Local Self-Government in Spain

ANGEL IGLESIAS & ROBERTO BARBEITO

Abstract In Spain, as in other European countries, local governments face new and complex challenges regarding demands for more and better local democracy, more transparency, expenditure accountability and designing and introducing local public policies as well as offering public services which guarantee the validity of the Welfare State. The present situation of financial austerity and cutbacks in resources means that local autonomy has come to play a vital role in ensuring that local governments are able to satisfy the demands and pressures put upon them. Spain was one of the first countries to ratify the European Charter of Local Autonomy, and its principles have gradually been incorporated in the Spanish legal system. The aim of this work is to explain how those principles have effectively taken shape in Spain since the approval of the 1978 Constitution (Articles 137, 140 and 142 acknowledge local autonomy) up to present day where local autonomy is in the centre of the debate due to the economic crisis and austerity policies which deeply affect the local public sector.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Spain

CORRESPONDENCE ADDRESS: Angel Iglesias, Ph.D., Professor, Roberto Barbeito, Ph.D., Professor, University Rey Juan Carlos, Faculty of Law and Social Sciences, P Artilleros, s/n, 28032 Madrid, Spain, email: angel.iglesias@urjc.es. Roberto Barbeito, Ph.D., Professor, University Rey Juan Carlos, Faculty of Law and Social Sciences, P Artilleros, s/n, 28032 Madrid, Spain, email: roberto.barbeito@urjc.es.

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1 Introduction and history

In the last four decades Spain has undergone an important process of territorial decentralisation which has also led to an increased local autonomy. Therefore, local autonomy in Spain has come to be acknowledged through the approval of the 1978 Constitution and, one decade later, the Spanish State's ratification of the European Charter of Local Autonomy, just a few years after the Law of Bases of the Local Regime (from now on LBRL) was approved in 1985. Even tough Spain was one of the first countries to ratify this Charter, in 1988, the scope of local autonomy is based on legal and historical tradition which have determined its shape. In this context, and not without difficulties and setbacks, important progress has been made in local autonomy in Spain. However, it is still not fully effective as local autonomy depends on local governments interacting with other levels of government, mainly the regional governments of the Autonomous Communities and central government as both possess important decision-making powers regarding local financing and its legal capacity.

Local government in Spain is situated in the country's multilevel and quasi-federal system of governance which is made up of Central Government and 17 Regional Governments (Autonomous Communities). They have been assigned general powers by Central Government and some other specific ones that may be assigned to them by their Autonomous Community's Statute of Autonomy. One of the local government characteristics in Spain is the legal uniformity which has been imposed on settlements in vast areas and heterogeneous in size which vary from millions of inhabitants to just a few dozen. Another peculiar feature of local governments in Spain is the fact that they are composed of two levels, the municipalities and the provinces. In some Autonomous Communities, especially in Catalonia, there is a third level, the shires, which include several municipalities of the same province and are created and function according to autonomic laws.

The two-tier local government system includes, on the one hand, 8.119 municipalities with huge territorial and socio-economic differences in terms of geography, population, transport infrastructure, unemployment, social inequalities and family income, among others; and, on the other hand, 52 provinces which are mainly responsible for coordinating and offering economic and technical support to small municipalities (less than 5,000 inhabitants) which account for 80% of the total number of municipalities. Therefore, in the Spanish local System there is an enormous contrast between a very small number of densely populated municipalities which are constantly growing and a large number of scarcely populated and aging municipalities, most of which are in rural areas. Those small local governments have limited institutional capacity to be able to effectively carry out their general responsibilities as their low financial capacity is not in keeping with their formal levels of autonomy. They therefore strongly depend on higher levels of government and intermunicipal cooperation. Excessive local fragmentation means it is not unusual to find many municipalities whose population is so low that they are unable to provide the minimum services imposed upon them by law. Moreover, in large

metropolitan areas, social and economic problems are not restricted to political and administrative borders and need to be solved through collaboration.

In the European context, local government in Spain belongs to the category of Napoleonic tradition (Kuhlmann/Wollmann, 2014; Bouckaert/Kuhlman, 2016) and has been shaped as time has elapsed by the combination of elements retrieved from previous times and endowed with a new administrative political dimension and other new principles mainly originating from French politics and administration. It is precisely from the first Spanish liberal Constitution in 1812 that all settlements, even the smallest, take the shape of local councils. This decision led to wide spread of democracy to all areas of the State, more so considering that during the Old System, previous to the above-mentioned Constitution, municipal positions were exclusively appointed by the King. This was therefore the reason for very small municipalities existing which, however, do not possess sufficient resources to carry out their duties (Canales & Pérez Guerrero, 2002:15).

As in other European countries, local tradition in Spain goes back to Medieval times. In the eleventh century, most Spanish cities were governed by closed councils composed of some local dignitaries. At first, the mayor, whose main job was to give justice in the name of the King, was elected, although it was a position occupied by one of the neighbors with high economic and social status. However, it was a position which gradually became one that was sold to the local elite in exchange for money for the Crown. During the following centuries, up till the Habsburg dynasty, the sale of municipal positions, together with the appointment of royal servants (correctors) who represented the Crown and with powers to collect taxes, public works, health and safety and security, in fact meant that local power was centralised in favour of the king. This centralisation reached its peak in the eighteenth century, with the Bourbon dynasty reigning in Spain, and it took the French administrative system as a model. This system was in favour of one professionalised administration for the whole the country. With Napoleon's invasion in 1808, this centralised model became widespread and was also adopted by the first Spanish liberal Constitution in 1812. Likewise, the following constitutions reinforced the central executive as opposed to the councils which were given less powers and could be suspended at any time by the central power. The political chief or provincial governor was above the councils and their mayor. The former had direct control of all the municipalities of that province and was directly appointed by the mayors from the municipal areas with least inhabitants. Thus, the mayor was mainly in charge of guaranteeing order and public safety as well as public health and promoting the local economy by creating markets and organising fairs. However, he also had an important political task as he was responsible for organising the elections for the national Parliament and also for guaranteeing results in accordance with the instructions given by the governing party at State level. Precisely a state law in 1845 had gave the Mayor the power to appoint council members, call meetings and establish the order of the day, as well as being responsible for the municipal budget in accordance with the central government's laws and priorities. Equally, he also had the power to appoint and dismiss staff working for the municipal corporation and, as a central government delegate, he could collect

certain taxes, manage municipal properties, including hospitals, hospices and charity homes for the poor. This regime remained practically unaltered until the advent of the Republic in 1934, which promoted local democracy and gave new powers to local governments under federalising principles, for the first time in Modern Spain. However, this change did not last for long as, after the Civil War in 1939 and under Franco´s Dictatorship, a new local regulation came into force and left the local governors with no autonomy. Centralisation was reestablished and the central governor appointed all the members of the commissions in charge of managing local government. Thus, councils and provincial deputations were mere administrative agencies, the mayors were mere representatives of the central administration in the municipality and appointed by central government. In the provincial capitals and all those municipalities with more than 10,000 inhabitants, appointments were made by the Government minister; in all the others, by the respective provincial civil governor, having previously informed the minister. The position of mayor was for an indefinite period and the minister decided when it should be terminated. The other councilors were elected through elections; however, they constituted a democratic simulation. After the end of the dictatorship and at the beginning of the current democratic system, with the legalised political parties, the first democratic elections which took place in Spain in April 1979 were at a local level.

In 1985, when the Law regulating the basis of local government was passed (LBRL), the legal classification of local entities was defined in the Spanish legal system in order to be in line with the Constitution's acknowledgement of local autonomy. This law was of a decentralising nature, giving powers to local governments which, before the 1978 Constitution, had belonged to central government. In the 1990s and the first years of the new century, the aims were to strengthen local autonomy by providing it with additional financial resources and additional powers, as well improving the processes of citizen participation. This took place in a context of economic expansion which lasted until the end of that same decade and therefore thwarted the aspirations of local governments to obtain more financial resources and powers. Thus, the Local Pact, The Law of Large Cities and the White Book for the reform are attempts to restructure local power. These attempts were made by the social democratic and conservative governments which succeeded one another in central power, together with the Spanish Federation of Municipalities and Provinces (FEMP), the Spanish Municipality Association at state level.

