaining the current number of municipalities. The provincial government model has also been called into question, with critics questioning the role of provinces as governmental and administrative bodies, charging that they contribute to the economic deficit.

Notes

1. This report was drafted by Enrique Orduña Prada.
2. See Spanish Constitutional Court decision 111/2016, of 9 June 2016, available at www.boe.es/boe/dias/2016/07/15/pdfs/BOE-A-2016-6839.pdf.
3. www.boe.es/diario_boe/txt.php?id=BOE-A-1991-9704.
4. www.boe.es/diario_boe/txt.php?id=BOA-d-2006-90038.
5. www.boe.es/diario_boe/txt.php?id=DOGC-f-2003-90015.
6. www.boe.es/buscar/act.php?id=BOE-A-2010-14562.
7. www.boe.es/diario_boe/txt.php?id=BOE-A-2001-11816.
8. Local Governments 'Portal, Ministry of the Finance and Civil Service Government of Spain, http://ssweb.seap.minhap.es/REL/.
9. See the document entitled *Nota Explicativa de la reforma local. Ministerio de la Presidencia y para las Administraciones Territoriales, 24 de enero de 2017*, pp. 22-23, www.seat.mpr.gob.es/dms/es/portal/areas/politica_local/regimen_juridico/NOTA-EXPLICATIVA-MODIFICADA-29-04-2016/NOTA%20REFORMA%20LOCAL-27-10-2016.pdf.
10. The Registry of Local Entities. Ministry of the Presidency and Territorial Administration, http://ssweb.seap.minhap.es/REL/.
11. www.dipuleon.es/frontdipuleon/frontDipuleonAction.do?action=viewCategory&categoryName=Presentaci%F3n&id=13944.
12. www.dipgra.es/contenidos/organigrama-asistencia-municipios/.
13. www.dival.es/es/content/asesoramiento-y-asistencia-de-municipios.
14. STC 237/1992 SSTC 109/1998 y 48/2004. Available at the Constitutional Court website, www.tribunalconstitucional.es/es/jurisprudencia/Paginas/default.aspx.

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