CHAPTER 15

Spain

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In general terms, the Spanish system of local government under the current Constitution (1978) is relatively stable. Various economic crises and social and political changes (such as the emergence of new political parties at the state, regional, and local levels) have brought about several adjustments in the local government system, but have not modified its pillars. Although both state and autonomous communities (regions) tend to reduce local autonomy, this reduction has not been dramatic yet. The constraints on local governments are mainly relevant in financial matters, in which since 2012 state and regional controls on local authorities have significantly increased to ensure the balance and sustainability of local budgets. Currently, the most urgent reforms concern the second tier of local government (provinces), whose contours are not clearly set out either in the Constitution or in the general laws, and the rural municipalities, many of which are continuously losing population and are at risk of disappearing.

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1 Country Overview

The Kingdom of Spain is a member state of the European Union. According to the National Institute of Statistics,[1] it had a population of 47.3 million in 2020 and a territory of 505,990 km^2. This equates to a population density of 93.5 people per km^2, although the population is in fact distributed very unevenly, with its densest concentrations found in large cities (such as Madrid, Barcelona, Valencia, Seville, Malaga, A Coruña, and Murcia) and on the Mediterranean coast. In terms of ethnic origin, Spain is homogeneous and largely Caucasian. However, it is also home to various cultural groups, as is evident from its three other official languages apart from Spanish: Galician, Catalan, and Basque. Immigrants represent 12.9 per cent of the population, and come mainly from Latin America, Eastern European countries (such as Romania), and Morocco. Spain's 2021 gross domestic product (GDP) per capita places it as a high-income country.

Under the Spanish Constitution of 1978, the Kingdom of Spain has three basic levels of government: the central state, the autonomous communities (regions and nationalities), and three mandatory types of local governments: islands, provinces, and municipalities. All three levels of local government are directly guaranteed by the Constitution. In accordance with this constitutional arrangement, Spain currently has 17 autonomous communities (plus two Autonomous Cities: Ceuta and Melilla); 11 islands (seven in the archipelagos of the Canary Islands and four in the Balearic Islands); 50 provinces; and 8133 municipalities.

The Spanish Constitution distributes territorial powers and functions among the three basic levels of government: the central or national state, the autonomous communities, and local governments. The Constitution reserves or expressly allocates certain matters and powers directly to the central state. At the same time, it provides that matters and powers not expressly reserved for the central state can be attributed to each autonomous community through a Statute of Autonomy for each community, with this approved via the 'Organic Law' of the State (an Act voted by the absolute majority of the members of the House of Representatives).

The growing relevance of the autonomous communities, the continuous withdrawal of the central state, and the apparent stability of local

[1] See www.ine.es (accessed 1 August 2021).

governments can be observed clearly in the country's public expenditure. Currently (according to the institution in charge of the general accounting audit),[2] subnational governments are responsible for 44 per cent of total public spending. Expenditure by the autonomous communities has clearly increased in recent years, while local expenditure (that of provinces, municipalities, and islands) has remained stable at between 11 and 13 per cent.[3] This distribution of public expenditure has prompted the Organisation for Economic Co-operation and Development (OECD) to conclude that Spain 'is now one of the most decentralised countries of the OECD'.[4]

The territorial distribution of power is far from symmetrical. The state currently focuses its activity on legislative functions, justice, and the administrative management of selected or strategic matters (such as military defence, or the construction and management of infrastructure of general interest). The autonomous communities carry out legislative tasks and manage the greater part of administrative functions (basically those related to the welfare state, such as education, health, and social assistance). The municipalities apply state and regional laws and provide most of the local public services (public transit, waste management, urban planning, and law enforcement, among others). Finally, the provinces assist and cooperate with the municipalities: their main function is to ensure the provision of local services to the smallest municipalities. In the case of the archipelagos (the Canary and Balearic Islands), their local councils carry out the services of the continental provinces as well as a good deal of the services provided by the autonomous communities. The so-called 'historical territories' of the Basque Country offer some exceptions to this arrangement.

Like the other members of the European Union, Spain is a democratic state of the particular kind referred to by the Constitution as a 'parliamentary monarchy'. Strictly speaking, the monarchy's role is restricted to that of official Head of State. The King, currently Felipe VI, enjoys only very limited constitutional powers. The form of government is parliamentary, both at the state level and within each autonomous community.

[2] See www.igae.pap.hacienda.gob.es (accessed 1 August 2021).

[3] As of 2018. See Ministerio de Hacienda, *Haciendas locales en cifras. 2018* (2020), www.hacienda.gob.es (accessed 2 August 2021). See also Juan Echániz Sans, *Los gobiernos locales después de la crisis* (Fundación Democracia y Gobierno Local, 2019).

[4] OECD/UCLG, *Subnational Governments Around the World: Structure and Finance* (2016) 229.

Significant powers and matters are reserved in favour of the different parliaments (both the national parliament and the parliament of each region or autonomous community). At the state and regional levels, the different cabinets or executive councils direct the politics in their jurisdictions and have some extraordinary legislative powers. Each cabinet owes its legitimacy to its relevant parliament and is directly accountable to it.

The political system is relatively stable. Traditionally, Spain's political life has been dominated by the two large parties, the Spanish Socialist Workers' Party (PSOE) and the (conservative) People's Party (PP). However, in the past decade both of them have been losing their hegemonic positions due to challenges from new parties that have appeared both on the left (*Podemos*) and the right (*Ciudadanos* and *Vox*). In the 2019 national elections, the winner (the PSOE) attracted only 28.3 per cent of all ballots, while the runner-up (the PP) obtained just 21 per cent. In the Basque Country, the nationalist parties (both on the right and left) are in the majority. In the case of Catalonia, parties not only nationalist but openly pro-independence are in the majority.

2 History, Structures, and Institutions of Local Government

At the subnational level of government, a clear distinction is made in Spain between autonomous communities (akin in many respects to the member states of the federal countries) and local governments sensu stricto.

The large number of local governments in Spain is best explained by the ongoing impact of historical-political forces. The current map of local jurisdictions was shaped largely in the early nineteenth century when, following the Napoleonic code, municipalities were created in each town of more than 1,000 inhabitants. In addition (and inspired by the French example of departments), the country was divided into 50 provinces, all dependent on the national government. The current Constitution of 1978 added a further layer of autonomous communities (standing above the provinces and municipalities), and also transformed the provinces into proper local entities (that is, entities not dependent on the central government). Neither the provincial map nor the high number of municipalities was altered.