This trend was broken in 2013, when, in the context of the Great Recession, the Spanish Central Government established the Law on Sustainability and Rationalisation of Local Government, arguing it in budgetary needs to control the public deficit and debt imposed by the European Union and the financial markets. This law constitutes a sharp regression in the decentralisation process as central government reinforced its control over local governments. By introducing it, the central government notified the European authorities that savings of €9,000 million would be made and contemplated reducing the number of municipalities. It could be thought, moreover, that this law pursued an exemplary effect for public opinion and European authorities, but not effective nor necessary, because the

Local Governments in Spain have in general no problems of deficit nor debt, and its weight in public spending is actually quite small. Therefore, as of this law enforcement, central government took charge of the financial control of local entities and thus reinforced the role of national civil servants to control decisions made by those in local elected positions. In conclusion, this new law aimed at strengthening the mechanisms and tools used by central government to control the local entities' budget and economy, constituting a resource at the service of recentralisation. At the present day, several postulates of this law have been questioned by the Constitutional Court for affecting local autonomy and some of its Articles have even been declared as unconstitutional. So, the future of its development is not clear, nor is the expansion of Local Self-Government in Spain.

2 Constitution and legal foundation for local self-government

The local government system in Spain can be classified within the Napoleonic tradition model, where the local institution has deep constitutional roots (Kersting and Vetter, 2003). As mentioned in the previous epigraph, autonomous local governments did not exist in Spain prior to the 1978 Constitution. Therefore, it is precisely that Constitution which comes to introduce and guarantee local autonomy in Articles 137, 140 and 141 of the Constitution. Moreover, Article 142 of the EU specifies the constitutional guarantee and emphasises that the above-mentioned autonomy must be adequately supported financially. However, what these Articles do is activate a sequence of laws, varying in rank and origin and aimed at defining, shaping, modulating and progressively proclaiming the concept of local autonomy established in the Constitution in such a way that local autonomy is guaranteed. However, the final level of local autonomy will come from the autonomy statutes, international treaties and the laws which define the scope, boundaries and guarantee of local autonomy established in the Constitution.

By having constitutionalised local power in Spain, the issue of resources can be laid before the Constitutional Court by the actors who have been given legal capacity to do so, amongst whom are obviously the very local entities, with the aim of safekeeping local autonomy, as reflected in the 1978 Spanish Constitution, which establishes the State's territorial organisation in Municipalities, Provinces and in whichever Autonomous Communities are constituted. All these Entities enjoy autonomy to manage their respective interests, which is what a representative government does which has been freely elected by its citizens, neighbours from that place. The existence of these territorial entities is guaranteed constitutionally by virtue of it being expressly acknowledged in the mentioned Articles 127, 140 and 141 in the constitutional text, which acknowledges local autonomy, leaving it to be developed by subsequent legislation. This development is carried out by the 1985 Local Government Basis Law. This Law specifies and broadens the constitutional precepts, where local autonomy, in Article 3.1 is defined as the right of local entities to participate in decisions which affect them. The characteristic function of the LBRL has been to lay the foundations for local government (in its basic aspects) always respecting the "minimum standards" of local autonomy established by the

Constitution and labelling the new Autonomous Communities with the highest "standard" levels of local autonomy. The LBRL, which can be considered a Law of local autonomy as it is embedded in the Articles of the Constitution which refer to local autonomy. This embedment has repeatedly been acknowledged by the Spanish legal system being placed in the block of constitutionality. The LBRL's special position does not prevent the Autonomous Communities' Statutes from also legislating on local government since Article 147.2 of the Constitution allows these Statutes to regulate municipal autonomy in their area. Therefore, almost all the 17 Autonomous Communities' Autonomy Statutes contain provisions which affect local governments and, in particular, defend their autonomy. However, the minimum levels of municipal autonomy guaranteed by the Constitution cannot be restricted by the Autonomy Statutes or any other law originating from the Autonomous Community.

Thus, in Spain and from a legal point of view, municipal autonomy is developed and guaranteed by a heterogeneous set of laws, from the Constitution to the different 17 Autonomous Communities' Autonomy Statutes, and the international Treaties which Spain has adhered to, including the European Charter of Local Self Government, as well as local, autonomic and state regulations. Needless to say, all these laws conform to and respect the constitutional guarantee of local autonomy. Apart from that, the definition, concision and guarantee of this autonomy has been subsequently developed by numerous decisions made by the Spanish Constitutional Court which guarantees minimum levels of autonomy which, in any case, can be extended by each Autonomous Communities' Autonomy Statutes. However, this does not only pertain to constitutional law but also ordinary law, together with the former they shape and set the contents of local autonomy established in the Constitution. Above all, they do not permit other public powers to influence the legal system nor management of the municipalities' own interests. In this respect and on some occasions, the constitutional law will give the same treatment to the municipal autonomous order in Article 140 EU as to the local autonomy required by Article 3 of the 1985 European Charter of Local Autonomy. This acknowledgement of local autonomy indicates the power which municipalities have to act legally to defend themselves.

Obviously, the municipal autonomy which acknowledges the previously mentioned set of laws implies an autonomy with legal capacity, thus municipalities have the power to act in all those areas which are considered of local interest. Political autonomy is above the latter autonomy since both municipalities and provinces (the two levels of local government) must be managed by representative authorities elected by citizens and therefore they are responsible to the same degree and scope for political autonomy inherent in a democratic system. The institutional guarantee of local autonomy amounts to a political management capacity to manage and administrate local interest determined by an electoral majority pronouncement which guarantees the existence of a representative government with sufficient autonomy to carry out local public policies adapted to their territorial area. Both these local autonomy elements in Spain will be dealt with in the next epigraph.

Apart from that, an order is inherent in the local autonomy constitutional guarantee which stipulates that all public powers must act favourably in order to preserve and promote local autonomy and this is optimised by granting municipalities maximum capacity to act as long as they use their powers in a way which does not contradict other constitutional principles.

As some author has pointed out (Velasco, 2007), municipal autonomy, which the Constitution guarantees, has a twofold content. On the one hand, each municipality, regardless of size, is guaranteed minimum levels of autonomy and, on the other hand, local governments have the power to act to legally defend their autonomy if it is threatened by other political powers. It is precisely through the constitutional law that the local autonomy concept has been given content, as stipulated in the 1978 Constitution, establishing minimum standards. One of the first has to do with the legislation control which other territorial powers can exercise over the laws and decisions approved at a local level. This however does not imply a position of dependency on or subordination to these very powers. In this way the deliberative power of municipalities in all issues and matters of municipal interest is safeguarded, Thus, if conflict arises with other territorial powers, the constitutional and ordinary law interpret municipal autonomy in the most favourable way for all those matters related to local interest.

A vital element of local autonomy is the availability of financial resources in order to make that autonomy effective. As regards this aspect, the constitution refers to the fact that local governments will have sufficient resources at their disposal. However, they largely depend on transfers from the State and the Autonomous Communities, since, as can be seen in the section related to financial resources, their own resources are very limited. On the other hand, autonomy does exist regarding local governments' ability to spend as, once the budgets have been approved, they have full autonomy to take decisions regarding what the funds are spent on.

As mentioned in the previous epigraph, the approval of the 2013 Law of Sustainability and Rationalisation of Local Administration has an important effect on local autonomy and leads to it being reduced and, for that reason, the Constitutional Court has already pronounced itself regarding several of its precepts which have been annulled. This Law, which is the response from central government to satisfy different requests from the European Union regarding public deficit reduction, is in line with the reform of Article 135 of the Constitution, of a purely economic nature, as well as the Organic Law 2/2012, 27 April, of Financial Sustainability and Budgetary Stability. Its objectives are explained in the reasons given in the following way: "With this aim this reform is laid out to achieve several basic objectives: clarify municipal powers in order to avoid duplicating powers belonging to other Administrations so the principle of one Administration one power is put into effect, rationalise the organisational structure of local Administration in accordance with the principles of efficiency, stability and financial sustainability, guarantee a more rigorous financial and budgetary control and favour private economic initiatives avoiding excessive administrative interventions". The aim therefore is to

reorganise the local system and it affects its powers, supports the merging of municipalities and, above all, it has a recentralising objective which greatly affects municipal autonomy. Due to this situation, numerous appeals of unconstitutionality have been presented to the Constitutional Court which have been resolved opposing what this Law intended and thus reaffirming the municipal autonomy principle.

