

Assist. Prof. Dr. Davor Trlin
Assist. Prof. Dr. Adem Olovčić
International Burch University, Sarajevo /
Internacionalni Burč univerzitet, Sarajevo
davor.trlin@ibu.edu.ba
adem.olovcic@ibu.edu.ba

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Stručni članak

THE RELATIONSHIP BETWEEN CENTRAL AND LOCAL AUTHORITIES IN SPAIN

ODNOS IZMEĐU CENTRALNIH I LOKALNIH VLASTI U ŠPANIJI

Summary

The distribution of responsibilities between different levels of management simultaneously represents the model of the chosen management system. Spain, as well as other unitary states, was affected by the trend of the expansion of the decentralization process. The concept of local self-government, expressed in the European Charter on Local Self-Government, means the right of local authorities to regulate and manage a significant part of public affairs under their responsibility and in the interest of the local population. Assessment of subsidiarity and local independence can be made from a large number of local perspectives. The focus will be on legal, administrative and fiscal aspects between the central and local levels. In the paper, we will analyze the administrative and judicial aspects, with a focus on supervision by the executive and the judiciary, but also the process of fiscal decentralization (distribution of costs, revenues, intergovernmental transfers, and granting of loans). The reason why we chose Spain is that this country has a long history of conflict between centralist and regional-federalist tendencies. The fact is that the complexity of cultural segments with different identities does not correspond to the centralism of the government. That is why the Spanish regional model and the demands for its revision are an important topic that requires a more careful study of the many aspects that this model implies. This paper is not intended to be a comprehensive analysis of Spanish regionalism, but rather a short section of the most significant elements that were actualized after the failed Catalan independence referendum in 2017. For these purposes, the assessment will be made in relation to existing theoretical models and constructions.

Keywords: *Spain, Administration. Multi-governance, Decentralisation, Asymmetry*

Sažetak

Raspodjela odgovornosti između različitih upravljačkih nivoa istovremeno predstavlja model odabranog upravnog sistema. Na Španiju je kao i druge unitarne države uticao trend ekspanzije procesa decentralizacije. Koncept lokalne samouprave izražen u Evropskoj povelji o lokalnoj samoupravi označava pravo lokalnih vlasti na uređivanje i upravljanje značajnim dijelom javnih poslova unutar njihovenadležnosti i u interesu lokalnog stanovništva. Procjena supsidijarnosti i lokalne nezavisnosti se može izvršiti iz velikog broja lokalnih perspektiva. Centar pažnje će biti na pravnim, administrativnim i fiskalnim aspektima između centralnog i lokalnog nivoa. U radu ćemo izvršiti analizu administrativnih i sudskih aspekata, sa fokusom na nadzor koji vrše izvršna i sudska vlast, ali i proces fiskalne decentralizacije (raspodjela troškova, prihoda, međudržavni transferi i odobravanje kredita). Razlog zbog kojeg smo Španiju odabrali, je taj što ova zemlja ima dugu istoriju sukoba između centralističkih i regionalno-federalističkih tendencija. Činjenica je da kompleksnost kulturnih segmenata sa različitim identitetima ne odgovara centralizmu vlasti. Zato su španski regionalni model i zahtjevi za njegovom revizijom važna tema koja zahtijeva pažljivije proučavanje mnogih aspekata koje ovaj model podrazumijeva. Ovaj rad nema za cilj sveobuhvatnu analizu španskog regionalizma, već kratak presjek najznačajnijih elemenata koji su aktualizovani nakon neuspjelog referenduma o nezavisnosti Katalonije 2017. U te svrhe, procjena će se vršiti u odnosu na postojeće teorijske modeli i konstrukcije.

Ključne riječi: *Španija, administracija. Višestruka uprava, decentralizacija, asimetrija.*

1. Introduction

The contemporary political and social structures of the civil world in modern European history can be traced back to the Enlightenment and the French Revolution of the 18th century. This transformative period marked a decisive conflict with the traditional absolutist and feudal monarchies, pre-capitalist economic systems, religious doctrines, and rigid class divisions, all of which suppressed free thought. As a result, a victorious, revolutionary, and democratic form of citizenship emerged, grounded in the principles of freedom, equality, and fraternity. This new relationship between the state, society, and the individual, as highlighted by the renowned German philosopher Immanuel Kant in his 1793 essay "Theory and Justice" (Rauscher, n.d.) played a pivotal role in shaping the modern era. The French Revolution, rooted in Enlightenment ideals, introduced groundbreaking concepts that transcended the established order, leading to profound political, individual, and collective liberation. This laid the foundation for the construction of an entirely new civilization—the modern era—in which we continue to actively participate and bear witness. It is said that the most important political change

of the modern era is the establishment of the nation-state (Giddens et al., 2009), a political entity characterized by a defined territory, a centralized government, and a sense of shared identity among its citizens. The concept of citizenship played a crucial role in this process, as it defined the rights, obligations, and membership within the nation-state. This new understanding of citizenship dismantled the hierarchical divisions of the old regime and fostered a sense of civic belonging and participation. It emphasized the rights and responsibilities of individuals as equal members of the nation, regardless of their social status or lineage. Moreover, citizenship became intrinsically linked to the notion of popular sovereignty, as the legitimacy and authority of the state were derived from the consent and participation of its citizens. This transformative shift in political thought and practice not only laid the foundation for the modern nation-state but also engendered a profound transformation in the relationship between individuals, groups, and the state, recognizing the agency and rights of citizens as essential components of political and social life. Similar to other Western European states, the Kingdom of Spain was not an exception in this regard.

