OLA
(Observatory on Local Autonomy)

Local Governance in Europe

LOCAL GOVERNMENT IN SPAIN

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INTRODUCTION

- (A) Main ideas and key-concepts in the native language:

- *Administración local:* the system of local authorities, local government
- *Régimen local:* the legal scheme governing local authorities
- *Entidades locales:* local authorities, bodies
- *Autonomía local:* local self-government, local autonomy
- *Municipios:* Municipalities (cities and towns)
- *Concejales:* municipal councillors
- *Diputados provinciales:* members of the provincial councils
- *Alcalde:* mayor
- *Provincias:* Provinces (2nd tier local authorities in most of the country)
- *Islas:* Islands (a local authority by itself)
- *Comarcas:* "county-type" local authorities, present in some regions
- *Mancomunidades:* Municipal joint authorities, associations
- *Areas Metropolitanas:* Metropolitan areas, local authorities including several neighbour municipalities, usually a big capital and "satellites" municipalities
- *Descentralización:* decentralisation, devolution
- *Constitución:* Constitution (the present in force was enacted in 1978)
- *Comunidades Autónomas:* Autonomous Communities, a "Region-type" authority. It does not belong to the local level. It stands between the central government and the local authorities
- *Estado*: the State, the central government

-(B) General and brief overview of the various local government tiers, of the history and role of the decentralization process

B.1.- Brief historical evolution.-

As in many other European countries, local government has been in Spain a key feature in the political evolution of the Nation. Municipalities can be traced back to the Roman domination (as the word "municipality" itself comes from Latin), at times when the country was called *Hispania.* During the middle Ages, several towns and cities were granted charters and privileges by the King, which received different names (*cartas de población, franquicias, fueros*, etc.). Other towns and cities had their own by-laws, (*ordenanzas*), respected by the Crown. During the centuries of Absolutism (XV-XVIII), those privileges (*fueros)* were progressively abrogated by the Monarchy, but still remained respected in some parts of the country. In the modern sense, though, one can only speak of "local government law" or "local autonomy" from the XIXth century, when the *constitutional* period started. During the XIXth and the XXth centuries, Spain went through a convulsed history. Different constitutions were approved (1812, 1834, 1837, 1845, 1869, 1876, 1931 and 1978). Several turbulent political crises took place, including cruel civil wars, endless military *putsches* and two "soft" revolutions, each one leading to the establishment of a Republic in the country (in 1873-74 and 1931-1939) eventually triggering civil wars and social unrest.

Within this scenario, it is easy to understand that both the historical evolution of local government and the law on the matter have followed an uneasy and erratic pattern. During the XIXth and XXth centuries, different pieces of legislation on local government were approved, each one responding to diverging political orientations and constitutional grounds. However, a basic alternative can be identified within this legislative evolution, as two vigorous and conflicting trends opposed: on the one hand, the conservative model (the dominant one from a temporal point of view), inspired by a centralist approach to local government, which favoured a system of control of cities and provinces from the State bureaucracy and departments; and on the other hand, the "progressive" (*progresista)* approach, that was supportive of a greater autonomy for the local bodies. As an example of this "to-and-fro" historical evolution, it is important to point that, during the XIXth century, local elections were alternatively introduced or eliminated, according to the dominant political trend of the moment (see below, point 1.3.1).

Thus, during the period 1812-1975, different general rules on local government were promulgated in 1812/1823, 1840, 1845 (inspired by a centralist model), 1870 (following a progressive model) 1877 (centralist model), 1924 ("*estatuto municipal de Calvo Sotelo"* following a progressive model, but largely unimplemented), and 1935 (progressive and democratic model). The regime of General Franco (1936-1975), reinstated a centralist model of local government. Three main pieces of legislation on local administration were approved in 1945/1950, 1953/1955 and 1975, which lasted in force until the reintroduction of Democracy (1976-78). A system of direct control over local government was performed by the national government, both by central Ministries (*Ministerios*) and by the "civil governor" (*Gobernador civil*, a political delegate of the central Executive in the province). Free and direct elections were suppressed at all levels (local, regional and national).

After the death of General Franco, a broad and comprehensive political process, conducted personally by the King, known as the "political transition" (*la transición política*), took place in 1975-1978 and eventually allowed the recuperation of Democracy and the promulgation of a modern Constitution (voted by the people on 6 December, 1978). This Constitution represents a clear and radical shift in the historical evolution of local government in Spain: it clearly recognises local autonomy and regulates the essential nutshell of some types of local authorities (*see* point 3, *below*). For what concerns democratic procedures, the Constitution reinstated direct, open and free elections for all levels of government. Moreover, it opened the door to a massive territorial decentralisation.

One striking feature of this process of local government decentralisation is that it was accomplished at the same time as regional devolution. Indeed, political decentralisation led to the establishment of seventeen "Comunidades Autónomas", or regions. They enjoy a large degree of administrative and political autonomy. In this contribution we use the word "region" instead of "comunidades autónomas" because this is an English word that is easily recognisable. *Comunidades Autónomas* are not analysed in this contribution, which focuses on local government *stricto sensu*.The politicians of the time, though, were capable to frame these two processes in a separate way, although both radical transformations had many points of contact, whose actual definition remained the source of political controversy. The combined result of this two-

fold political decentralisation process is that, at present, Spain presents a territorial structure which is totally different to the one that was in force in the seventies, and there is a neat division among three different layers of government: local government, regional government (*Comunidades Autónomas*) and the national level.