3 Scope of local self-government

In Spain local governments' powers and responsibilities are implicitly protected by the local autonomy principle supported by the 1978 Constitution. However, the constitutional text does not specify the nature nor the scope of its powers and responsibilities. This scope has been developed through different ordinary laws on local government, and particularly as of 1985, with the approval of the Local Government Basis Law, which, in its original version, contemplated the area of local self government powers in Articles 7, 8, 36, 37 and 38. This law and other subsequent ones related to local government have been delimited, at the same time, by the Autonomous Statutes of different Autonomous Communities (of higher rank), as well as by other sectorial laws approved by the former in areas of powers attributed to them by the Constitution, together with the delimitation set by the Constitutional Court laws. All these laws (which has meant the LBRL text had to be modified on more than 20 occasions) gave local governments (municipalities) relatively ample and clear effective powers, based on the criteria of maximum proximity to citizens. However, these powers have been applied in very different ways depending on the population and territorial size of the municipality, its financial capacity and the Autonomous Community where it is situated. In actual fact, during these years many local governments have experienced a serious problem, that of having to assume responsibility for rendering services through delegation, or complementary ones (to cover voids or emergencies), which come under the legal responsibility of Autonomous Communities or of central Government (amongst these services, some in such relevant areas as education, culture, promoting women, housing, health and protecting the environment). The lack of means to cover these services is due to two main reasons: one, the scarce legal margin possessed by the councils to increase their own resources: the other, cutbacks in financial transfers from the regional and central Government to cover services which, although rendered by the councils, do not constitute part of their responsibilities (Villar, 2014).

Local government reform carried out in 2013 by the central State through the Local Administration Law of Sustainability and Rationalisation (LRSAL), in the context of the economic crisis, particularly affected the area of local self-government powers. As mentioned in previous chapters, this reform was carried out without political consensus, at no territorial level, and in actual fact led to serious rejection and enormous controversies on the part of local governments, autonomous communities, political parties, social agents and even amongst a large number of experts in local government. It came into force thanks to the support which the Popular Party (PP) received from two other small conservative parties. However, the institutional and political actors were

consulted and could express their differences, thus contributing to modifications in some aspects of the first drafts of the new law.

The main objective of the reform was, supposedly, to clarify local powers and avoid duplicities and, by doing so, avoid excessive costs in rendering local services. It was also argued, moreover, that it was necessary to bring local laws in line with the principles of efficiency, budget stability and financial sustainability established in the new version of Article 135 of the Constitution (modified in 2011 as required by Troika), and in the 2/2012 Organic Law, which developed the new constitutional precept.

The LRSAL reduces and limits responsibilities corresponding to local governments and delimits them according to population segments and limits them to a series of listed areas in Articles 25.2 and 26. They are entrusted to a law that should determine them and guarantee based on its financial viability through different administrations, but especially provincial deputations (intermediary governments formed through indirect representative legitimacy). Therefore, it subordinates municipalities with regard to other levels of government. Likewise, it establishes a tutelage system for exercising powers different to its own and to those attributed through delegation in such a way that they would only be accepted after previous and binding reports being drawn up by other administrations. By contrast, the LRSAL strengthens provincial deputations' powers through two main mechanisms which in short are: (1) coordinating the rendering of minimum services in municipalities with less than 20,000 inhabitants, in a direct way or using any other formula, including outsourcing to private companies; and (2) attributing new responsibilities related to rendering services, cost tracking and control and also granting them very active participation in drawing up and tracking local government financial-economic plans. Lastly, it indicates a series of minimum responsibilities which municipalities could carry out through autonomous communities delegating them but also with a strong economic tutelage system. It basically adds up to an update of complementary responsibilities which had previously been attributed to the municipalities and which are now attributed to the autonomous communities, especially in such decisive matters for citizens such as health, social services and education.

The above-mentioned regulations are the result of intense debate during the first drafts of the law. Some of the initial proposals were toned down mainly at the request of or suggested by the Council of State, the Spanish Federation of Provinces and Municipalities (FEMP) and the amendments made by political parties during the parliamentary process. However, even considering the modifications which the law underwent until it was passed, there is a common conviction that behind the reform lie two undeclared objectives on the part of central government: to limit local public expenditure (despite constituting a minimum amount of total public expenditure and despite the fact that the majority of councils did not have deficit or debt problems); and to take advantage of the economic crisis as an excuse to centralise powers due to lack of trust in local governments and also to favour private initiatives in the rendering of local services (amongst many other authors who have expressed this opinion: Ferre, 2014; Villar, 2014).

After the LRSAL was passed, it has rarely been applied because it was brought into force without consensus and was a sole initiative by central government. There were numerous appeals of unconstitutionality on the part of autonomous communities and local governments. These appeals have led to six sentences from the Constitutional Court, which correct critical aspects of the law, especially those related to powers. Amongst the most severe corrections is that of annulling powers attributed in relation to health, education and social services. It is considered that these powers correspond to the autonomous communities not to central Government. Moreover, and even before the Constitutional Court's amendments, the autonomous communities have passed laws and norms which hinder applying the reform of powers established by the LRSAL in their territories.

Part of this centralising insistence on the part of the central Government can be observed from the weak arguments used in the preamble to the LRSAL to justify the reform, as well as in the review of the structural principles related to the area of municipal powers (Villar, 2014). Thus, after the reform, Article 2 of the LBRL maintains the principle of "decentralisation", but it substitutes the principle of "maximum proximity of administrative management to citizens" for the less ambitious principle of "proximity" and adds new principles of "efficacy, efficiency, budgetary stability and financial sustainability". With these and other changes, such as considering "local autonomy" of municipalities to be the same as the capacity of "coordination" of provinces (Article 10.4 of the LBRL), it is clear that local autonomy was being attacked, "stripping the term municipal of its essence by comparing it with the term local, and that of provincial with municipal" (ibidem). And, as is peculiar to Spain, municipal government has a direct representative democratic legitimacy, whereas provincial government has an indirect representative democratic legitimacy. Another eloquent change related to the central legislator's aims is that of no longer encouraging citizen participation, which was an objective of the responsibilities to be delegated and which was previously contemplated in Article 27.1. That same Article referred to "the own interests" of municipalities as an evident reason which justified delegating responsibilities belonging to other levels of the state. In the specific case of "autonomic and state control of improper powers, Villar (2014: 5) maintains, a couple of years before the Constitutional Court began to pass sentences on the numerous appeals presented against the 2013 Law, which was to do with a control referred to as "extreme and contrary to the constitutional guarantee of local autonomy due to its preventive and opportunist nature and because all binding reports constitute an assumption of power sharing".

Despite the measures which attempted to deplete local powers, and therefore local autonomy of municipalities, the 2013 Law has had an incomplete and limited result in its declared objective, and failed to be applied (Forcadell, 2015), whether it be due to the Constitutional Court sentences, or to alternative laws drawn up by autonomous communities and opposing what was established in the LRSAL. The reform has been successful in controlling local government expenditure as well as encouraging

privatisation of services. Both these aspects doubtlessly affect the exercise of local government powers and hinders it.

Although the limitations on councils' powers have proved to be less than the 2013 Law set out to achieve, this law has generated uncertainty which, for the majority of mayors, represented by FEMP, can only be resolved by derogating the law and promulgating a new one (Caballero, 2016b). A judgement which is certainly shared by experts, many of whom accept that a new integral regulation of the local government system in Spain is necessary, one which gives coherence to all the jurisprudential and legal updates and alterations which have been made up until now and which paves the way for an effective rationalisation and modernisation of local government (Forcadell, 2015; Martínez Pallarés, 2014). For the majors represented by FEMP, the repeal of the 2013 Law would be the first step to recover a genuine local self-government, together with financial self-sufficiency and the institutional recognition of the municipalities and provinces as powers of the state in equal conditions to the central and regional government (Caballero, 2016a)

4 Protection of local authority boundaries

In general, local government boundaries (municipal and provincial) are well protected by Spanish laws and jurisprudence. This protection is deduced from the constitutional guarantee regarding local autonomy, but in actual fact it has been acknowledged since the promulgation of the 1985 Local Government Basis Law (LBRL). The Constitution is deliberately very scarce in all that is related to local government (Parejo, 2017) and only alludes, in Article 141, to the basic structure of the territorial organisation of the State. Its basic local entities are the province and the municipality. In Article 148, moreover, the constitutional text states that powers which change municipal boundaries and the State's responsibilities in local governments belong to the autonomous communities and expressly permit the modification of provincial boundaries, as well as groupings of different municipalities from the province, but it does not specify any further and makes no allusion to local entities neither inferior nor superior to municipalities.

The administrative and territorial structure of local governments is determined and developed through the 1985 Law and autonomic laws, which differ from one another as regards the way they legally protect and consider local bodies inferior and superior to municipalities (different to the provinces). The common local law considers municipalities, provinces and the Islands (Balearic and Canary Islands) as basic local bodies, but it also adds other local bodies expressly acknowledged: the *shires* or other supra-municipal entities different to provinces which the autonomous communities decide to institutionalise, as well as metropolitan areas and the municipalities' *associations* (Article 3 of the LBRL).