Namely, the Enlightenment and its ideas permeated Spanish society, challenging the traditional order and setting the stage for transformative political and social changes. The French Revolution served as a catalyst, inspiring Spanish intellectuals and revolutionaries to question the existing absolutist monarchy and feudal structures whose power was worldly, based on almost four centuries-long imperialism. During this period, Spain underwent a process of political and constitutional reform. The establishment of the Cortes of Cádiz in 1812 marked a pivotal moment, as it sought to create a constitutional framework that recognized the rights and liberties of citizens. The Constitution of 1812 (*Constitución de 1812 - Congreso de Los Diputados*, n.d.), often referred to as "La Pepa" was a key milestone in the development of Spanish citizenship. It enshrined fundamental principles such as equality before the law, freedom of speech, and the right to participate in the political process. These principles sought to redefine the relationship between the state and its citizens, emphasizing the notion of collective sovereignty and the active role of citizens in shaping the nation. In spite of these modernist changes, the late 19th century and the beginning of the 20th century in Spain were characterized by a deep crisis within the country's political regime (Kamen, 1973; Payne, 2011). This crisis stemmed from a combination of factors, including social, economic, and political challenges. Spain, as an imperial power, had experienced a significant decline in its colonial holdings, leading to a loss of prestige and economic resources. Additionally, the country struggled with internal conflicts, including regional tensions and separatist movements, which further destabilized the political landscape. Moreover,

Spain's economy faced challenges such as industrialization and the impact of global economic fluctuations (Escosura & Sánchez-Alonso, 2020).

These circumstances created a fertile ground for political unrest, with multiple competing factions vying for power and influence. The crisis of the Spanish regime during this period was characterized by a lack of effective governance, weak institutions, and a growing disillusionment among the population. All this had been witnessed by the so-called Generation of 1898, a group of intellectuals and progressive people including Miguel de Unamuno, Antonio Machado, Ramiro Maeztu, Pio Baroja, Ramon Valle y Inclan, Jose Baroja y Gasset, Martines Ruis, Jacinto Benavente, Santiago Ramon y Cajal, etc. The generation of 1898 found itself, as Ortega y Gasset points out, "without a nation in which to realize itself, and without an individuality to follow." It was left without parents and spiritual order. / *Se encontro sin casa y sin padres en el orden espiritual.*" (Ortega y Gasset, 1983: 226–227).

This turbulent period eventually paved the way for significant political changes, culminating in the dictatorships of Miguel Primo de Rivera (1923-1930), and Francisco Franco (1939-1975), which significantly impacted the formation of the nation-state and the evolution of citizenship in Spain during the 20th century, actively suppressing democratic processes and limiting individual freedoms, thereby impeding the progress of citizenship development. It is a historical fact that under the dictatorship of Primo de Rivera (1923-1930), political repression was prevalent, and the notion of citizenship was subjugated to the interests of the authoritarian, military regime (Black, 2019). liberties were curtailed, political opposition was silenced, and the rule of law was undermined. As a result, the active development of citizenship was stifled, with individuals having limited agency and participation in the political realm. The subsequent dictatorship of Francisco Franco, which lasted from 1939 to 1975, had an even more profound impact on the concept of citizenship in Spain. Franco's regime actively imposed a centralized and authoritarian system that suppressed regional identities and imposed a homogenous Spanish identity (Phillips & Rahn Phillips, 2016). Political dissent was actively suppressed, and citizens were subjected to strict control and censorship. The active participation of citizens in shaping the nation and their rights and obligations as citizens were severely curtailed. These dictatorial regimes actively obstructed the natural progression of citizenship development in Spain. The principles of freedom, equality, and civic participation, which are essential components of citizenship, were actively undermined. The authoritarian rule actively limited the active agency of citizens and hindered the active recognition and protection of individual rights and liberties (Guibernau, 2004). It was only after Franco's death in 1975 and the subsequent transition to democracy that Spain actively resumed its

path toward the development of citizenship. The active dismantling of the authoritarian regime and the establishment of a constitutional framework actively paved the way for the reemergence of democratic principles, active citizen participation, and the active recognition of individual rights.

2. Spanish Transition, Democratic Consolidation, Regionalization, and National Group Relations in Spain

The Spanish transition, following the death of Francisco Franco in 1975, was a period of remarkable political transformation. Led by King Juan Carlos I and political elites, Spain embarked on a path toward democracy, as the country shifted from authoritarian rule to a constitutional monarchy (Jacobson, n.d.; *The Spanish Constitution, 1978*). The drafting and approval of the 1978 Spanish Constitution were key milestones during this transition, consolidating democratic principles, protecting individual rights, and recognizing the diversity of the Spanish nation. Namely, political negotiations and consensus-building played a pivotal role in Spain's democratic transition. Various political parties, including the Spanish Socialist Workers' Party (PSOE) and the Union of the Democratic Center (UCD), actively engaged in discussions and negotiations to shape the new political landscape. These efforts led to important reforms and the establishment of a democratic framework.

The 1977 general elections marked a crucial milestone in the democratic transition process. Political pluralism flourished as different parties competed for power and voters actively participated in the democratic process. The UCD emerged as a major political force, emphasizing the need for democratic consolidation and reconciliation. The drafting and approval of the Spanish Constitution of 1978 represented a significant achievement in Spain's democratic transition. The Constitution aimed to establish a framework for a democratic and decentralized state, protecting individual rights and promoting regional autonomy. It guaranteed political freedoms, established a parliamentary system, and recognized the diverse cultural and linguistic heritage of Spain (*The Spanish Constitution, 1978*). Following the establishment of the new constitution, Spain faced several challenges in consolidating its democracy. The main challenge was a long-standing claim of the historical nationalities within Spain, primarily, the Basques and Catalans to establish themselves as distinct nationalities within the new political framework. This addressed regional tensions, balancing regional autonomy with central governance, and ensuring accountability and transparency in political institutions. Decades of dictatorship and suppression of the given identities required the consolidation of democracy, in the form of ongoing efforts to strengthen democratic practices, foster civic participation, and build

trust in democratic institutions for all the Spanish citizens, and especially for the given nationalities.