In accordance with all of the above, and leaving aside the particular case of the two archipelagos (where there is a governing council

for each major island), the primary structure of local government in Spain is based on the existence of two entities: the municipality and the province. However, the Spanish constitutional system does also make allowance for (although does not impose) the existence of other local bodies: those established by the autonomous communities (as is the case of the *comarcas* [counties] in Catalonia and Aragon), as well as some single-purpose bodies established by the municipalities for the efficient management of local public services (such as the metropolitan commonwealths and the consortia). The creation of these other entities is frequently the cause of political conflict: in the case of the *comarcas,* because they try to occupy the functional space that would typically fall to the provinces; in the case of the metropolitan areas, because (at least in the cases of Madrid, Barcelona, and Vigo) they compete for economic power with their respective autonomous communities.

The current structure of local government in Spain is a familiar one to those who study comparative constitutionalism. There are many federal states—Germany and Canada are good examples—which include two or more levels of local government, such as the municipal and regional (or provincial).

The local administrative map of Spain reveals that most municipalities (especially so in the interior of the peninsula) are small or even very small: 85 per cent of them have less than 5000 inhabitants, and many are unviable both financially and functionally. They are highly dependent on assistance from and cooperation with their corresponding provinces and autonomous communities. In recent times, and as a response to the financial crisis of 2008, the conservative national government launched a twofold political initiative, calling for the amalgamation of some municipalities as well as a reinforcement of the role of the upper tier of local government (the provinces). However, neither of these two initiatives (both included in State Law 27/2013, Rationalisation and Sustainability of Local Administration) has proved successful.[5] Great social resistance and mobilisation has been directed against municipal mergers, in addition to which it has been found that the provinces cannot generally replace the small municipalities, given that the Constitution defines provinces as only second-degree jurisdictions. In this regard, one sees a notable difference

[5] Eloisa Carbonell Porras, 'La alteración de términos municipales en la reforma local de 2013: Crónica de un fracaso anunciado' (2018) 9 *Revista de Estudios de la Administración Local y Autonómica: Nueva Época* 5–21.

between Spain and the Anglo-Saxon tradition of having strong upper tiers of local government.

Single-purpose bodies play a secondary role in the general scheme of local governments. These can be set up directly by a municipality or province and have proved to be popular, with 4125 established by the end of 2020 (mainly in the large cities). However, none of them enjoys direct democratic legitimacy, and they serve strictly instrumental purposes in their municipality or province.

Local governments fall under the concurrent jurisdiction of the state and the autonomous communities. According to article 149(1)(18) of the Constitution, the state has the power to establish by law the 'basis of the legal system of the public administrations'. Thus, in describing the provinces and municipalities as 'public administrations', the regulatory powers of the central state over local governments are acknowledged. At the same time, though, the different statutes of autonomy (with different texts and nuances of meaning) confer some exclusive powers over local governments to the corresponding autonomous communities, notwithstanding the fundamental regulation of the state under article 149(1)(18).

After interpreting article 149(1)(18) of the Constitution alongside the statutes of autonomy, the Constitutional Court concluded that the Spanish local system has a 'two-fold nature'[6] in that it is defined both by the laws of the state and the laws of the different autonomous communities. The state is responsible for 'fundamental' regulations, whereas the autonomous communities are responsible for 'non-fundamental' regulations, or the so-called 'development' regulations. As we see below, the state interprets its 'fundamental' powers quite broadly.[7] The 'fundamental' regulations of the state over local governments are found in two Acts. The first is Act 7/1985 of 2 April (On the Basis of the Local System, LBRL), and the second, Royal Legislative Decree 2/2004 of 5 March: this approved the Restated Text of the Local Tax Authorities Act (LHL). The 'fundamental' regulations of the state have served to set clear limits on the regulatory sphere of the autonomous communities.

[6] STC 214/1989, FJ 11.

[7] Francisco Velasco Caballero, 'Organización territorial y régimen local en la reforma del Estatuto de Cataluña: límites constitucionales', in *Autori vari*, *Estudios sobre la reforma del Estatuto* (Institut d'Estudis Autonòmics, 2004) 283 and ff.

2006 saw the beginnings of the reform of various statutes of autonomy, including those of Catalonia and Andalusia. The reform sought to expand regional legislative power (of the autonomous communities) over local governments,[8] but, in 2010, a Constitutional Court ruling halted this institutional evolution in its tracks.[9] Since then, further constitutional rulings—such as Constitutional Court Judgment (*Sentencia del Tribunal Constitucional*, STC) 103/2013 on a special State Act for the largest cities—have confirmed the pre-existing case law since 1989. It is now clear to all that wider regional powers over local governments would be possible only through reform of the Constitution itself.

3 Constitutional Recognition of Local Governments

Article 137 of the Constitution guarantees the 'right to self-government' for municipalities, provinces, and islands, but the constitutional recognition of local autonomy does not imply any direct conferral of power on local authorities. Unlike the case with the detailed constitutional regulation that applies to the autonomous communities,[10] local governments are granted no more than a general and unspecific 'right' to local autonomy, with the Constitution providing no specification regarding what powers such autonomy entails. Indeed, even at the financial level, the Constitution guarantees only the 'financial sufficiency' of local governments, and gives no clear indication of the extent of their powers to raise their own taxes.[11] Similarly, the Constitution makes no clear distinction between provincial and municipal autonomy, and no specific provision is made for the large municipalities or the metropolitan areas. While article 5 of the Constitution expressly names Madrid as the capital of the state, no indication is given as to its autonomy.

[8] Francisco Velasco Caballero, 'El gobierno local en la reforma de los estatutos: Estatutos de autonomía, leyes básicas y leyes autonómicas en el sistema de fuentes del Derecho local', in *Anuario del Gobierno Local 2005* (Barcelona, 2006) 121–152.

[9] STC 31/2010 on the Statute of Catalonia.

[10] Articles 148 and 149 of the Constitution contain a distribution of powers between the autonomous communities and the central state, a distribution complemented by each community's Statute of Autonomy as approved by the Spanish parliament.

[11] SSTC 4/1981, 233/1999, and 82/2020.

In the absence of pervasive constitutional regulation of local autonomy, local self-government is basically shaped by statutory law.[12] National and regional laws are little bridled by the vague guarantee of local-self-government entrenched in the Constitution. In practice, the Constitutional Court has tolerated that the State and of the autonomous communities deeply limit local autonomy, with state and regional laws allowed to structure its powers and resources. In 2013 the Constitutional Court held that municipalities deserve little constitutional deference as to their internal organisation.[13] Additionally, in 2016 it declared that laws can subject local governments to multiple financial controls by the state and relevant autonomous community.[14] Nevertheless, the weakness of the Constitution's protection of local autonomy does not mean that local governments enjoy no actual self-government whatsoever; rather, it means that self-governance (which is comparatively high in Spain) derives more from state and regional statutes than from the Constitution itself.