The procedures for creating and suppressing municipalities, as well as changing boundaries, are contemplated in Article 13 of the LBRL, since it was passed in 1985. Its legal precision depends on the Autonomous Communities. After the 2013 reform, this

Article has been modified profusely and has also been extended and given more detail, on the part of central Government, mainly due to two economic reasons: (1) to impede the creation of new local entities smaller than municipalities; and (2) to reduce municipal fragmentation. This is due to the fact that 6 of every 10 Spanish municipalities have less than 1,000 inhabitants, and 8 out of 10, less than 5,000 inhabitants, in a context of aging populations, increasing depopulation and a boom in seasonal residence linked to leisure or second homes. On the other side, that means that there are few, but big and even huge, Spanish municipalities, highly populated, with very different circumstances and problems to face. That was the reason for the approval of the Large Cities Law, in 2003. But even this law has been clearly insufficient to solve the problem regarding big as small municipalities.

Until the 2013 Law of Reform, the smallest local entities were acknowledged as such and had legal form. However, new local entities created after that date are not considered as such and neither do they have legal form. They are perceived as mere entities of the councils' deconcentrated administration (new Article 3.2, 45 and 24.bis of the LBRL reformed by the 2013 LRSAL). Although the initial proposal of this law of reform attempted to completely suppress local entities smaller than municipalities, in the end it still acknowledges them institutionally and their legal form, which they were constituted with before the reform, but only if they satisfy expenditure accountability in a timeframe and form determined by the new law. (4th and 5th transitory dispositions of the LRSAL). This reduced legal and political significance of local entities smaller than municipalities has not contemplated neighbour participation mechanisms or consultation with the entities which have been affected to determine their new legal consideration. It is also important to mention that the 2013 Law of Reform also aimed to suppress a supra-municipal entity: the *association's* services, to favour provincial deputations. In the end they were contemplated by the Law as local entities with legal form because during the discussions about the draft of this law it was clear that the regulation of the former depends on the Autonomous Communities and are likewise supported by the right of municipalities to associate with one another guaranteed by the European Charter of Local Autonomy. The Council of State also stated this fact when the law was being drawn up. However, despite being preserved, the reform limited the *associations'* capacity to act as their responsibilities were oriented to carrying out works and public services.

As regards the decrease in local fragmentation, the 2013 reform uses two basic mechanisms. On the one hand, it limits the creation of new municipalities. The new conditions being territorial areas with at least 5,000 inhabitants and financially sustainable. Both regarding the creation and suppression of municipalities, the reform contemplates the need to maintain provincial boundaries and likewise maintains the hearing process for the affected municipalities, the report from the Executive Committee or Autonomy and the obligation of informing the central Administration, but it adds a new control: the report from the Administration which acts as financial tutelage.

On the other hand, the reform aims to reduce local fragmentation through specific measures which encourage neighbouring municipalities to merge through legal and economic incentives, regardless of their population. The economic incentives for mergers include subsidies and financial aid such as the direct public contributions and the possibility to create a fund with no legal form. The legal incentives involve drawing up a merger agreement amongst equals, which is approved without having to consult the affected population and is approved through the municipal plenary representatives with a simple majority. Likewise, it includes an element of supervising and coordinating the merger which is carried out by the provincial deputations, which reinforce them in detriment to the municipalities' local autonomy.

After four years since the Law of Reform was passed, neither experts nor those affected have sufficient information at their disposal to make firm conclusions about the effects related to territorial organisation, particularly, regarding this Law's aim to reduce fragmentation and limit infra and supra-municipal local entities. The general impression is that the reform has not solved the underlying problems because its aim was merely economic. In Spain, the basic problems of a municipal nature are still the same (Martínez Pallarés, 2014; Forcadell, 2015; Pizarro, 2017).

As regards local boundaries (municipal and provincial), it can be concluded that they are well protected from a legal point of view, and both municipal groupings and the formation of new ones are allowed since the minimum population limits seem sensible. However, the same cannot be said of local entities smaller than municipalities nor of supramunicipalities different to provinces, which the reform attempted to suppress and, in the end, accepted, but weakened. Weakening these institutions can be interpreted as an attempt to hinder the maximum proximity principle which the European Charter of Local Autonomy expresses as a fundamental criterion for functioning. In any case, the most evident lack of legal form regarding the protection of boundaries is that local decision-making mechanisms regarding the latter do not contemplate previous consultation with citizens through a referendum, and decisions taken by the representative municipal councilors only require a simple majority (particularly in the case of mergers with neighbouring municipalities within a province). Likewise, it is remarkable that the modifications carried out by the 2013 Law of Reform are only based on economic reasons, without taking into consideration, nor attempting to favour in any respect, an effective citizen participation in an aspect as important as local autonomy. This lack of concern is especially grave in the case of minor local entities, which are unable to access channels which allow them autonomous decision capacity and legal acknowledgement to manage their neighbours' interests. These decisions show that central Government is at present insensitive to local autonomy and prefers centralisation in order to control local expenditure rather than decentralisation which favours direct participation from citizens in matters which concern them most.

5 Administrative structures and resources for the tasks of local authorities

The functional and material scope of local autonomy not only depends on the capacity of each municipality and the inter-administrative and inter-governmental relationships which are established with other territorial powers within the State, but also on the personal and material resources which it reasonably has at its disposal to carry out that autonomy. In this respect, the internal organisational autonomy of local governments, which, above all, includes having appropriate staff to adequately address those responsibilities. This is guaranteed by the 1985 Law which acknowledges that municipalities, provinces and islands, amongst others, have legal and self organisation powers, financial and tax powers, as well as that of programming and planning municipal organisation. Acknowledging their power of self organisation is applicable to all the independent municipalities regardless of size. However, in practice, it is a formal acknowledgement in the case of small municipalities which have minimum capacity to organise due to the lack of resources. Designing and introducing local public policies requires complex, specific and sectorial knowledge to develop activities, for example, housing, social policies, infrastructure, transport, etc. And the small municipalities in Spain, which are most of them, do not possess sufficient resources to maintain administrative staff to take charge of these activities.

Apart from that, it can be clearly deduced from the local Spanish government regulations already mentioned that the government is responsible for local politics, but local public managers take care of municipal management with the appropriate resources at their disposal. In any case, the Mayor is at the top of the executive and is also the Administration head and therefore has the capacity to manage the administration and thus determine the municipal organisation tasks and structures.

This original acknowledgement of self organisation power was endorsed and extended by a new law in the year 2003, called Modernisation Law or Large Cities Law and established a specific organisation system for large cities, in the legal text known as "densely populated municipalities" and which include: "a) municipalities with over 250,000 inhabitants b) provincial capital municipalities with over 175,000 inhabitants. c) those municipalities which are provincial capitals, autonomous capitals or centres for autonomous institutions and d) municipalities with over 75,000 inhabitants with special cultural, historical, social or economic circumstances." This Law set two main objectives: to strengthen local government's executive capacity and, at the same time, strengthen the Plenary's power to control an executive granted important management capacity. Thus, this Large Cities Law introduces the separation of administrative and executive structures, on the one hand, and the Plenary or representative body, on the other. Its regulations are approved separately through the procedure stipulated in the law. Although the Modernisation Law lays out the general guidelines which municipal organisation must adhere to, it is through the internal regulations, using the regulatory power as regards self organisation, which determines how each Council's organisation will be shaped and regulated.

Thus, in large cities municipal administration is organised to function in areas of Government, called Municipal Delegations, which can be managed by Councillorships or non-elected members of the Local Executive Committee. The Mayor is responsible for determining the structure of Municipal Delegations. The latter will assume the responsibilities granted to them as well as those the Local Executive Committee decides to transfer at any time. In any case, Municipal Administration organisation adheres to the principles of task division in Municipal Delegations and decentralised management is contemplated in the Districts and it is here that citizen participation in management and improving municipal matters in neighbourhoods is promoted and developed.

The Mayor and Local Executive Committee delegate their responsibilities in the councillors. The Mayor determines their number, the type and scope of responsibilities to be delegated. Therefore, the councillorships have capacity and responsibility in specific areas of intervention. They carry out government actions in their area in accordance with the guidelines set by the Mayor and the agreements reached by the Local Executive Committee. By means of dividing tasks, each Councillorship is given one or several homogeneous sectors related to administrative activity. The Councillorships' structure is based on General Instructions which are also determined by the mayor. The Executive Committee also appoints management staff proposed by the mayor. These positions are held by State, Autonomous Community, Local Entity civil servants or those from local administration with capacity to do so at a national level. Despite the aforementioned, and as regards special tasks related to area managers or general managers, which include advice, direction, study, management and implementation, in conclusion, however many initiatives and projects correspond to the area or areas, all these tasks are an inherent part of management. The Executive Committee can appoint non-civil service staff proposed by the mayor.