The reason for this can be found in the deep historical roots, of the distinct Basque and Catalan identities, which date back centuries. Namely, the Basque Country, with its ancient traditions, unique language (Euskara), and distinct cultural practices, has fostered a strong sense of Basque nationalism and historical consciousness. Similarly, Catalonia, with its rich cultural heritage, including the Catalan language, literature, and art, has cultivated a unique identity as a historical nation within Spain. Basques and Catalans have maintained a strong attachment to their cultural heritage, using it as a means of expressing their distinct identities. The preservation of their language, folklore, and customs has played a pivotal role in solidifying their historical nationhood. Cultural expressions, such as literature, music, and visual arts, serve as a powerful medium for asserting their unique identities and fostering a sense of belonging.

The quest for regional autonomy has been a central tenet of Basque and Catalan political movements. The Basque Country and Catalonia have sought greater self-governance, recognizing their historical nationhood within the Spanish state. These aspirations have manifested in demands for devolved powers, control over regional institutions, and the promotion of cultural and linguistic rights. The consolidation of democracy in Spain provided an opportunity for recognizing and accommodating the historical nations of Basque and Catalonia. The Spanish transition to democracy after the Franco regime allowed for the expression of regional identities, the establishment of autonomous governments, and the recognition of cultural and linguistic rights (Ruggiu, n.d.). This process aimed to strike a balance between the preservation of historical nationhood and the cohesion of the Spanish state.

Recognizing Basques and Catalans as historical nations present both challenges and opportunities for democratic consolidation in Spain. Balancing regional autonomy with the unity of the state requires effective mechanisms for intergovernmental cooperation, negotiation, and the peaceful resolution of conflicts. The diversity of historical nations within Spain can enrich the democratic system, foster social cohesion, and encourage the active participation of citizens in the political process. Achieving a harmonious coexistence between historical nations and the Spanish state necessitates ongoing dialogue, negotiation, and constructive engagement. Political processes, such as referendums and participatory decision-making, provide opportunities for the expression of popular will and the democratic validation of regional autonomy. Constructive dialogue between the central government and regional authorities is vital in managing the complexities and challenges associated with accommodating diverse historical nationhood.

Presently, the Basque Country and Catalonia exhibit a dual characterization encompassing both political and cultural dimensions (Conversi, 1997). This multifaceted nature can be attributed to the aforementioned intricate historical processes that have shaped these regions, taking into account their shared origins, distinctive language, and unique cultural attributes. Additionally, the present autonomy of these regions as autonomous communities, established by the 1978 Constitution, further underscores their individuality within the broader framework of the "Spanish nation," which recognizes the existence of other "nationalities" (*The Spanish Constitution*, 1978). Consequently, the contemporary identities of the Basque Country and Catalonia are characterized by cultural factors such as historical and linguistic heritage, as well as political factors like regional autonomy (Black, 2019). While these identities bear resemblances, there exist notable divergences in their manifestations within the respective regions. For example, the Basques have their own drink, the Txakoli; they have their national sport, the Pleota, their dances, and folklore. If one wants to list all the characteristics or norms for creating a country, in a modern sense, as advocated by a prominent author Ernest Gellner, the Basques have it all – the territory, the people, the language, culture, dances, stories, and a common history (Gellner, 2006).

It could be claimed that the contemporary Kingdom of Spain is a nation-state with a plurinational character, whose identity underwent a significant and comprehensive transformation in the latter half of the 20th century, encompassing various aspects both individually and collectively. The country's accession to the European Union marked the most dynamic and profound historical shift in its trajectory. Spain's European experience stands out as distinctive. In the classical phase of its history, Spain wielded influence over a significant portion of European land and was associated with an imperial mission, as discussed earlier in the historical section. While this mission extended beyond the confines of Europe, the notion of European identity was aligned with Christian beliefs (Diez Medrano, n.d.; Gadamer, 1997). Namely, in recent times, novel forms of identification have emerged unexpectedly. These are founded on economic liberalization and superstructure initiatives. Spain is not an exception in this regard; however, Spain's case is unique in most aspects.

One can make the argument that Spain's European identity is likely more comprehensive, as only this identity has been able to transcend Spain's plurinational character. This identity appears to support the assertions made by French historian Ernest Renan, who proclaimed the demise of nations almost 150 years ago and predicted they would likely be succeeded by a European confederation (Renan & Giglioli, 2018). This notion seems to be confirmed once again in research conducted in 2021, where around 65% of

Spanish citizens expressed their identification with European identity. In spite of the national differences within Spain itself, 35% of the total number of its citizens have a strong identification with the European identity of Spain, and about 30% of the citizens are inclined to identify with the European identity, which makes a total of 65% citizens of Spain who have a distinct European identity. If this number is compared with 5% of citizens who do not identify with the mentioned identity at all or 4% of those who tend not to identify themselves (a total of 9% of citizens), it is evident that the European identity of Spain is the dominant identity of its citizens (Values and Identities of EU Citizens - November 2021 - Eurobarometer Survey, 2021). All this ultimately confirms the strong commitment of Spanish citizens to European identity even today, almost 40 years of accession, after a myriad of different political and structural changes.