4 Governance Role of Local Governments

The Constitution does not attribute specific powers, services, or functions to the local governments, nor does it directly distribute local power between provinces, municipalities, and islands. As mentioned, while article 137 grants municipalities, provinces, and islands the right to local autonomy, it gives no precise detail on what this means or how it works. Some scholars suggest that article 137 includes a 'universal clause' for local powers as the main expression of the so-called 'principle of subsidiarity'.[15] In addition, they argue that such universal powers can be limited by law only under the principle of proportionality. German public law and the principle of subsidiarity under article 4(3) of the European Charter on Local Autonomy of 1985 (ratified by Spain in 1988) have obviously influenced legal opinion, but not yet that of the Constitutional Court.[16]

[12] J Mir i Bagó, *El Sistema Español de Competencias Locales* (Marcial Pons, 1991).

[13] STC 103/2013.

[14] STC 111/2016.

[15] José Luis Carro Fernández-Valmayor, 'El debate sobre la autonomía municipal' (1998) 147 *Revista de Administración Pública* 89 and ff.

[16] Article 28 II GG according to German case law since BVerfGE 89, 127 (Rastede).

Several reasons have been put forward to oppose the constitutional recognition of a 'universal clause' of competences based on the principle of subsidiarity. First of all, it has been pointed out that the principle of subsidiarity in favour of local administration can only be understood correctly in a system of the territorial distribution of power in which both the federation and the states are also ruled, with some minor differences, by a constitutional preference for the states over the federation. In other words, the principle of subsidiarity must apply to the entire range of territorial powers, and not only at local level. This is quite different from the Spanish system. Here the autonomous communities hold limited powers, granted to them under an organic law approved by the state (Statute of Autonomy), which includes a residual clause of powers granted to the state, as provided by article 149(3) of the Constitution. To proclaim the principle of subsidiarity in favour of local authorities entails, ultimately, the defence of municipal powers over the powers of the different autonomous communities, without, at the same time, defending the priority of the autonomous communities over the state powers. This option clearly alters the distribution of powers established in the Constitution, as interpreted by the Constitutional Court.

It is still generally accepted that the allocation of powers to local bodies is a task best reserved for both state and regional parliaments.[17] State and regional laws do not act on powers attributed by the Constitution to local governments. Instead, the laws comply with the constitutional mandate of local autonomy, attributing specific powers to the different types of local government. Because of this, local governments do not possess constitutional powers. It cannot be said that the law limits local powers (in order to give them over to the central state or the autonomous communities), or that the principle of proportionality governs this limitation of power.

In any case, Spanish constitutional case law has interpreted the guarantee of local autonomy, as provided by article 137, as guaranteeing 'sufficient participation' by the local governments in the exercise of public power. This interpretation has been reinforced by article 3(4) of the European Charter on Local Autonomy.[18] The constitutional mandate of 'sufficient participation' by the local governments (in matters of local

[17] On this debate, see Francisco Velasco Caballero, *Derecho Local: Sistema de Fuentes* (Marcial Pons, 2009) 45.

[18] STC 159/2001, FJ 4.

interest) does not necessarily require (in the judgement of the Constitutional Court) the attribution to them of decision-making powers on all the matters in which they are concerned. In the eyes of the Spanish Constitutional Court, 'sufficient participation' is guaranteed through procedural interventions in the adoption of decisions at other levels of government (for example, in the drafting of regional planning, or in water or environmental planning), through the integration of local representatives in supra-local government organs (such as in the state organ for education programming), or in the government organs for water resources. 'Power through participation' is considered especially fitting in matters where it is difficult to distinguish local from supra-local interests. In these cases, local autonomy is guaranteed by giving decision powers to a supra-local organ, while allowing for the possibility that local bodies might intervene in the decision-making process.

Today, after 40 years of constitutional jurisprudence on 'sufficient participation', it can be argued that the doctrine has not afforded an effective method for strengthening local governments. While local participation in supra-local decisions is undoubtedly very high, it has generally not been found to be useful. As a result, demands are being made that the 'right to participation' (which ensures the constitutional guarantee of autonomy) be realised through more concrete measures, such as specific decision-making powers (and not just in the rights to procedural or organic intervention in the decisions being made by others).

To repeat, the degree of local power is decided by parliamentary acts made by both the state and the autonomous communities. The general state legislation on local governments (LBRL) distinguishes between municipalities and provinces for this purpose, and contains some of the basic norms regarding the attribution of powers to local bodies. First, the LBRL prescribes that, in all matters of local interest, the laws (both at state and regional levels) must allocate sufficient and specific functions or competences to the corresponding local governments. Secondly, article 4(1) of the LBRL enumerates the types of prerogatives (sanctioning power, taxation, planning) that correspond to municipalities and provinces in their range of responsibilities. It does not specify the competences, functions, and prerogatives of the local entities created by each autonomous community (*comarcas,* metropolitan entities, consortia created by regional laws) or those that have arisen freely from municipal cooperation (associations or commonwealths). All such local entities

(less important than municipalities or provinces) exist in a field of regulation specific to each autonomous community. The following section describes some of the different functions and powers of municipalities and provinces.

4.1 Municipalities

As we have seen, the general state law on local government (LBRL) does not directly assign powers or competences to municipalities. Instead, it lists the matters in which the sectoral laws (of the state or the autonomous communities) must attribute specific powers or competences to the local governments. In the majority of cases, the autonomous communities assign these powers. This is due to the fact that, in general, matters of local interest coincide with those that are attributed by the Statutes of Autonomy to the respective communities. Occasionally, the autonomous communities assign powers to the municipalities in an exclusive manner (such as for the collection of urban waste). At other times, the regional laws assign extensive executive powers to the municipalities, but they then also set up managerial oversight by establishing an administrative entity in which the municipality and the autonomous communities are equally represented, as, for example, with the management of public transport in the metropolitan area of Madrid (this was done by means of a single-purpose entity of the regional government that also incorporates representatives from the municipalities concerned).

Finally, there are also situations in which control is spread across two distinct levels of the decision-making process and the municipality gives initial approval while the autonomous community gives final approval (this is the case with general urban planning). The laws allocating powers (or those which regulate the management of the different services) do not usually contain specific financial provisions. Each municipality draws from its general financial resources (which, as shall be explained later, are regulated by state legislation) to provide the necessary funding. In this way, a clear separation is maintained between the territorial entity that attributes powers, competences, or services (normally the autonomous community) and the level of government that regulates local income (usually the national government).