It's necessary to take a look at how local public civil service is regulated and organised as it affects local autonomy. Firstly, it's important to mention that some state civil service bodies exist in the Spanish municipal tradition, those who can act at a national level. They are in fact in charge of controlling the locally elected members but the reason for their existence is justified by the fact that they ensure that certain tasks are carried out in all local governments, thus guaranteeing "that certain sets of tasks are carried out and developed correctly" which are considered to be of greater interest than just locally. These tasks are, on the one hand, the secretary's, in charge of legality control and certifications and, on the other hand, the supervisor's, mainly in charge of internal fiscal matters related to the council's budget and economic-financial management. In most of the small municipalities the latter carries out the management tasks.

As regards the rest of the local public employees, the capacity of self organisation which local governments have, also includes that of regulating the civil servants. However, this is done within the framework of autonomous and state legislation. Thus, a state law, the Basic Statute of the Public Employee stipulates in Article 3 that "with regard to local autonomy, local entity civil servants are affected by whatever state and autonomous

community legislation is applicable and which this Statute forms part of. This said, as regards civil servants, the local autonomy demands that the autonomous and state legislators respect the local autonomy through acknowledging legal and management spaces belonging to the local entities. Thus, the latter are forced to not exceed the use of legislative power and must abstain from legislative monopoly when it comes to local public employment system, thus impeding local powers being exercised. In practice, this triple system of local, autonomous and state sources means that local laws related to civil servants are very limited due to the state basic legislation and the autonomous community's legislation which can never be contradicted.

With the passing of the 2013 Law of Local Administration Sustainability and Rationalisation, which, as we have previously mentioned, mainly came about due to budgetary and economic issues, the state recuperates local civil service powers through a double manoeuvre. Firstly, the local employment dual system, made up of civil servants and non civil servants, which reserves certain tasks for civil servants, thus central power duplicated tasks for civil servants and non civil servants arguing that in recent decades too many non civil servant employees have been hired and this allowed political positions to appoint those employees at their discretion but, by doing so, neither merit nor capacity were priority principles. Secondly, the new law introduces new mechanisms aimed at controlling the number of local public employees. Therefore, local governments are obliged to periodically publish the number of job posts within the local public sector which can be taken by temporary staff. The Mayor must also inform the Plenary about this. Temporary staff is appointed freely by those elected based on political confidence and one of the objectives of the 2013 Law is to reduce the number of this type of staff, limiting it to the number of inhabitants in the municipality. Lastly, control tasks carried out by national level civil servants have been extended and strengthened, which affects local autonomy.

Therefore, as regards self organisation and, especially, local public employment, the measures taken to save and contain local public expenditure have led to a recentralisation in favour of the State, with the subsequent negative effect on local autonomy, all this in a context where the majority of Spanish municipalities lack the conditions required to carry out their responsibilities (Mellado, 2015).

6 Conditions under which responsibilities are exercised at local level

In general terms, Spanish law amply protects the free exercise of responsibilities related to local elected representatives. This is so considering both the economic compensation they receive for costs incurred through carrying out their responsibilities and also the safekeeping of their job and work conditions outside the council and the system of incompatibilities. Therefore, it can be said that in general local elected representatives possess the necessary legal instruments in Spain to carry out their positions freely and unaffected by any interest other than political ones, even their own party interests.

The legal protection of mayors and councilors is stipulated in a specific Statute, within the 1985 Local Government Basis Law (Articles 73 to 78) (LBRL), which has been modified on 8 occasions, especially in the nineties and the beginning of this century's first decade. The Statue has only been modified in order to broaden and satisfy the needs which were detected during the first decades of Spanish democracy (Torres, 2014). The Statute was last updated due to the 2013 Law of Local Administration Sustainability and Rationalisation (LRSAL), for economic reasons: to set economic limits for elected positions' salaries and also the number of representatives which can work full time (Domingo, 2014).

Particularly Articles 74 and 75 develop the economic and welfare guarantees stipulated in Spain by the Statute of local entity members. These guarantees not only cover the elected positions but also include non-elected members from the Local Executive Committee, if there are any. Article 74 deals with the specific case of public employees, whereas Article 75 develops all the other guarantees and economic incompatibilities which are applied to all Assembly (Plenary) members and also those of Local Government (Executive Committee surrounding the mayor). The specific guarantees depend on the positions' level of involvement: (1) full time, (2) part time and (3) neither of the aforementioned. These three systems amply protect the exercise of these positions from an economic point of view, but in different ways.

In the first case, the council provides a full salary and also pays the employee's National Insurance contributions, however, in exchange, these positions cannot receive income from any other entity, neither private nor public, except in certain cases determined by the Law of Personnel Incompatibilities Serving Public Administrations (Law 53/1984).
In the second case, the council provides a partial income, in accordance with what has been agreed on regarding part time involvement, which has to sufficiently compensate the loss of income caused by the time involved in public activity. In this case the council also covers the corresponding part related to the National Insurance contributions which would correspond to the company or employer administration.

In the third case, the council only covers expenses for attending sessions of the professional bodies which he belongs to.

In all the above-mentioned situations, the Local Executive Committee's councillors, mayor and non-elected positions have a right to claim expenses derived from the exercise of their position, which have to be clearly specified.

Article 75 also stipulates basic rules on incompatibilities and transparency regarding the Executive Committee's local representatives' and the non-elected positions' financial or patrimonial and work situation. In actual fact, the latter have to declare any possible incompatibilities or activity which might provide them with income and also declare their financial and patrimonial possessions. These declarations form part of three different local registers (Interests, Activities and Patrimonial Possessions) and are made before

taking possession of the position, once it is left and whenever their circumstances vary. Both Local Executive Committee representatives and non-elected members can, if they desire, also declare any risk related to their personal safety or that of their possessions or businesses, as well as that of their family, business partners, employees or anyone who they are related to economically or professionally. Finally, this same Article sets a two-year limitation for those in positions with executive responsibilities as regards the private activities they may be involved in in areas related to their council work. However, in exchange, economic compensation is provided during this period if they receive no other income.

Developments in this law allowed an ample margin for these positions to decide on their own specific income for local positions, in accordance with the principle of local autonomy. However, this ample power led to many striking situations and even contradictory ones in relation to the population reality of the represented municipality. The 2013 Reform Law attempted to classify income through Article 75 bis by stipulating a maximum income scale (for all the concepts) for representatives and municipal executive positions, linking them to the population rate of their municipality and taking as a reference for all of them the annual income of a Secretary of State (equivalent to a vice minister from local Government). In accordance with this scale, local positions from the largest municipalities (more than 500.000 inhabitants) can earn the same as a Secretary of State, whereas, at the other end, local positions from small municipalities (between 1.000 and 5.000 inhabitants) can earn a maximum of 60% less than the Secretary of State. Local positions in municipalities with less than 1.000 inhabitants cannot be involved full time and only in exceptional cases are they allowed to be involved part time. Another limitation stipulated by Article 75 bis is that claiming expenses for attending professional bodies will only be applied to positions which are neither full time nor part time. However, each council is allowed to determine the amount for expenses.
The 2013 Law of Reform introduces a second significant change related to the conditions in which local positions carry out their responsibilities: limiting the number who can be involved full time. Here again, a maximum limit is set in relation to the size of the municipalities' population. In the smallest ones, the possibility of full time involvement in municipalities with less than 1.000 inhabitants is eliminated; and a maximum of three are allowed in municipalities with less than 10.000 inhabitants. Strangely enough, the population segments used to set the maximum number of full time elected positions or executives are not the same as those used to determine the number of councilors who can be elected in each council. Generally, this lack of proportionality decreases as the size of the municipality increases, but with leaps. By means of an approximate comparison, municipalities with between 3.000 and 10.000 inhabitants are allowed 20-25% involvement, whereas the two largest municipalities, Barcelona and Madrid, are allowed 80%, and in the case of the majority of municipalities with 50.000 and 100.000 inhabitants, 60%.

Despite the economic restrictions stipulated by the 2013 Law of Reform (especially those referring to the limit on the number of full time positions), the real effects of which are

still not known, income and compensations guaranteed by this law for local elected positions and executives are ample in Spain. However, it is true to say that there are numerous cases of malpractice regarding ethics and corruption, normally based on intertwined interests which link local positions, party financing needs and businesses, especially during the real estate boom years (Ramió, 2015). In conclusion, apart from legal protection, a serious rethink about the circumstances which lead representatives to stray from the interests of those they represent is necessary.