It is a historic fact that Spain's three decades of integration within the European Union have yielded remarkable political, economic, and social consequences. The Spanish populace can rightfully take pride in surpassing the challenges posed by the Franco dictatorship and the subsequent isolation, leading to their transformation into competitive participants within the globalized world. Moreover, Spain has achieved full integration within Europe while establishing an adequate social welfare system. The country's entry into the European Economic Community solidified its commitment to an open economy and enhanced its global visibility. Spain's homecoming to the European fold was not characterized by distinctiveness but rather represented a reunion of a Western European nation after a prolonged period of exile.

3. Legal and Administrative Aspects

3. 1. European Charter on Local Self-Government

The European Charter on Local Self-Government (Charter), the most important international document defining the principle of local self-government, was adopted in the form of a convention by the Council of Ministers of the Council of Europe and opened for signature in the form of a convention by the member states of the Council of Europe on October 15, 1985.¹ This document is of great importance to the laws governing local self-government in the member states of the Council of Europe. The charter foresees that the principle of local self-government will be recognized in

¹ The Charter was signed and ratified by 43 of the 47 member states of the Council of Europe. Montenegro has signed but not yet ratified the Charter. Andorra, Monaco and San Marino have not signed the Charter.

domestic legislation, and where possible in the constitution.² The concept of local self-government, provided for in Article 3, paragraph 1 of the Charter, includes the right and ability of local authorities, within the limits of the law, to regulate and manage a certain part of public affairs based on their responsibility and in the interest of the local population. The Spanish Constitution of 1978 gave the local self-government of municipalities, provinces, and islands the status of a constitutional principle, guaranteeing them the right to participate in those affairs that concern their interest. Spain ratified the Charter in 1988. In addition to this, the scope of local self-government is provided for in Article 4 of the Charter, paragraph 3, which requires the following: "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy" (*European Charter of Local Self-Government*, 1985) This principle is otherwise known as the principle of subsidiarity.

According to the explanation from the Charter, which is an official source, Article 4, paragraph 3 states the general principle that the exercise of public functions should be decentralized. The Charter, in addition to referring to "own" powers in Article 3, also refers to "delegated" powers in Article 4, paragraph 5. It refrains from defining precisely what local authorities should have the right to regulate and to manage. This stems from the fact that the traditions of the member states that are signatories to the Charter vary widely and may differ between states and over time. However, the Charter was drafted with the intention that local governments have a wide range of responsibilities that can be exercised at the local level.³ Bearing the same in mind, Article 4 of the Charter defines the scope of local self-government in an abstract sense and does not refer to specific areas of competence. In addition, it also provides that local authorities, in cases where powers are conferred on them by a central or regional authority, are allowed discretion in adapting their application to local conditions. Bearing in mind the importance of the principle of subsidiarity, mentioned in paragraph 4.3 of the Charter, the Council of Ministers of the Council of Europe adopted Recommendation No. R(95) 19

² Article 2 of the European Charter on Local Self-Government. This proposed solution for its recognition, either in the law or in the constitution, was given precisely for the reason that the given inclusion could require changes in the constitution of the member states, which sometimes represents a difficult process, especially since some states have not yet written their constitution.

³ European Charter of Local Self-Government, 1985, Explanation to Article 3, Paragraph 1.

on the application of the principle of subsidiarity.⁴ It recommends the governments of member states to, among other things (*inter alia*),

“specify in the relevant legislation a core set of powers pertaining to each level of local and regional authorities in addition to any assumption of general competence; [...] to „with regard to the promotion of the implementation of the principle of subsidiarity, set up procedures or mechanisms, of a legal or political nature, where these do not already exist, to promote the implementation of the principle of subsidiarity and to deal with any possible associated disputes“ ; to „apply all these provisions not only to relations between central government and local authorities“ [...].”⁵

When we talk about the supervision of municipal activities by the central level, the Charter foresees in Article 8 the administrative supervision which is foreseen by the constitution or statute and which is carried out in proportion to the interest, which it intends to protect. Under normal circumstances, it should be limited to questions of the legality of municipal actions, not their speed⁶. However, an exception is made in respect of delegated powers, where the conferring authority may wish to exercise some oversight as to how the task is carried out. When we talk about judicial supervision, Article 11 of the Charter calls for the right of municipalities to resort to means of legal protection in order to ensure the principles of local self-government. The European Charter on Local Self-Government has been in force in Spain for 31 years. The General Secretary of the Congress emphasized the particularly important role of the Congress in monitoring the implementation of the Charter as an early warning mechanism and a clearinghouse for identifying challenges and recurring issues for implementation. He also underlined the lessons learned in ensuring respect for the Charter in times of crisis. Spanish Secretary of State for Territorial Policy and Civil Service Victor Francos emphasized the importance of the Charter for Spain and the importance of local and regional self-government as a pillar of the Spanish constitutional system.

⁴ Adopted by the Council of Ministers on October 12, 1995.

⁵ For more detailed information, see page 2 of Recommendation no. R (95) 19. of the Committee of Ministers to Member States on the implementation of the principle of subsidiarity, p. 2.

⁶ 1985 European Charter of Local Self-Government, Explanation to Article 8, Paragraph 2.

In May 2021 (18-21), Congress monitored the implementation of the Charter in Spain. The monitoring resulted in a report⁷. The report states that Spain is generally meeting its obligations under the Charter and that municipalities are the heart of Spanish democracy. The Charter is incorporated into Spanish national law, allowing for legal interpretation by domestic courts. Moreover, local authorities can directly challenge laws or regulations enacted by the state and autonomous communities that adversely affect the constitutionally guaranteed local autonomy. It is also stated that the division of competencies between levels of government has not been clarified, and the clause on the general competence of municipalities has been narrowed down to limited issues and subjected to the fact that it must comply with several conditions. Also, the report notes the persistence of the transfer of authority to municipalities without adequate financial resources. Furthermore, the difficulties of managing small municipalities and insufficient financial equalization procedures or equivalent measures to correct the effects of uneven distribution of financial resources between smaller and larger municipalities have not been resolved. It is therefore recommended that the Spanish government give full discretion to local authorities to exercise their own initiative in any matter not excluded from their competence or assigned to any other authority. National authorities are invited to clarify the division of responsibilities between levels of government while providing the appropriate legal and institutional frameworks for consultation with local authorities. The recommendation also calls on the Spanish authorities to ensure that any transfer of powers to local authorities is accompanied by adequate financial resources with greater support for the management of smaller municipalities. Finally, the Government is encouraged to sign and ratify the Additional Protocol to the European Charter on Local Self-Government on the right to participate in local government affairs.