The LBRL contains a list of fields in which conferring powers on municipalities is compulsory. The laws of the autonomous communities

must always respect this 'minimum list of local matters'.[19] This does not preclude the autonomous communities from allocating further powers or competences that are not included in the LBRL. In addition, the new statutes of autonomy in Catalonia, Andalusia, and Aragon (2006) contain additional lists of fields in which the corresponding regional parliaments must attribute powers to the municipalities. To be precise, the LBRL contains both a list of 'local matters' (fields or matters of obvious local interest) and a list of mandatory local services. As a direct result of the major financial crisis of 2008, State Law 27/2013 reduced both lists slightly in an attempt to lessen municipal expenditure for non-essential services or services that were also provided for by the autonomous communities or by the state government. As the Constitutional Court later pointed out, the shrinkage of the state lists of local matters (those in which regional laws must necessarily attribute powers to the relative municipalities) does not prevent the regional laws from voluntarily allocating any additional powers and services to the local governments of their territory. According to the above, in the LBRL we can find three types of municipal powers.

- Article 25(2) of the LBRL identifies as 'municipal matters' those fields in which there is a clear local interest and which are of concern to every municipal resident (safety in public places, planning for vehicle traffic and pedestrians on urban roads, emergencies, fire extinction and prevention, urban planning, historic-artistic heritage, environmental protection, water supply, slaughterhouses, markets and consumer and user protection, cemeteries and funeral services, urgent social services, water and public lighting, street cleaning, waste, sewage, public transit, cultural and sports activities). In all these areas, the legislation (of the state or the autonomous communities) must confer the relevant powers on the municipalities (though these need not necessarily be exclusive powers).
- According to article 26(1) of the LBRL, municipalities are directly responsible for maintaining a certain level of minimum public services. These required services increase according to the number of

[19] Monica Domínguez Martín, 'Municipios: Competencias y potestades´, in Francisco Velasco Caballero (ed) *Tratado de Derecho Local* (Marcial Pons, 2021) 231–257.

inhabitants.[20] In complementary fashion, article 86(2) of the LBRL 'reserves' certain essential activities or services to the municipalities, ensuring that private firms are banned from competing with local governments. The current list of reserved services includes (for the moment; it is continually being reduced) water supply and purification; waste collection, treatment, and use; and public transit.

- Article 7(4) of the LBRL authorises municipalities to perform supplementary activities on two conditions: that the sustainability of the municipal budget is not put at risk; and that the activity is not already undertaken by the national or regional government. This broad power is referred to by the Constitutional Court as a 'general municipal competence' and is allocated by state law. In practice, municipal councils encounter few objections from national or regional governments to any proposed supplementary activities funded by municipalities from their own revenue sources.

The legal regulations on the management of local powers and services are contained mainly in the regional laws that assign powers to the municipalities. For example, the regional laws that confer the municipal powers and functions around water supply also set the payable fees and foresee possible sanctions for failure in payment. Beyond the details of the regulations themselves, how the different services are organised and operate depends in large measure on each municipality. These operational decisions form part of the 'power of self-organisation' which is guaranteed both by article 4(1)(a) of the LBRL and article 6(2) of the European Charter on Local Autonomy. In this way, and with very

[20] Article 26.1 LBRL: The municipalities shall individually or in association provide, in all cases, the following services:

a. In all municipalities: public lighting, cemetery, garbage collection, street cleaning, residential supply of drinking water, sewer system, access to population centres, paving public highways.
b. In municipalities with population over 5000 inhabitants-equivalent, also: public park, public library, and waste treatment.
c. In municipalities with population over 20,000 inhabitants-equivalent, also: civil emergencies, assessment and provision of urgent social services, fire extinction and prevention, and public sports facilities.
d. In municipalities with population over 50,000 inhabitants-equivalent, also: urban public transit and environmental protection.

few limits, each municipality can choose between managing a power or service directly (through its own departments and agencies) or indirectly, through a public contract or administrative concession. Over the last two decades, contracting-out has been the general trend, although when a number of radical-left parties won local elections in 2015 and took control of cities such as Madrid, Barcelona, and Valencia, a small return to contracting-in began (mainly for water supply and garbage collection).[21] But contracting-out remains by far the most common option for running municipal services.

Some municipal functions must always be managed directly by the staff of permanent civil servants. This is the case for necessary tasks in which public prerogatives or special public interest are involved, as prescribed by article 92(3) of the LBRL. Aside from these cases, every municipal council is allowed to fill its bureaucratic posts either with civil servants or contractual employees. Currently, more than half of all local employees are contract-based (although their contractual conditions strongly resemble those of civil servants). Table 1 presents comparative figures for the employment of civil servants and contractual employees in 2020.

From an overall perspective, and under the contemporary paradigm of greater efficiency in private management, a clear tendency can be observed today towards the provision of local public services under the rules of private law (common law): through municipal-owned companies, or through public procurement. This is an example of what has become known in European law as the 'flight from administrative law'.

Table 1 Civil servants and contractual employees in 2020

	Civil servants	*Contractual employees*	*Others*	*Total*
Municipalities	166,006	266,721	56,059	488,786
Provinces and islandic councils	24,965	23,393	16,489	64,847

Source Ministerio de Política Territorial y Función Pública, Boletín Estadístico del Personal al Servicio de las Administraciones Públicas (2020), www.mptfp.es (accessed 1 July 2021)

[21] Julia Ortega Bernardo and María de Sande Pérez-Bedmar, 'El debate sobre la remunicipalización de los servicios públicos' (2015) 9 *Anuario de Derecho Municipal* 63–96.

According to the Spanish Constitution, every municipal government is based on democratic principles. In addition, article 140 of the Constitution provides that this democratic legitimation consists in the direct election of councillors. However, the Constitution says nothing about mayors, who can be elected directly or indirectly (by the councillors-elect). The electoral system for mayors and councillors or aldermen is contained in the Organic State Law 5/1985 of the General Electoral System. In accordance with this regulation, Spaniards and citizens of the European Union over 18 years old are voters and can run as candidates in each municipality. Municipal residents directly choose a fixed number of councillors or aldermen, grouped together in closed lists of political parties or electoral coalitions. The number of councillors depends on the municipal population size. For the determination of the councillors-elect, a corrected proportional system is followed: the d'Hont rule. Councillors elected in this manner then designate the mayor by majority vote. In recent years, most political parties have considered choosing mayors by direct election, but no legislative initiative has been forthcoming. This possibility has been criticised by scholars who point out that the direct election of mayors could create tensions and conflicts between the councillors (elected through blocked lists drafted by the political parties) and the directly elected mayors.[22]

National and regional laws offer a wide range of participatory mechanisms in addition to direct elections, as does, for instance, the 'popular municipal initiative' introduced by Act 57/2003, Measures for the Modernisation of Local Government. In addition, there are numerous municipal plans and regulations on civic participation; new municipal bodies for participation; the stimulus for participation provided by Local Agenda 21; and many other programmes of subsidies for the promotion of participation. Despite the large list of existing participatory mechanisms, the truth is that the ratio of effective civic engagement is low.[23]

[22] Manuel Arenilla Sáez, 'Sistemas electorales y elección directa del alcalde: Una perspectiva comparada', in Manuel Arenilla Sáez (ed) *La Elección Directa del Alcalde. Reflexiones, efectos y alternativas* (Fundación Democracia y Gobierno Local, 2015) 19–62, 36.