7 Administrative supervision of local authorities' activities

The Spanish constitutional framework acknowledges government autonomy both for local (municipalities and provinces) and regional (Autonomous Communities) governments. However, although the Constitution amply regulates the Autonomous Communities, especially in the area of its powers and its relationship with other powers (territorial and central), local powers are regulated very little. This lack of development and clarification of local autonomy in the constitutional text lead to doubts from the beginning regarding the real scope of power which was acknowledged for municipalities and provinces, as is the case with the relationships they should establish with other state territorial levels (Parejo, 2017). Apart from this striking fact, there is another exceptional one: the Spanish Constitution does not grant local governments legislative autonomy. Rather, central Government and the Autonomous Communities governments possess legislative power. In fact, these two powers regulate local governments. The central State is mainly responsible for setting the foundations of local government, whilst the Autonomous Communities are in charge of delimiting local autonomy in a broad range of sectorial laws. Therefore, the Constitution left the real development of local autonomy in hands of the future relationship of powers within the superior legal organisations, central and autonomic, thus initiating what is known as the "bifront nature" of local government in Spain (Parejo, 2017). These relationships were clarified in a very favourable way for local governments due, on the one hand, to the jurisprudence of the Constitutional Court, which has repeatedly shown to defend local autonomy. On the other hand, due to the fact that the majority of the Autonomous Communities Statutes and the autonomic legal development have been equally favourable to local self-government, granting ample margins of action to the councils (more than to the provinces).

In conclusion, although the Constitution acknowledges local governments' autonomy, in practice it treats them like an administration which renders services, rather than a level of government channeling citizen participation. However, the subsequent legal developments and jurisprudence have proved to be coherent for three decades, with the idea that local governments, as well as rendering services, are a genuine state power, a vehicle of representative democracy in the area closest to citizens, despite the Constitution not having granted them with legal capacity. In accordance with this idea, administrative supervision of local activities, although complex and with striking regional differences, turned out to be extremely respectful towards local self government up till the beginning of this decade. The general tendency was for autonomic supervision, with municipalities

having ample margins of action to decide on local matters. However, during the present decade, and in the context of the economic crisis, the central State has gone backwards, as regards its central nature, creating new mechanisms to control local powers. This regression is expressed above all in the 2012 Organic Law of Financial Sustainability and Budgetary Stability (LOEPSF, of maximum rank) and in the 2013 Local Administration Law of Sustainability and Rationalisation (LRSAL). Both took the change of Article 135 of the Constitution, approved in September 2011, which forces public expenditure cut backs, by limiting the deficit and favouring the use of other budgetary items to pay off financial debt.

The 2012 LOEPSF greatly conditions local governments, as well as other levels of government, because they cannot decide freely how to use their budgetary resources nor the amounts. This is achieved through two mechanisms: one, budgetary stability, which involves forcing public administrations' costs to be lower than their incomes (except payment of debt); and, two, rules on expenditure which do not allow public administrations with surplus to use it at their own will. A non financial expenditure limit is set for certain items, taking the previous year expenditures as a reference and increasing it by a small percentage, which is determined by central Government each year based on its forecast of the GNP increase for the whole of Spain. The liquid assets remnants must be used for paying off debt or for investments with pay off periods of over a certain number of years, thus councils are unable to contemplate expansive budgets even when they have sufficient resources of their own to be able to do so.

The rule on expenditure has been applied by central Government in a discretionary way and has led to numerous problems. The most striking of all was in 2017 when the Treasury intervened Madrid city government's tax administration (which enjoyed a surplus) so the latter could not use its surplus for unauthorised items such as short-term investments in infrastructure or investments in social services. No doubt this was an exemplary measure, precisely against a local government composed of a coalition of parties which arose from the 15-M Movement and which opposed the central Government's austerity measures. Controlling surplus has led to significant political confrontment amongst councils and the central State, which, in February of 2018, appeared to be temporarily resolved. The Spanish Federation of Provinces and Municipalities (FEMP) achieved, as an exception and not susceptible to being consolidated, the beginning of an agreement with the Treasury so that the latter allows Spanish councils to reinvest the 5.000 million which they accumulated in 2017 in items different to that of paying off debt. This agreement, which has not yet been approved, only contemplates the possibility of reinvesting this surplus up till the municipal elections in 2019, and in conditions which have not yet been clarified. That is to say, it is an opportunist and circumstantial decision which is based on the idea of a discretionary application of the law on behalf of central Government.

Apart from these practical restrictions on local autonomy, the 2013 Law of Reform includes other obstacles for municipal governments. First of all, the strengthening of

intermediary governments (provincial deputations) which are assigned new supervision and coordination tasks, especially of small municipalities. Secondly, a system of quasi subordination for municipalities which take on delegated responsibilities and an extremely tutelaged exercise related to responsibilities different to their own and to those which have been delegated (Martínez Pallarés, 2014), which, moreover, are linked to financial sustainability and to less costs. Thirdly, direct control mechanisms of local budgets are introduced, as well as management of public services on the part of central Government. It requires binding, perceptive and previous reports from the Treasury and Controllers and the State also attributes itself powers regarding local civil services posts for those able to work nationally. The result of these and other measures is "an opportunist, generic and preventive tutelage assumption which situates the Local Entity in a subordinate position and dependent on the State. This position is contrary to the constitutional guarantee of local autonomy", this is a "state tutelage under financial pretexts which already constitutes a fundamental pillar for systemising and regulating Spanish local entities" (Villar, 2014:10).

The changes which have occurred since 2012 have in short led to the central State increasing supervision of local governments. To be more precise, they mean "a setback in local autonomy (…) and even worse is the fact that Municipalities are treated or are tried to be treated like autonomous bodies dependent on the State General Administration, which comes into conflict with its condition of representative public entity granted autonomy" (Villar, 2014:14). In this case, central Government's territorial policy would now be guided, not by the aim of guaranteeing local governments autonomy regarding the Autonomous Communities, but by a new aim of impeding a closer relationship between the former and the latter (ibidem).

8 Financial resources of local authorities and financial transfer system

The exercise of local autonomy depends on the existence of sufficient financial resources. The percentage of public expenditure in which local governments in Spain incur adds up to about 13% of total public expenditure. The weight of local public debt on the GNP is about 3%. Financial autonomy is contemplated in Articles 137 and 140 of the Constitution and Article 142 stipulates that "Local Treasuries will need to have sufficient resources at their disposal in order to carry out their responsibilities which the law attributes to the respective entities. Their main source of income will be their own taxes and also from participating in those of the autonomous communities and the State." This constitutional ruling, apart from establishing the principle of sufficient financial resources for local governments, explicitly refers to a mixed system of resources, made up of their own taxes and income from transfers made by the Autonomous Communities and the State. Thus, it is acknowledged that local entities participate in their tax income. This explicit constitutional acknowledgement means that both the State and the Autonomous Communities are obliged to bring into being the principle of financial sufficiency of local entities. Moreover, the Spanish Constitutional Court has acknowledged in several sentences that local entity autonomy is therefore closely related to financial sufficiency

since it requires that the local entities, with no undue conditioning and in its full extent, have financial resources at their full disposal in order to carry out the responsibilities which have been legally granted to them.

Therefore, the State is responsible for determining the model for financing local entities, by virtue basically of its exclusive power over the general treasury and is consequently mainly responsible for guaranteeing local governments' financial sufficiency. Thus, the local financing system is regulated in a 1988 state law which is supposed to bring into being the constitutional principles of sufficiency and autonomy, allowing local governments to determine their own taxes. However, this is not the case of provincial governments which depend on central government. The local financing structure is sustained by the existence of a mixed system of resources made up of their own taxes and transfers from the Autonomous Communities government and central government.

As regards their own taxes, the most important is Property Tax, which provides the councils with stable tax collection as the annual amount can be forecasted and, in global terms, it represents a quarter of the total income from local taxes. Apart from those taxes, the local Treasury is also made up of fees and special taxes. Each municipality decides on the fees and special taxes. They are used to finance the cost of services created by the Municipality. Public prices for the rendering of certain municipal services would also have to be contemplated. In total, the fees and public prices amount to about 25% of the total municipal income. Marginally, local governments can also participate in budgetary items from the European Union in the framework of Common Rural Policy or financing projects. However, procedures are controlled by central government and, moreover, co-financing is usually required and very few local governments, especially those in rural areas, have capacity to participate in co-financing.

Apart from its own taxes, local governments in Spain also have financial resources at their disposal from transfers which they receive from the State and the Autonomous Communities governments. The annual amount is determined by rules which are common to the regional governments. These transfers are divided into two types: unconditional and conditional, depending on what they are used for. Conditional ones are designed to satisfy the aims of whoever offers the subsidy, whereas the unconditional ones can be used freely by the local government. Naturally, most of the transfers usually have a condition, which restricts autonomy as local government cannot determine the use of these funds.