3. 2. Types of Local Self-Government Units in Spain and their Competencies

The right to autonomy/self-government is guaranteed by the Constitution (Article 2). Moreover, the autonomy of municipalities, provinces, and autonomous communities is contained in Article 137. Autonomous communities adopt their own statutes and have legislative powers in accordance with the Constitution. Local government in Spain refers to the

⁷ This report follows the third remote monitoring visit to Spain since the country ratified the European Charter of Local Self-Government in 1988. Retrieved from:

https://search.coe.int/congress/pages/result_details.aspx?objectId=0900001680a4210d

government and administration of what the Constitution calls "local entities", which are primarily municipalities. Two basic forms of the territorial organisation of the State are municipalities and provinces. Municipalities form groups, including provinces, metropolitan areas, districts and communities and sub-municipal groups known as Minor Local Entities (Spanish: *Entidad de Ámbito Territorial Inferior al Municipio*).⁸ Municipalities have smaller size, and because of that, entities larger than them play a key role in the functioning of the Government. All of these entities are mainly managed by a council, each with a different name and set of rules (Spanish: *régimen*). Councils are the third level of government, the first being the state (Spain) and the second is the regional level (regional governments) (Moreno, 2016). Spain is a regionalised State, also referred to as "*Estado de las Autonomías*", and it comprises three levels of governance: central, regional, and local.

Local government is heterogeneous, it is not distributed in a balanced way throughout the country (Cools & Verbeek, 2013), includes duplication of services (Cools, Verbeek, 2013), and is even labeled as dysfunctional (Albet i Mas, 1993). Spain is a party of the European Charter on Local Self-Government, but it does not want to be completely bound by the requests for direct elections of all local self-government bodies (Cools & Verbeek, 2013).⁹ The municipality is the basic unit of local self-government in Spain, together with the province. Article 140 of the Spanish Constitution provides the basic constitutional principles for municipalities. Each municipality forms part of a province which forms part or all of an autonomous community (17 in total plus Ceuta and Melilla)¹⁰. Some autonomous communities also group municipalities into entities known as districts (*comarcas*) or communities (*mancomunidades*). In the Principality of Asturias, municipalities are officially called councils (*concejos*)¹¹. According to the European report from 2013, one of the most important problems facing local governments in Spain has a very large number of small towns with small populations (Cools & Verbeek, 2013).¹² The organization of municipalities is regulated by the law of April 2, 1985, supplemented by the royal decree of April 18, 1986. The statutes of autonomy of the various autonomous communities also contain provisions relating to the relations between municipalities and autonomous governments. In general, municipalities enjoy a high degree of autonomy in

⁸ Articles 40-44 of the Local Government Act 1985.

⁹ Voting for Mayors is an indirect election, except in „concejo abierto“ systems, where local residents vote for their Mayors directly, but only in small municipalities.

¹⁰ Spanish Ministry of Economic Affairs and Digital Transformation. "Register of Local Entities". Local Entity Portal (in Spanish). Retrieved 10 June 2022.

¹¹ Cf. Paragraph 1 of Article 6 of the Statute on the Autonomy of the Province of Asturias

¹² The area of the municipal territory (Spanish: *termino municipal*) usually ranges from 2-40 km², but some municipalities spread over a much larger area, up to 1,750.33 km²

their local affairs: many functions of comarcas and provinces are municipal competencies that have been consolidated. The governing body in most municipalities is called the municipal council or corporation (*ayuntamiento*), a term often used for the municipal seat (city/town hall). The municipal council consists of a mayor (*alcalde*), a deputy mayor (*tenientes de alcalde*) and an advisory assembly (pleno) of councilors (concejales). Another form of local government used in small municipalities is the open council (*concejo abierto*), in which the council is formed by all voters in the municipality.

Municipalities were first created by decree on 23 May 1812 as part of the liberal reforms associated with the new Spanish constitution of 1812 and based on similar actions in revolutionary France. The idea was the rationalization and homogenization of the territorial organization, the abolition of the previous feudal system and the provision of equality before the law for all citizens (Albet i Mas, 1993). Between 1812 and 1931, the legislation on municipal organization was changed more than 20 times, and there were 20 additions and unsuccessful proposals for change (Albet i Mas, 1993). The governing bodies are: municipal council, open council, provincial council, island council, commercial council, metropolitan council. There are a number of other administrative bodies that are largely dependent on specific regional legislation, including the board (*Junta*) is used for communities.

Numerous Autonomous Communities were formed in Spain from 1979 to 1983. The Basque Country, Catalonia, Galicia, and Andalusia were the first to adopt their Statutes of Autonomy. (Estatutos de Autonomía). They used a special fast-track procedure of Article 151. of the Constitution of Spain. The others also did it (under Article 143 of the Constitution), so today they all enjoy autonomy and have legislative powers. Ceuta and Melilla, two Spanish Autonomous Cities in North Africa, also adopted Statutes in 1995. Since 2004. all of them reformed their statutes to have larger autonomy.