[23] Francisco Velasco Caballero and Carmen Navarro Gómez, 'The New Urban Agenda and Local Citizen Participation: The Spanish Example', in NM Davidson and G Tewari (eds) *Law and the New Urban Agenda: A Comparative Perspective* (Routledge, 2020) 74–86.

With regard to the internal organisation of municipalities, the LBRL clearly distinguishes between government and municipal administration. The LBRL regulates government organs (the decision-making organs) in great detail, but leaves the administrative organisation of municipalities practically without regulation (and therefore open to regional regulation or municipal self-regulation).

Decision-making power in councils is divided between three main government organs: the assembly of council members; the mayor; and the local government commission. However, the distribution of tasks between them is not symmetrical across Spain. Currently, several different systems are at work: 'a common system', applicable to the majority of municipalities and contained entirely in the LBRL; a specific system for 'municipalities of great population' (introduced into the LBRL with the State Act 57/2003 of Measures of Modernisation on Local Government); and, alongside these, the special systems of Madrid (State Act 22/2006) and Barcelona (State Act 1/2006).

In the common system of municipalities, the assembly of council members (which is directly elected by residents) has numerous powers of political or strategic direction (planning, budget) and administrative execution (public procurement, alienation of goods). These powers are substantially different in the large municipalities (such as Madrid and Barcelona) where the assembly concentrates on decisions that are more relevant politically (norms, budgets) and has more political control over the executive organs (mayor and local government commission). The specific ways in which the assembly works in the large cities is commonly described as the 'parliamentisation' of local government.

In the common system municipalities, the mayor directs local politics and exercises numerous administrative functions (leadership of personnel, leadership of the municipal police force, sanctioning powers, licencing). These functions of the mayor are absent in the larger municipalities.

Lastly, most municipalities include an executive organ: the local government commission. The composition and functions of this commission are diverse: in small and ordinary municipalities, the commission is simply there to help the mayor, while in the larger municipalities, it concentrates the executive power and performs most of the functions that, in smaller municipalities, belong to the mayor. It is common for both the mayor and the local government commission to delegate wide powers to particular councillors from the assembly.

4.2 Provinces

The new constitutional order of 1978 did not bring substantial changes to the powers of municipalities (though it did change the way these are exercised: with full autonomy and without upper governmental controls). For the provinces, though, the new constitutional order allowed a significant reduction in their functions, with many of these being taken over by the nascent structure of autonomous communities. The Constitutional Court accepted this reduction of provincial powers in favour of the autonomous communities, but insisted that it should not affect the 'essential core' of provincial autonomy. As stated in STC 32/1981, with regard to the Catalan provincial councils, '[the functional adaptation of the provinces to the new scheme of functional distribution of power] could not lead, except through an amendment of the Constitution, to the elimination of the Province as an entity with autonomy for the management of its own interests'.

Since then, constitutional case law has identified the irreducible core of provincial autonomy as being the traditional functions of 'cooperation and assistance' to the municipalities. So, according to STC 109/1998, 'the removal or substantial reduction of such an essential stronghold had to be considered detrimental to the provincial autonomy guaranteed by the Constitution'. This cooperative function is understood, essentially, as spending power. The core of provincial autonomy is regarded as financial autonomy (in terms of spending power).

The constitutional right to provincial autonomy is specified by article 36 of the LBRL in a reduced list of provincial powers based on the idea of cooperation and assistance to the municipalities. While the autonomous communities could have worked to increase provincial powers, in general they have not done so. Instead, they have added further constraints and controls over the provinces, right up to the limits allowed by the Constitutional Court. The reality is that the provinces compete for public authority with the autonomous communities (especially in Catalonia). From the perspective of the autonomous communities, the provinces are frequently considered no more than the remains of the pre-democratic centralised state of the Francoist dictatorship (1939–1975). Several statutes of autonomy modified in 2006–2007 have confirmed the force of this perspective. In the case of Catalonia, the province is intended to be replaced by a new regional territorial entity, the '*veguerías*', while

the regional government in Andalusia also introduced new powers of coordination and control over the provinces.

Contrary to this trend, the economic crisis of 2008 produced State Law 27/2013. This strengthened the autonomy of the provinces at the expense of both the small municipalities and the autonomous communities. It should be noted that its key objectives were financial rather than political, seeking to address the economic unsustainability of the small municipalities. The reform was confirmed by the Constitutional Court (SSTC 111/2016 and 82/2020), although it is worth noting that there have been few practical outcomes. Provincial councils continue to assist the small and medium-sized municipalities, but seldom assume control over the direct provision of public services to citizens.

5 Financing Local Government

The Constitution guarantees the 'financial sufficiency' of local governments, as provided by article 142 of the Constitution, but fails to specify the mechanisms for this guarantee. The existing case law shows that the constitutional guarantee tends to cover spending power rather than income.[24] The local governments that are directly guaranteed by the Constitution (provinces, municipalities, and islands) have not been provided with the constitutional authority to control their own resources, and local revenues are determined by parliamentary rulings (state laws).[25] More precision has been offered in the various statutes of autonomy modified in 2006 and 2007. The new Statute of Autonomy for Catalonia (2006), for example, specifically guarantees a certain amount of local taxation under article 218(3); article 219(1) provides for the unconditional receipt of grants; and article 219(3) provides for the necessary provision of funding for new tasks or powers that the law assigns to local bodies.

The local funding system is currently determined mainly by state law. In 1988 a state act—Act 39/1988 of 28 December on Local Tax Authorities (LHL)—determined the financing of local institutions. The Act was subsequently challenged at the Constitutional Court, but, in STC 233/1999, the Court confirmed its validity in broad outline. The judgement reasserted that the state's power to regulate the 'basis of the legal system

[24] STC 48/2004, FJ 10.

[25] Since STC 4/1981, FJ 15.

of the Public Administrations', as provided by article 149(1)(18) of the Constitution, was considered sufficient to grant the state parliament the power to fully regulate the local financial system. After several minor amendments, the 1988 Local Tax Authorities Act was revised in 2004. Currently, the regulation of local taxation is provided by Royal Legislative Decree 2/2004 of 5 March, which approves the Restated Text of the Local Tax Authorities Act (LHL). In terms of its general provisions, it is similar to the 1988 Act.