In this context of dependency regarding resource transfers, the way the state legislator interprets the principle of budgetary stability constitutes a significant limit on local financial autonomy as regards budgets. This does not mean to say that the State can intervene directly in annual budget decision making by each government. This State regulatory capacity has been acknowledged by the Constitutional Court which points out that whatever financial sufficiency pretenses there might be are recognised under "possible reserve", depending on the resources which actually exist and can be used at

each instance and depending on the economic situation and financial adjustments required by economic cycles. Thus, in the current context of financial crisis, particularly virulent in several south European countries, the Spanish government, urged by the European Union, proceeded to reform Article 135 of the Constitution in 2011, thus forcing all Public Administrations to act in accordance with the budgetary stability principle. In order to comply with this constitutional Article, the 2/2012 Organic Law of Financial Sustainability and Budgetary Stability was passed. It requires local governments to maintain budgetary balance and they are not allowed to incur in any structural deficit, however the State and Autonomous Communities are allowed to do so.

Therefore, local governments cannot get into structural deficit since a state law requires they maintain a balanced position or budgetary surplus. This law is extremely strict with local governments in comparison to autonomous and central governments. Whilst the latter are allowed to maintain structural deficit adjusted to the economic cycles, local governments are required to maintain an annual budgetary balance with excessive control from central government to verify they fulfill this requirement. This situation is worse in the case of small municipalities as they have experienced drastic cutbacks in both unconditional and conditional transfers and, therefore, find themselves in difficulties to satisfy citizens' demands.

In conclusion, in the current austerity context, the financial laws do not guarantee autonomy nor stability as regards municipal financial resources. This means many councils have difficulties and therefore local autonomy has decreased. On the one hand, local governments have not participated in the drafting of these laws which require they introduce austerity policies and, therefore, with the financial resource restriction, the municipalities are unable to offer the services requested or they have to resort to privatisation which, in many cases leads to a reduction in the quality of services rendered.

9 Local authorities' right to associate

In Spain, the right of association of local entities is reflected, on the one hand, by the existence of intermunicipal cooperation tools for exercising responsibilities and offering services and, on the other hand, by acknowledging the creation of autonomous or national associations to promote and defend local government interests before other territorial powers.

Creating associations for intermunicipal cooperation is a necessity due to the fact that more than eighty per cent of municipalities have less than five thousand inhabitants. This level of fragmentation is a threat to any attempts at functioning in public resources management and creates distortions which are difficult to overcome in local financial mechanisms (Alba & Navarro, 2003). As has occurred in other European countries, a solution to this problem could be obligatory groupings of municipalities to better allocate resources. Due to different historical, political and social reasons, it has not been possible to bring about a territorial policy in Spain aimed at suppression or obligatory mergers.

Therefore, in order to optimise resources and accomplish aims which, on its own, each municipality would not achieve, the alternative has been for municipalities to group together. Traditionally, in Spain, the local authorities' right to associate is a mechanism to reform Local Government. Due to historical traditions which have resulted in strong local identities, amalgamations in search of economic efficiency are problematic, not only because the two major parties are well rooted in each place and radical territorial reforms will be penalised politically (electoral system: rural vote is overvalued, proportional system, etc.) but also because the merging of small municipalities would have no significant impact on individual local budgets. In this context, promoting associations has always figured as part of the laws regulating local governments in Spain, not only supporting relationships between the two levels of local government, the municipalities and the provinces, but also with other territorial administrations. Although of a voluntary nature, creating associations has also arisen from the need to comply with European Union requirements in order to benefit from their structural Funds. During the last decade and due to austerity measures imposed on Spain by the European Union and the International Monetary Fund, the need to associate has become more acute as cutbacks in transfers from Autonomous Communities and central government force the municipalities to create associations to jointly draw up public policies and render local public services.

In any case, the problem of small municipalities in Spain was already observed by state legislators in the nineteenth century, who in the 1870 Municipal Law foresaw the creation of Municipal Associations as a way to solve their problems. However, these groupings have always been of a voluntary nature and are an alternative to municipal mergers (amalgamations). Its obligatory nature has always been contemplated as a threat to local autonomy. However, the first regulatory law on local associations came about in 1955 with the approval of the named local consortiums which, possessing a legal form, allow different municipalities to group together to accomplish certain aims. The local consortium is made up of municipalities but, unlike *associations*, it is also composed of other public entities of a different nature to manage common services shared amongst several places. This figure also permits private entities to form part of the consortium but with no profit making in mind and with the sole aim of pursuing aims of public interest.
The association figure of the consortium as a means of cooperation has a new reason for existing when the 1978 Constitution came into force with its concomitant legislation regarding local government. Thus, the 1985 Local Government Basis Law acknowledges the consortium as a means of cooperation for managing public affairs of common interest and contemplates two formulae: the first and simplest contemplates municipal communities. They are entities with no legal form and are for enhancing intermunicipal cooperation. The second, forming *associations* with the aim of rendering joint services or exercising joint responsibilities. Both options are based on the need to voluntarily gather resources and efforts. However, the best means for intermunicipal cooperation in Spain are the municipalities' *associations* as an alternative to obligatory groupings (amalgamations). The municipalities' *associations* are public law entities and of a territorial nature and mainly aim to carry out works and render public services that are

necessary so that the municipalities which it is composed of can exercise their responsibilities granted them by the State basic legislation. Thus, the *associations* play a vital role as they allow their municipalities to guarantee social and territorial cohesion, especially in those small sized or rural municipalities, which in Spain are the vast majority.

The *associations* are public law entities and, as such, adhere to their own statute and have legal capacity and form to accomplish their specific aims which are normally related to jointly carrying out works and services for the municipalities which form part of the former. However, under no circumstances do they take on all the responsibilities of any of these municipalities. Municipalities which do not belong to the same province can form part of the *association* and they do not have to be neighbouring areas. The Statutes ensure regulation of the scope of action as well as their government bodies where the Councils forming part of the *association* need representation. They have the power of self organisation and have their own resources at their disposal. Therefore, financing is covered by the members' fees as well as establishing special taxes for financing works or services in the municipalities which form part of the *association*.

There are a total of 1,012 *associations*, 785 of which (78%) are made up of small municipalities and 227 (22%) of large municipalities (FEMP, 2012). Out of the 8,119 municipalities, 6,010 participate in *associations*, which vary in size, in the number of municipalities taking part, the legal system and the range of services rendered. Thus, these figures show that municipal associations are a necessary means to promote intermunicipal cooperation so that small municipalities can render basic services which would otherwise be impossible to offer.

All types of shared service experiences exist in Spain, from those that have a real content and a positive way of working to those that constitute a formal mechanism but hardly function. Apart from that, there is no information about results as regards effectiveness. However, it is known that there are cases of inefficiency and overlapping. There are also matters which have not been solved related to transparency, accounts and democratic quality since their bodies are not directly elected by the neighbours.

It should also be mentioned that the "comarcas" and metropolitan areas form part of intermunicipal cooperation. In some autonomous communities, especially Catalonia, these entities have been shaped to carry out decentralised responsibilities which belong to the autonomous community.

As regards metropolitan areas, they have been created to respond specifically to problems inherent in large urban areas. These are contemplated in the 1985 Local Government Foundation Law. They are governed by their own statutes and can have their own resources at their disposal. However, as is the case with *associations*, there is no information about their efficiency and they do not function well as regards transparency

and democracy as although mechanisms exist in some cases to allow for citizen participation, they have no real content.

Finally, local governments are being allowed to associate in order to promote and defend their interests. There is a national association for this (The Provincial and Municipal Spanish Federation, FEMP). Several Autonomous Communities have also formed associations at a regional level. The FEMP has 7,324 local entities as members which represent more than 90% of the total local governments in Spain. It also forms part of the Council of European Regions and Municipalities. As FEMP express at its website, it aims to "promote and defend Local Entities' autonomy; represent and defend Local Entities' general interests before other Public Administrations; develop and consolidate the European spirit at a local level, based on autonomy and solidarity amongst Local Entities; promote and favour relationships based on friendship and cooperation with Local Entities and their organisations, especially in the European, Ibero-American and Arab areas; render all types of services either directly or through companies or entities to Local Corporations or to entities dependent on these and any other aim which may directly or indirectly affect members of the Federation" (www.femp.es).

10 Legal Protection of local self government

Local governments in Spain enjoy an ample and satisfactory organic structure of special courts of maximum rank (especially the Constitutional Court) and also consultants or consultation boards (Executive Committee, Autonomous Communities Social and Economic Board, Ombudsman, etc.) which they can appeal to in order to ensure free exercise of their powers and respect of local self government principles, when they consider they have been violated. In fact, local autonomy took its first steps in Spain despite the content of the Constitution not having been developed and before the Local Government. Basis Law (LBRL), thanks to a sentence passed by the Constitutional Court in 1981. Even after this Law was passed in 1985 and also after Spain signed the European Charter of Local Self Government in 1988, the Constitutional Court has continued to pass numerous sentences through different procedural channels related to local autonomy and conflicts amongst local, regional and central powers.