The Constitution contains a general guarantee of local autonomy (Article 2 and Article 137), but the distribution of local powers is regulated by law. The law from 1985 that regulates the bases of the local self-government system (*Ley reguladora de las bases del régimen local*) defines the basic institutional framework of local authorities and gives an indication of their powers. However, the local distribution of powers depends to a large extent on each sectoral law (state law or autonomous law) and may differ significantly from one autonomous community to another. In addition to the powers expressly granted by law (mainly administrative powers), local authorities can adopt their own rules provided they respect state and autonomous laws. They also have general administrative competence in matters not assigned by law to other institutions. Local powers are mainly assigned to municipalities; second-

level local governments (such as provinces) have essentially delegated powers and general powers to cooperate with municipalities.

Autonomous communities can participate in the decision-making of the European Union (EU). This was developed internally through various sectoral conferences and after that, through the Spanish delegation. Since 1997 they participate directly in the committee system that oversees delegated acts implemented by the European Commission. Since 2004 autonomous communities and autonomous cities can participate in some of the meetings and working groups of the Council of the EU. The relationship between the autonomous communities and the EU today manifests itself in: Conference for matters related to the European Union, participation of the Autonomous Regions in the Council of Ministers, Regional participation in Comitology (EU Committees) and participation of the autonomous communities and Local Entities in the committee of the regions.

The rule is, the powers of the Autonomous Community extend to all matters not assigned to the state by the Constitution. It was done through legislative development and implementation of basic legislation and state legislation. This is a method of presuming the competences in favor of forms of territorial decentralisation. Autonomous Communities can assume competences in the following areas: Organization of regional government institutions; Changes in municipal boundaries; Public order; Planning, urbanism and housing; Public works of regional interest; Transport (regional rail and road networks; Regional transport; non-commercial ports and airports); Agriculture and forestry; Environment (protection); Water management; Inland fisheries, hunting and aquaculture; Festivals; Promotion of economic development within the national policy; Craftwork; Culture (museums, libraries and music conservatories of regional interest; cultural heritage; promotion of culture and regional language when relevant); Promotion of regional tourism; Promotion of sports and leisure activities; Social assistance; Health and hygiene; Development and implementation of basic state legislation on issues such as general regulation of economic activity, education, public health or the environment; Enforcement of state legislation on matters such as labor legislation, the judiciary or intellectual and industrial property.

Provinces are competent for: Jurisdiction in areas of national-municipal interest; Technical, legal and economic assistance to municipalities with less than 5,000 inhabitants; Provision of public services of supra-municipal character; Cooperation in the improvement of economic and social development and planning of the territory of the province; Implementation of capital expenditure projects outside the territorial boundaries of the municipality (including secondary road networks, some hospitals, etc.); Any

delegated authority. The actual provincial competences, which are generally defined as ensuring coordination and providing municipal services, depend to a great extent on the financial resources of the Province, municipal decisions, as well as historical development. This means that there are big differences between provinces.

Municipalities have a right and duty to implement activities in the area of: Local public enterprises; Local public networks (waste and water supply, public lighting) Maintenance of local public roads; Municipal police; Any delegated authority; All other executive and administrative activities not assigned to other institutions by law. Competencies that are exercised under the conditions defined by state and regional laws: Public safety; Traffic management; Civil protection, fire prevention and extinguishing; Management of parks and gardens; Urban policies; Cultural heritage; Environmental protection; Fairs and related activities; Protection of public health; Participation in the management of primary health care; Cemeteries and funeral services; Social services, promoting social reintegration; Cultural activities; Cultural or sports facilities; Tourism; Participation in designing educational programs and facilities. Municipalities with more than 5,000 inhabitants are responsible in any case for: Markets and public parks; Libraries; Waste treatment. Municipalities with more than 20,000 inhabitants are responsible in any case for: Civil protection; Fees for social services; Fire fighting services; Sports facilities. Municipalities with more than 50,000 inhabitants are responsible in any case for: Environmental protection; City public transport.

3. 3. Executive/Administrative Supervision

Municipalities, as basic territorial units, exercise their powers within their areas of responsibility, in order to achieve certain goals and provide services for the population, and for their rights to be within the limits of the conditions and procedures established by law. In addition to applying existing laws, municipalities can also regulate issues within their areas of competence (own and delegated). The problem of supervision at the local level arises considering that it is necessary for all municipalities to comply with the applicable law. Local self-government exists in a broader system of state organization, but it also needs to be separated from the executive power at the central level, that is, the government. In the Charter, in Article 8, the relationship is also taken into account and the principle of legality is indicated, a distinction is made between own and delegated competences and finally the importance of the principle of proportionality is underlined. In this sub-

chapter, we will examine the current legal framework in terms of the extent to which it enables central level oversight.

Article 8 of the Charter deals with the supervision of local authorities. It can be said that the obligations of the Charter have been fully respected in Spain. According to Article 8, paragraph 1, any administrative supervision over the work of local authorities must be carried out in accordance with the procedures and in cases provided for by the constitution or statute. Here, the Charter establishes an important principle in the field of intergovernmental supervision of local authorities: any form of such supervision must be foreseen by the constitution or statute, that is, the Charter introduces the principle of legality into the supervision of local authorities¹³. In accordance with the requirements of the Charter, in Spain the rules governing the supervision of local authorities and the powers of the respective central and regional authorities are established by law. According to Article 8, paragraph 2 of the Charter, supervision of local authorities can only aim to ensure compliance with the law and constitutional principles. Expediency control can only be used in the case of delegated tasks. In Spain, the supervision of acts of local authorities is carried out by the state or autonomous communities and is limited to the control of legality. If the supervisory authority considers that the act is illegal, it can challenge it only in court. So far, no such case has been recorded. Article 8, paragraph 3, deals with the way in which supervision is carried out in practice and requires respect for the principle of proportionality. According to the principle of proportionality, a regional or national authority should intervene only to the extent that it is necessary, taking into account the relevance of the public interest in question, or the seriousness of the violation of the law allegedly committed by the local authority¹⁴ (no such issues have been raised so far). Nor did financial supervision, which was strengthened as part of the introduction of the balanced budget principle into the Constitution and legislation (Organic Law No. 2/2012; ZRSZ), raise any particular concerns of local authorities.