Both the 1988 and 2004 versions of the LHL established a 'mixed system' for local financing. A basic distinction is discernible between own-source revenue and national and regional transfers. Own-source revenues include income from local property; earnings from local taxes; profit from credit transactions; and income from fines. Taxes are the most important of these 'local assets'. In terms of local taxes, distinctions are made between public prices and fees (for individualised delivery of local public services); special contributions (though rarely used, this impose taxes on those who benefit especially from public infrastructure); and the five municipal taxes. Although reference is commonly made to 'local taxes', it should be noted that local institutions do not enjoy taxation powers and lack the authority to establish taxes—this authority resides with parliamentary laws issued by the state or the autonomous communities. However, the LHL does recognise that local governments have the power to decide (through the passage of by-laws) on certain non-essential elements of the local taxes established by state or regional laws: these include abatements and tax rates within a narrow legal range.

Municipal taxes contribute the most to the tax income raised by municipalities. These include the Buildings, Facilities and Construction Tax (ICIO); the Increased Value of Urban Land Tax (IIVTNU); the Real Estate Tax (IBI); the Power Haulage Vehicle Tax (IVTM); and (though residual at present) the Business Tax (IAE). On average, municipal tax revenues make up 50 per cent of all revenue. The largest slice of this comes from Real Estate Tax, which makes up 26.17 per cent of all revenue, including the national and regional grants.[26] Compared with other European countries, the existing business tax (IAE) brings in very little.

The own-source revenues of local governments are insufficient for funding necessary local tasks. This conclusion is made especially

[26] Ministerio de Hacienda (n 3) 42.

clear in small municipalities, where tax revenues are correspondingly thin. In response to this, the Local Tax Authorities Act allows these municipalities to receive grants as a supplementary element. In the past, only the state (and not the autonomous communities) transferred tax revenues to local authorities; now both the state and the autonomous communities contribute to local financing by means of transfers. The most important state transfer is the so-called 'share in state revenue'. On average, this unconditional state transfer makes up 32 per cent of the total municipal revenue and is mainly based on the population size of each municipality. It is only for medium-sized and large cities (those with more than 75,000 inhabitants) that a complementary criterion exists, based on the tax revenue collected by the state (principally through personal income tax) in each municipality.

In addition to the general and unconditional state transfers, municipalities receive additional grants from the central state, the autonomous communities, and the provinces. These are frequently earmarked grants and tend to be based on the political priorities of the supra-municipal authority rather than the priorities of the municipalities themselves. As a result, scholars often argue that earmarked grants undermine, or are out of sync with, the constitutional guarantee of local autonomy.[27] Indeed, in recent years various political parties have joined such scholars in insisting on the need for reform of local financing. In 2017, an expert commission appointed by the government prepared a draft document on general reform of local financing.[28] However, serious differences between the large cities (which benefit significantly from the current system) and the small and medium-sized villages and cities meant that this carefully considered proposal was unable to garner enough political support.

Municipalities and provinces generally enjoy complete budgeting power over their income. Only some statutes of autonomy (such as that of the Autonomous Community of Valencia, or the new Statute of Andalusia) provide the autonomous communities with some generic powers to coordinate or oppose the spending priorities of the local budgets. In practice, these regional powers are not really relevant. Nevertheless, while local spending power is in theory quite extensive, in reality

[27] Manuel Medina Guerrero, 'La articulación de la suficiencia financiera de los entes locales', in 1/2004 *Cuadernos de Derecho Local* 38 and ff.

[28] Ministerio de Hacienda, *Informe de la Comisión de Expertos para la reforma de la financiación local* (2017), www.hacienda.gob.es (accessed 2 August 2021).

levels of spending are conditioned in many ways by the other orders of government, as it is the parliamentary statutes (both of the central state but also of the autonomous communities) that determine the tasks and services of local governments, which then have to be reflected in the budgets. On the other hand, since the Organic Law 2/2012 (Budgetary Stability and Financial Sustainability) entered into force, the spending autonomy of local governments is submitted to the strict legal requirement that the local budgets be balanced, what directly prohibits financial deficits in local government. Practical experience since 2012 shows that both the state and the autonomous communities have exhaustively monitored the balancing between income and expenditure in local budgets. On occasions, this tight supervision has led to the suspension of state or regional grants to the non-compliant local governments.

6 Supervising Local Government

With the exception of the financial field, where state and regional controls have been greatly intensified since the Organic Law 2/2012 entered into force, Spain's system of local government allows for very little governmental supervision or control (either by the state or the autonomous communities) over the activity of municipalities and provinces. In this matter there is a basic distinction between political control (that is, the possibility that a state or regional authority amends the political option followed by a local authority) and legal control (understood as the possibility that a state or regional authority supervises that local authorities comply with the laws). Indeed, the Constitutional Court takes the view that the local autonomy guaranteed by article 137 of the Constitution widely forbids any state or regional political controls on local governments.[29] This includes the strict prohibition of any sort of removal of municipal officials, either elected or permanent, and ensures that local government bodies cannot be dissolved on the grounds of mismanagement. The Constitution only allows the state and regional parliaments to authorise selective controls of the corresponding state or regional authorities on the accomplishment of the laws by the local bodies.

At the statutory level, the state LBRL has further reduced the already small margin for state or regional legal control over local authorities

[29] The case law remains stable since STC 4/1981 until today: STC 82/2020.

provided by the Constitution. While the Constitution did not specifically prevent state and regional governments from—selectively—controlling the legality of the local action, articles 63 and ff of the LBRL have ruled out this possibility other than in the financing field. Since the LBRL is a fundamental state regulation, and therefore binding for all regional authorities, it prevents the laws of the autonomous communities from adding further specific legal controls not directly foreseen in the LBRL. This was the argument presented by the Constitutional Court in the STC 159/2001 in relation to a Catalan Law on urban planning. Here the Court considered that certain specific controls on the legality of municipal urban planning activity went beyond the highly restrictive system of governmental controls stipulated in the LBRL. Similar arguments were made in STC 154/2015. As a result of these constitutional and legal constraints on supervision from above, Spanish local autonomy scores high in the European context.[30]

In the LBRL, state and regional control of local authorities was replaced by a complex system of 'intergovernmental relations'. This was based on the idea of full respect being paid to the powers of local institutions and on the principle of cooperation. Aside from the minor obligation to provide information to the supra-local authorities, as stipulated by article 56 of the LBRL, the LBRL establishes legal instruments to prevent conflicts between the state and the autonomous communities, on the one hand, and the local authorities, on the other. In order to prevent or resolve conflicts of authority, articles 57 and 58 of the LBRL promote the 'free cooperation' of public administrations. It is only in cases where voluntary cooperation is not technically possible that the LBRL, as stipulated by articles 10(2) and 59(1), provides for the possibility that the state or the autonomous community establish (by law) procedures for 'coordination'. In this process, possible confrontations between or conflicts with local governments are to be resolved by a final decision of the state or the regional government.