The first reason why the Constitutional Court has had to resolve so many sentences related to local autonomy and other conflicts is due to the fact that the Constitution looks in detail at the precise content of local autonomy and power. The 1985 Local Government Basis Law and the passing of the European Charter of Local Self Government in 1988 are those which amply develop local government, together with the sectorial laws passed by the Autonomous Communities. Precisely a frequent reason for legal dispute has come about from the fact that local issues are shared between central Government and the Autonomous Communities. This has produced repeated conflicts and appeals between the latter and central Government, as well as amongst Autonomous Communities, central Government and councils. The predominance of Autonomous Communities in local

matters has moreover led to a very varied range of relationships, dependencies and, in the end, conflicts between regional and local powers.

Local autonomy in Spain has greatly benefited from the Constitutional Court's case law. Tens of sentences have been passed by this court between 1981 and 2017, some openly posing the problem of local self government, and others indirectly, due to other conflicts posed between territorial powers and central Government (Parejo, 2017). One very relevant point in this period was the 7/1999 Organic Law (maximum degree of legal protection), which opened a specific legal appeal channel to ensure free exercise of local powers and attributions before the Constitutional Court, through a special procedure to attend to the, as denoted by this law, "conflict in defense of local autonomy (Pomed, 2006). The justification for the inclusion of this special channel through an organic law in the Constitutional Court procedures was precisely due to the fact that the European Charter in Article 11 defends legal appeals. The aim of this innovation is precisely what is not allowed by the Spanish legal system: active legitimisation in a appeal of unconstitutionality. It is worth highlighting that many of the appeals which have arisen due to this conflict have come about from a background of construction interests and area planning (ibidem), a fact which is very congruent with the outstanding role played by the councils and Autonomous Communities in the real estate boom of the first years of the last decade.

After the 2013 Law of local Reform, a new wave of appeals of unconstitutionality (nine) appeared and a conflict in defense of local autonomy, due to different initiatives, but, essentially, from the Autonomous Communities and municipalities and provinces through their Federation (FEMP). Basically, in their sentences, the Constitutional Court has maintained a large part of the reform, especially changes in economic issues, except some very striking ones such as attributing to the Treasury the task of controlling the cost of rendering certain services prior to their existence. A large part of the modifications which the reform made regarding territorial organisation has also been maintained as this model is considered a central Government issue, although it is applied by the Autonomous Communities. However, the Constitutional Court also pronounced itself against central Government on several issues of reform, such as the modifications related to responsibilities which, in its judgement, should have been legislated by the Autonomous Communities instead of central Government.

In conclusion, and regardless of the outcome of the Constitutional Court's sentences, the experience of four decades allows us to conclude that, whether it be through the special channel of "the conflict in defense of local autonomy" or resorting to the appeal of unconstitutionality, local governments can exercise their right to legal tutelage clearly and effectively.

11 Future challenges related to the implementation of the European Charter of Local Self-Government in Spanish Legislation

Spain was one of the first signatories of the European Charter of Local Autonomy in 1988 and, since then, has been used as a parameter to interpret and shape the development and implementation of the local autonomy principle contained in the Constitution and developed in subsequent laws. In a way, the 1985 basic legislation on local government which refers to the Charter in the reasons it puts forward, was influenced by the latter. Moreover, numerous laws of different rank approved afterwards also refer to the Charter and the case law has also referred to it in numerous sentences since its precepts can be invoked before the courts. However, the local autonomy principle and its correlation of financial sufficiency contemplated in the Constitution is basically of a formal nature and although state laws exist which broaden and give content to the constitutional precepts, this law is not of a constitutional rank, therefore, the real content of local autonomy is left to the decisions of other territorial powers and highlights not only the institutional weakness of local governments but also the fact that there is no uniformity as regards local services rendered and received by citizens and it depends on the area they live in.

This institutional weakness which affects local autonomy is evident in the limited decision-making power which local governments possess in Spain in order to develop public policies related to the Welfare State such as education and health. Both of these are in the hands of the Autonomous Communities in which local governments play a residual role since the principle of subsidiarity is not explicitly included in the Autonomous Communities statutes of autonomy. In this context, and despite the fact that the basic state laws, especially the 1985 law, grant local governments capacity to exercise certain powers it depends on sectorial laws which means delegation is abused. This therefore results in the delegating powers exercising obligatory power and has the local autonomy in check. In any case, the problem of clarifying local powers is linked to a territorial policy whereby in the process of territorial decentralisation, which began with the approval of the Autonomy Statutes, the autonomous communities have taken on powers from bilateral negotiations with the State and this problem will continue until the Senate is converted into a true chamber of territorial representation where, as well as representing the interests of autonomous communities, a system of inter-administrative and inter-governmental relationships amongst the latter and local governments is contemplated, more so when the local governments in the 17 autonomous communities differ in historical tradition, geography, size, population and other socioeconomic variables.

Perhaps such a reform would permit a more effective solution, from autonomic areas, to the problem of infra-municipalities through groupings (amalgamation) looking, through economic incentives, for local integration which facilitates economies of scale, effective exercise of powers and better rendering of services in such a way that integration could be perceived as beneficial for its neighbours. Half the Spanish municipalities are at risk of disappearing with many negative implications which are not only to do with territorial

imbalance but also with risks of depopulation, being this matter one of the biggest challenges expressed by the mayors through their national organization (FEMP, 2017).

Doubtlessly, one of the other main pending challenges is to achieve financial and fiscal autonomy which is consubstantial to local autonomy and, in order to give the latter content, it is necessary to reform local financing in Spain, one that contemplates its own fiscal system and unconditional transfers from central government and the autonomic governments, especially taking into account the diversity of municipalities as mentioned previously, in such a way as to guarantee maximum uniformity in the rendering of services to citizens. But a serious fiscal reform which addresses the problem of financial insufficiency of local governments must be made from a global perspective involving all territorial powers, the State, Autonomous Communities and local governments to determine a local financing system. And this is so because one of the pillars of local financing, as occurs in other European countries, should contemplate the participation of local governments in common taxes such as tax on individuals and VAT, without altering the legal capacity which would reside in the State but in a way that the three territorial powers, State, Autonomous Communities and municipalities participate together in collecting and managing taxes.

In Spain, the economic and financial crisis has been affecting public policies for a decade. These policies are closely linked to the Welfare State, a Welfare State which Spain arrived late at and is weaker in comparison with other European States (Navarro, 2006; Moreno, 2013; Pino & Rubio, 2013). In fact, the basic support of Welfare in Spain has fallen especially on families, who are a fundamental network of social welfare in Spain (Moreno, 2001; Navarro, 2006). The financial objectives imposed on Spain by the European Union and the International Monetary Fund have led to a loss in national sovereignty in which local autonomy has also been seriously affected as central government has promoted a series of laws aimed at reducing public administration's deficit. This set of laws focuses on reforming the economic system and redesigning municipal autonomy in terms of recentralisation in accordance with plans imposed by the EU of a purely financial nature (Martínez de la Casa, 2016). Without going to say that the capacity of local governments to influence the approval of all these laws which affect autonomy has been minimum as, although its interests are represented in the Committee for Local Issues, an associated body made up of representatives from central government, autonomous communities and local government, the latter has little influence. In this context and although some precepts of the 27/2013 Law of Local Administration sustainability and rationalisation, limiting local autonomy, have been declared unconstitutional and, in global terms, local autonomy has decreased. For example, as regards their debt capacity and public expenditure and even autonomous organisation. In conclusion, austerity measures imposed by the EU and IMF have urged Spain to reform its local government. Central Government reform measures include not only the reduction of transfers from the central, regional and provincial governments but also the recentralisation of powers to those same territorial governments and the reduction of local expenditures through the rationalisation of local organisational structures and the joint

provision of local services and policy coordination. Of course, local governments are exercising great organized resistance to the recentralizing policy of the current Spanish central government. In fact, the Spanish Federation of Municipalities and Provinces (FEMP) has clearly expressed the intention of repealing the current 27/2013 Law as a priority objective for Spanish mayors in order to reinforce del Local Self-Government in Spain (Caballero, 2016b). This purpose, expressed by the nowadays president of the FEMP, coincides with the access of new parties and citizen candidacies to the Spanish municipal governments, including those of the two main cities, Madrid and Barcelona. Being political expression of the mobilizations and citizen protests (worldwide known as Movement 15-M, or Movement of the Indignados) these local governments seek to recover lost self-government and have also become municipalities platforms to promote economic and social policies different from those imposed by the Spanish central government and the EU (Pradel & García, 2018).

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