4. Financial Aspect

Local finances are regulated by Article 142 of the Constitution, which stipulates: „Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of State

¹³ Contemporary Commentary, Paragraph 128, see also Recommendation CM/Rec(2019) 3 of the Committee of Ministers to Member States on the supervision of the activities of local authorities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of Deputy Ministers).

¹⁴ Contemporary Commentary, para. 139.

taxes and those of the Autonomous Communities“ (*The Spanish Constitution*, 1978). The four main pillars of fiscal decentralization are: cost estimation, revenues, intergovernmental transfers, and borrowing. Fiscal decentralization was implemented in Spain in accordance with the requirements of the European Charter on Local Self-Government.

The essence of the process of fiscal decentralization is the reduction of the centralized character of government. There are three forms of administrative (in this case fiscal) decentralization: decentralization, delegation, and devolution. Deconcentration is the process of redirecting decision-making power from central government officials in the capital city to central government officials outside the capital city at the local level. Delegation is the process of redirecting responsibility for costs from the central government to the local government, where the entire financial burden is on the back of the central government, as well as the decision-making power. Devolution is the process of transferring responsibility for government functions and costs from the central level to local authorities, for which they are given decision-making authority.

Fiscal decentralization is the process of redistributing decision-making power and management responsibilities in the sphere of financial issues to lower levels of government in the government system where the transfer is made. Therefore, local authorities are given the authority to make decisions regarding some functions of government and are given the power to finance those functions as well as the responsibility for management. Further, in the system of decentralization where the transfer is made, local authorities are fully responsible for their actions in relation to the population, while in the delegated system of decentralization, local authorities are accountable to the central government.

The concept of local self-government, as depicted in the Charter, means the right of local authorities to regulate and manage a significant part of public affairs under their responsibility and in the interest of the local population (Article 3). Local authorities implement their initiatives depending on the size and nature of the task and the requirements for efficiency and economy, i.e. in accordance with the principle of subsidiarity and their competences are not threatened by other regional or central authorities (Article 4). Local authorities have the right to appropriate financial resources of their own, which they can freely dispose of within the scope of their powers. The protection of financially weaker local authorities calls for the introduction of the institution of financial equalization, which should be designed to correct the consequences of the unequal distribution of potential funding resources and the consequences of the financial burden that local authorities must bear on their shoulders. As far as possible, grants to local authorities will not be pre-marked (Article 9). These

articles of the Charter form the framework in relation to which the process of fiscal decentralization in Spain will be analyzed in this part.

In our view, the requirements of Article 9 of the Charter have been met by Spain, with certain exceptions which we will explain. Article 9, paragraph 1 of the Charter establishes two basic principles in the field of finance. First, local authorities should have their own financial resources; the right to "adequate" resources is not absolute, but must be implemented "within national economic policy". Second, they should be free to decide how to spend those resources. This freedom takes the form of various spending decisions, the most important of which is the adoption of the annual budget. Any restrictions and limitations imposed by higher authorities on local authorities should be specified and justified and aimed at ensuring macroeconomic stability and sound financial management.¹⁵ In Spain, as we have already stated, the Constitution contains special provisions that emphasize the principle of financial sufficiency. Apart from the provisions of Article 142 of the Spanish Constitution, Law no. 2/2004, dated March 5, on local finances provides comprehensive regulation of this issue.¹⁶ Local authorities have their own revenues (*recursos propios*), fiscal and non-fiscal nature.¹⁷ Local governments approve their own budgets. There is no prior approval of regional and state bodies, except for some budget operations local authorities require such approvals (for example borrowing, when local authority has to go over the given limit of financial means). As for expenditure, it is also decided in an autonomous way and is only submitted to the *ex post* control by the internal auditors and the Spanish Court of Auditors. Some restrictions were introduced within the constitutional reform of Article 135 (balanced budget) and its legislative development. For example, in the event that there is a surplus, it must be fully set aside to reduce indebtedness in the net amount (Article 32 of the Organic Law No. 2/2012), with some exceptions, such as the so-called "Financially sustainable investments" (*Inversiones Financieramente Sostenibles*). In the same perspective, "Income that is obtained above the expected will be fully used to reduce the level of public debt" (Article 12.5 of the Organic Law No. 2/2012). This is understandable because, as a member of the EU, Spain must respect the Treaty of Lisbon and Protocol No. 12 on the excessive deficit procedure. This means that the national government is responsible not only for its own deficit but also for the deficit of local and regional governments.

Another basic principle, established by Article 9, paragraph 2, requires that local authorities have sufficient financial resources commensurate with the

¹⁵ Contemporary commentary, para 147.

¹⁶ STC 82/2020, FJ 7 referred to several paragraphs of Article 9 (paragraph 1, 2, 4, 5).

¹⁷ The Basque Country and Navarra are the only Autonomous Communities that have special financial competencies (of keeping, establishing and regulating their tax regime).

responsibilities assigned to them by law. This paragraph contains the so-called "principle of comparability" of the financial resources of local authorities. This means that the resources available to local authorities should be sufficient and proportionate to their functions and tasks. To this end, any delegation of powers and tasks should be based on a careful calculation of the actual costs of providing services borne by local authorities. The costs of mandatory and delegated tasks can include several factors (such as the socioeconomic structure of the population) to produce a more accurate calculation and avoid arbitrary political decisions.¹⁸ The Spanish government has announced reforms to local finances in favor of a new regional and local funding model.