This technique of coordination is included in several laws (of the state or of the autonomous communities) that have to do with significant infrastructure (such as ports, airports, water works) and with urban planning. In all these cases, the location of infrastructure of general interest can be determined by the state or the regional government after hearing

[30] Andreas Ladner, et al., *Patterns of Local Autonomy in Europe* (Palgrave Macmillan, 2019) 184.

the affected municipality. These arrangements for upper coordination, though they undoubtedly serve to limit municipal powers, have been accepted and endorsed in constitutional case law.[31]

Article 60 of the LBRL stipulates that, in exceptional circumstances, supra-local governments can act to replace local bodies by taking over the exercise of their powers. This is possible only when an action or omission by the local institution has violated legal regulations and, further, when this violation directly affects competences exercised by the state or the autonomous community. Therefore, it is not really a control of the legality of the local action by a supra-local administration, but rather an instrument that allows the latter to defend its own powers when faced with possible interference from a local institution. Nevertheless, given the strict requirements set forth in article 60 of the LBRL for exercising this power, as well as the relevance of the constitutional principle of local autonomy, in practice such a coercive mechanism has become useless.

In extreme cases (when local administrations pose a serious threat to general interests or violate constitutional obligations), article 61 of the LBRL provides for the dissolution of the local council (through an order of the state government). Any such dissolution must be accompanied by a call for partial elections to replace the now-dissolved council. This measure clearly represents an instrument of control over local authorities, but given its truly exceptional status, it does nothing to undermine the general conclusion that local governments in Spain are not submitted to ordinary controls by the upper levels of government.[32]

The lack of a system of ordinary governmental supervision over local administrations is compensated by a special regulation. According to this, the state or the autonomous communities can take local governments to the courts over violations of legal regulations by a local institution. According to the LBRL, three types of special judicial remedies exist:

- In the event of a minor violation of legal regulations, article 65 of the LBRL directly empowers the state or autonomous community to challenge local decisions before the courts. Any such challenge,

[31] A pertinent example is STC 40/1998, on planning for ports of general interest (under state authority). See also STC 204/2002 in regard to state airports.

[32] This has been used on only one occasion, when the Council of Marbella (Malaga) was dissolved by means of Royal Decree 421/2006 of 7 April. More than half of the councillors were on trial for corruption.

however, does require the submission of prior notice to the local institution. Only if there is no response to this can the filing of an appropriate claim to the judicial court begin. As the Supreme Court points out, such a challenge does not require any specific impact upon general interests or usurpation of supra-local powers; it requires only a reasoned claim that any legal regulation has been infringed.

- In the event of usurpation of powers, article 66 of the LBRL provides for direct challenge to local activity, with no need for prior notice, and facilitates provisional interruption (by the court) of the local activity that violates legal regulations.
- In the event of local decisions that pose a serious threat to Spain's general interest, article 67 of the LBRL authorises the delegate of the central government (the highest governmental authority of the state in each autonomous community) to bring local action to an immediate halt and, within 10 days, bring a challenge to this action before the Administrative Court. In this scenario, the suspension of the enforcement of the local agreement is a decision made by the supra-local administration (not by a court), though it may be confirmed or denied by the court as soon as the appropriate legal claim has been filed by the national or regional government.

7 Intergovernmental Relations

Given the importance of the constitutional guarantee for local autonomy, the administrative relations of local governments with other, superior, orders of government are frequently explained through recourse to the idea of 'formal equality'. As previously stated, article 137 of the Constitution guarantees the autonomy of the autonomous communities, the provinces, and the municipalities in parallel fashion. Consequently, all the territorial levels of government find themselves in a position of 'formal equality', that is, with each one enjoying autonomy with respect to the others (in theory if not always in practice). Such 'formal equality' tends to be limited to the executive or administrative proceedings of the diverse orders of government. As we have seen, at the normative level, the state laws and those of the autonomous communities prescribe rules for the administration of local life at a high level of detail. Inspired by the ideal of formal equality, the LBRL regulates inter-administrative relations in

ways that focus on cooperation and coordination and gives less attention to questions of control and supervision.

In recent decades, the question of local bodies participating in upper levels of government (and especially in the largest cities) has been a heated political issue, albeit with few concrete results. Early in the new century, and following the experience in Italy, the proposal was made to make the local governments present in the Senate. It consisted of setting up special procedures and committees within the chamber to evaluate the possible effects that legislative projects could produce on local governments. Today, such proposals have been abandoned completely and, in practice, local governments play only a small role in the decision-making processes of the state and the autonomous communities. Here, there are two main tendencies: institutional participation (where representatives from the local entities participate in state organs or regional entities) and functional participation (by issuing reports and proposing possible alternatives in the decision-making procedures of supra-local authorities, such as those referred to state or regional infrastructure).[33]

Traditionally, the Spanish local system includes some forms of institutional participation by municipalities in state bodies or on councils with a cooperative structure (such as the National Commission of Local Administration or, more recently, the General Conference on Local Matters). Here, the representation of local interests is almost exclusively reserved to the Spanish Federation of Municipalities and Provinces (FEMP). This is a free association of local bodies, one formally independent from the state administration (although largely financed by it). Its scope for political agency is very restricted, with the larger national parties (either government or opposition) using it to articulate their own political projects. In the last decade, some autonomous communities have also set up their own cooperative councils, notably the Councils of Local Governments in Andalusia and Catalonia, and the Basque Council of Local Public Policies. In ways similar to FEMP, local participation in those regional councils is carried out through regional associations of local governments.

All of the possibilities above for local government participation certainly do allow for bringing the local perspective into higher levels

[33] See Silvia Díez Sastre and Luis Medina Alcoz, 'La participación de la villa de Madrid en los procedimientos normativos estatales, autonómicos y europeos', in Luciano José Parejo Alfonso (ed) *Estudios sobre la Ley de Capitalidad y de Régimen especial de Madrid* (Barcelona, 2006) 353 and ff.

of government. However, the way in which this happens raises some concerns in regard to the principle of democracy, as there are no real mechanisms for democratic accountability: citizens cannot easily identify who decides on particular matters and thus who should be politically responsible to the voters.[34] All in all, participation of local bodies in supra-local levels of government remains very limited.

Spanish local governments can relate directly both to the state and to the corresponding autonomous community, which exemplifies what is described in constitutional case law as the 'two-fold character' of the Spanish local system.[35] In fact, however, this direct relation with the state is only really relevant within the financial sphere (with regard to transfers from the state to the municipalities and provinces). Other than that, direct administrative relations are scarce or at best sporadic.