Article 9, paragraph 3, requires that at least part of the financial resources of local authorities must come from local taxes (they are authorised to determine their rates). Larger municipalities have a problem with the local tax system in taxes with a significant degree of rigidity because tax bases are made without direct contact with the economic activities of lower political-territorial units. Article 9, paragraph 4, refers to the need for the resources available to local authorities to be sufficiently diverse and dynamic in nature to enable them to keep pace as far as is practically possible with real changes (increases) in the costs of carrying out their tasks. In Spain, local government revenues can come from different sources (own taxes and fees, transfers, other sources). Local authorities can adjust their own revenues to different circumstances (to increase taxes to compensate). We can state that paragraph 5, article 9 of the Charter is not fully respected in Spain. It deals with the financial situation of municipalities that are financially threatened because they are located in economically or geographically weak areas (transition, mountainous or island regions), or simply because they are too small to receive the necessary amount of resources to perform their tasks. Recommendation 336 (2013) asks the Spanish government to "provide smaller municipalities with larger management support from the provincial administration and provide a system of equalization between municipalities, in order to transfer funds from the richer to the poorer" (Article 9.5).

The problem has not yet been discussed by the Spanish legislature. Article 9, paragraph 6 of the Charter on consultation with local authorities on the manner in which redistributed resources are allocated, it can be concluded that these consultations are not performed adequately. In accordance with paragraph 7 of Article 9 of the Charter, local authorities are completely free to exercise discretion within their jurisdiction also when using these special grants. Article 9, paragraph 8 of the Charter refers to access to the national capital market for borrowing for capital investments. The amount of own "ordinary"

¹⁸ Contemporary commentary, para 150.

funds is not sufficient to cover all the projects and plans that local authorities decide to meet local needs. However, like other rights contained in the Charter, this is not absolute and must be reconciled with general policy on public sector spending and debt. This is why the Charter says that access must be "within the limits of the law". Local self-government debt has an impact on public finances and the importance of maintaining a balanced budget, taking into account the requirements of the European Union. The Spanish state respects this position.

4. Europeanization

Direct international representation is one of the biggest problems because the Constitution of Spain in paragraph 3 of Article 143 recognizes only the central government as a unique actor in international relations. The Europeanization of the relationship between local and central authorities in Spain is primarily about changes in the relationship between the central government and lower territorial-political units in order to implement the Brussels directives, so the interests of the entire state could be represented at the European level. The system of participation of autonomous communities in the Council of Ministers introduced sub-national self-government but also strengthened internal cohesion in the state. The Spanish regions received competences but also the direct defense of their interests in some cases. Regardless of all that, as well as the changes in the responsibilities of the central government, the multilevel cooperative system that characterized Spain remained intact.

1988 is an important year in which the direct influence of the European integration process on the institutional system of Spain can be seen. After the reforms of the Structural Funds in the European Community, the Inter-Ministerial Conference for European Affairs was formed in Spain. The importance of European issues increased and not only the central government but also forms of territorial decentralization wanted to defend their interests and to take advantage of the benefits that membership in the European Union offers. 1992 was also one of the key moments. The Maastricht Treaty changed the role that sub-national parts play in Europeanization. The General Commission of Autonomous Communities was included in the Senate in 1992. In 1994, an agreement was signed on procedural matters for the Conference on European Affairs.

The formation of the Committee of Regions was also important, which opened new paths for the Spanish Autonomous Communities. Not only is their role now taken into account, but the sovereign role of the central government is set in a new way. Interdependence of supra-national, national, and sub-national level has increased and also the leadership of the Spanish state in conversation

with the Autonomous Regions, i.e. from this moment on, it takes place on the basis of the "top-down" principle. This is all-important for confirming the legitimacy of the policy of the Spanish central government from lower political-territorial units, both at the European level and in national politics.

5. Conclusions

After Franco's death, Spain was marked as a successful example of peaceful democratization. The system of Autonomous Communities enabled the first wave of decentralization of rights, duties and responsibilities to different regions. This system has been questioned through decades and statute changes, and the region's demand for more decentralization and autonomy. The constitution already accepted the differences between the autonomous communities, developing on the one hand the nationalities (Basques, Catalans, and Galicians) that claim the status of historical nations, and regions based on history, geography, and socio-economic foundations. Multilateral and bilateral agreements between autonomous communities and the central government played a major role in the development of a system of cooperative multilevel governance in which resources were fairly allocated. The Spanish system manifests a large *de jure* discrepancy in the tax competencies of the historical autonomous communities (Basque and Navarre), and the "ordinary system" that applies to other autonomies. Spain can serve as a significant case study on the implementation of territorial decentralization on asymmetric bases.

Another important thing is multi-level governance. The relationship between sub-national, national, and supra-national is specific, where inter-administrative cooperation occurs within the classic system of multi-level administration. Overall, the paper has shed light on the importance of the administrative and judicial aspects of the Spanish regional model. The supervision by the executive and judiciary plays a crucial role in maintaining a balance between central authority and local autonomy. Additionally, the process of fiscal decentralization has implications for the distribution of financial resources, including costs, revenues, and intergovernmental transfers, which impact the ability of local authorities to effectively manage public affairs. Lastly, the study of Spain's regional model and the demands for its revision are essential in understanding the complexities and challenges associated with accommodating national differences within a unitary state. Further research and analysis are necessary to explore the potential reforms and adjustments needed to address the ongoing regionalist aspirations and promote a harmonious relationship between the central and local levels of government in Spain.

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