The autonomous communities do have direct administrative relations with local bodies, and these extend beyond the financial sphere. Municipal powers usually correspond to those matters that the statutes of autonomy attribute to the different autonomous communities. Due to this correspondence, the administrative connection between local bodies and autonomous administration is particularly close. The close-knit connection is especially important in the two areas of regional planning: urban planning and development, and environmental protection. In both these areas, the regional administration directly and indirectly exerts control over local activities by making their plans and programmes subject to its final approval or authorisation.

8 Political Culture of Local Governance

The local electoral system has been relatively stable during some 40 years of democracy, even though it has seen some diverse electoral results. Little by little, the number of independent candidates and local parties has diminished in favour of national and regional political parties. In addition, since 2015, the proportional electoral system has afforded municipal councils a wide range of electoral choices. This greater diversity has not caused any instability in municipal government, however: the LBRL has

[34] See José María Rodríguez de Santiago, *Los Convenios entre Administraciones Públicas* (Marcial Pons, 1997) 311.

[35] STC 214/1989, FJ 11.

several regulations for containing the risk of instability arising from split councils. These include the balanced distribution of powers between the council and the municipal executive bodies (mayor and executive cabinet) and the weak legal role allowed to councillors if they leave the political parties in whose lists they were elected.

Local elections are in good health. Voter turnout is high (around 65 per cent), sometimes higher than that for regional elections, this despite the fact that in most autonomous communities local and regional elections are held at the same time. The effects of the Organic Law 3/2007 of 22 March (on the Effective Equality of Men and Women) are fast becoming visible. This law requires equal inclusion of women on all electoral lists, and in recent years the number of female councillors has grown a lot and is now up to 35 per cent; nevertheless, the number of women as mayors is still low, at 19 per cent.[36]

The reality of local democracy today is that state or regional parties are visibly and directly present in the exercise of local power, whether because the political elite at local level is the same as the elite in the central structures of the political parties, or because these parties direct local government from a supra-local perspective. In either case, a certain lack of connection can be observed between the constitutional and statutory guarantee of local autonomy (which is based on the existence of local interests) and the actual exercise of this autonomy (which is often linked to the demands of regional and state party-politics). Above all, the situation is in large part the result of an electoral system that favours the selection of candidates by the national parties.

9 Covid-19's Impact on the Role of Local Government

Covid-19 has given rise to many different municipal responses, both in executing decisions adopted by the state and the autonomous communities and in undertaking complementary and additional activities. This diversity is visible in all three stages of the national response to the pandemic: in the initial weeks; during the first state of emergency as declared by the national government; and throughout the never-ending de-escalation process. Municipalities have acted under two legal orders:

[36] Carmen Navarro, Francisco Velasco Caballero and Piotr Zagórski, 'Cuarenta años de elecciones municipales: el sistema electoral y su rendimiento' (2018) 12 *Anuario de Derecho Municipal* 23–49, 42.

the ordinary municipal law (applied in the pre-emergency phase and during the de-escalation process) and the laws provided by the state of emergency that allowed the national government to adopt all manner of necessary measures.

Under emergency law, the municipalities have acted in part simply as the executors of state measures. Thus, for example, the local police corps were essential to the enforcement of the confinement and closure orders issued by the national government. Here it should be noted that only three of the 17 autonomous communities have their own police forces (Catalonia, the Basque Country, and Navarre), and that the effectiveness of national orders has depended to a large extent on the enforcement of these orders by the local police.

While local governments followed the instruction of the national authorities with regard to police action, almost all municipalities took other measures of their own. These included multiple deferrals of local taxes; the suspension of municipal contracts; and multiple grants to people risking social exclusion. In addition, many city councils approved the payment of subsidies to companies, despite the fact that many regional laws do not allocate this power to local authorities.[37]

In the de-escalation phase, the autonomous communities re-assumed many of the powers which had been exercised temporarily by the national ministries during the state of emergency. Regional governments were ordering curfews and the provisional closures of restaurants and bars, and relying on local police to enforce these measures. As vaccinations began to be rolled out, so municipalities started to lose their lead position in the fight against the pandemic. Indeed, while they recognise and pay tribute to the work of the municipalities during the pandemic, the new national and regional plans for reconstruction (especially so the 'Recovery, Transformation and Resilience Plan') provide little space to municipalities as agents in the recovery process or in the management of the enormous economic stimulus package approved by the European Union.

[37] Francisco Velasco Caballero, 'Derecho local y Covid-19' (2020) 59 *Revista Galega de Administración Pública* 5–33.

10 Emerging Issues and Trends

Since the economic crisis of 2008, we have seen how pressures to recentralise power have been present throughout the country. In line with broad economic reform, the State Organic Law 2/2012 (Budgetary Stability and Financial Sustainability) imposed multiple controls on the financial activity of the autonomous communities and local governments, while the secessionist movement in Catalonia resulted in the suspension of Catalan self-government and effected a certain recentralising trend in the country as a whole. Despite the pressures of this general context, local governments have resisted these pressures well. In practice, and despite the legal changes that have taken place in the past decade, municipal autonomy has not declined significantly.

The short and medium term is unlikely to see any great changes to the situation of the municipalities, and ongoing debates around municipal amalgamation are unlikely to lead to any practical results. Similarly, there are unlikely to be any significant changes to municipal powers, as any such changes would have a direct impact on the autonomous communities and therefore require the elaboration of new constitutional and political arrangements.

However, we may well see changes to the second tier of local government. It is possible that the current provinces may suffer as a result of legal changes or political agreements which favour the development of new types of upper local governments. This possible transformation is related to growing political concern about the depopulation of a large part of the rural municipalities in the interior of the country. The current types of local government (municipalities and provinces) have not proved effective in tackling this serious problem. Local governments which are larger than municipalities but smaller than provinces might be in a better position to deal with rural depopulation.

The large Spanish cities—notably Madrid, Barcelona, and Valencia—are experiencing long-standing political and legal tensions with their corresponding autonomous communities. Their status as 'global cities' gives them leading roles in the economic life of the country, but their legal powers are limited to those enjoyed by the small municipalities.[38] Despite the pressures of this paradoxical situation, no easy outcome is

[38] Francisco Velasco Caballero, 'El Derecho de las ciudades globales' (2017) 11 *Anuario de Derecho Municipal* 23–40.

foreseeable. Any institutional upgrade to the power of the largest cities would reduce the influence of the autonomous communities, and this would require a constitutional, political, and legislative consensus which is still far away.

Thus, while it is likely that the Spanish 'global cities' will continue to gain standing in the international sphere, this standing will be cultural and economic, not administrative or institutional. For similar reasons, the metropolitan areas are unlikely to give birth to new and powerful local governments. This will not happen because the creation of new metropolitan government entities would need the approval of the very regional governments that would be in political and economic competition with them. The poor prospects for this kind of local government in Spain are all too evident in the recent experience of the metropolitan area of Vigo, where a metropolitan council was arranged but was never operative.