In 1985, a national statute was enacted (the "7/85" Act), which still forms the backbone or "framework" legislation for all contemporary Spanish Law on local government. Several amendments have taken place afterwards. At different times during the last four years, legislative initiatives to change the system have been announced by the central government, but did not come to an end. In 2010, the competent department of the national Executive announced the preparation of a draft statute on local government (*Ley de Gobierno Local)*, but it never went through the legislative process since general elections were called in Fall 2011. After the general elections held in November 2011, a new Government was formed at the national level, run the center-conservative party "Partido Popular" (PP). This cabinet has since the beginning of 2012 announced a comprehensive plan of measures to solve the economic crisis, including major governmental reforms. Among those reforms, stand the reform of local government (see, point 3.2).

B.2.- Brief overview of the various local government tiers

From the point of view of their historical, political and social importance, in Spain there are three main types of local authorities (*Entidades Locales*, in Spanish): Municipalities (*municipios*), Provinces (*provincias*) and Islands (*islas*). Municipalities make up the "first tier" of local government. Provinces and Islands form the "second tier" of local government.

The Province is the traditional second-tier type of local government unit in Spain, and also a territorial division for the provision of State services, a feature which is here irrelevant. Although the concept of the province as a supra-municipal territory is very old in the country (going back to the roman *provinciae)* and some parts of the national territory had a neat and recognisable provincial division for centuries (for instance, in the Basque country), the current division of the kingdom in provinces was established in 1833. Nowadays, and after the devolution process (1979-1983) several provinces were transformed in Regions. Therefore, those "single-province Regions" have superseded and absorbed the competences and activities of the original province.

As for the islands, the country has two archipelagos, the Canary Islands and the Balearic Islands. Each major island is considered to be a distinct local authority.

Apart from Municipalities, Provinces and Islands, there are other local government bodies, which will not be analysed in depth in this contribution (see point 1.2.1, below)

The following table provides aggregated figures for the most important types of local government in the country (source: National Register of Local Government Units, a government register run by the Ministry of Finance and Public Administration, 2012 edition).

Annex Nº1:
The institutional framework of Spain

Central, national government: *1 Estado*		Regional government *17 Comunidades Autónomas (CA)*		Local government
Legislative power	Executive power	Legislative power	Executive power	More than 15,000 bodies See annex 2
2 chambers: - *Congreso* - *Senado*	- 1 President (*Presidente del gobierno*) - 1 cabinet (*Gobierno*), formed by Ministers (*Ministros*) - Other agencies and bodies	1 chamber: - Name differs in each region: - *Asamblea* - *Parlamento*	- 1 regional President (*Presidente de la CA*) - 1 cabinet, (*Gobierno*), formed by *Consejeros* - Other agencies and bodies	

Annex Nº2:
The Institutional framework of local government system
(types and number of local authorities)

Municipios (Municipalities)	*Provincias* (Provinces)	*Islas* (Islands)	*Mancomunidades* (intermunicipal joint authorities)	*Comarcas* (counties)	Infra-municipal units ("EATIM")
8,114	50	11	1,024	81	3,722

Subannex 2.1:
Average population living in Municipalities (*Municipios*)

Inhabitants	Less than 100	100-1,000	1,001-2,000	2,001-5,000	5,001-10,000	10,001-20,000	20,001-50,000	50,001-100,000	More than 100,000
Number of municipalities	1,074	3,789	928	1,019	554	356	249	83	62

This simple information shows one of the most important and recurrent problems of local government in Spain: the number of municipalities is very high. There is a huge proportion of little towns, with a small number of inhabitants. This situation, which has a purely historical justification (based on the inception of the French model of legal regulation of human settlements) triggers different problems: many municipalities are incapable of providing the essential public services that are obligatory under the Law since they lack the necessary resources to do so (not only economic, but also technical and personnel resources).

On the other hand, Municipalities are not distributed in an even or balanced way across the nation. Some Regions have a high number of municipalities (usually, small and under populated towns), while other Regions have a smaller figure due to its

extension or to other patterns of human settlement. The following table, with selected data concerning seven representative Regions, will help understanding the situation:

Subannex 2.2
Number and types of municipalities in some Regions (Comunidades Autónomas)

Region (*Comunidad Autónoma*)	**Extension (in km2)**	**Total inhabitants**	**Total number of municipalities**
Castilla y León	93,892	2,563,521	2,248
Galicia	29,564	2,796,089	315
La Rioja	5,027	321,702	174
Madrid	8,022	6,386,932	179
Cantabria	5,106	589,235	102
Cataluña	30,025	7,475,420	946
Andalucía	87,581	8,303,923	770

1. The local government system

1.1. Logal Government Law

1.1.1: Local government Law: Constitutional and international law

The cornerstone element underlying the whole system of Local Government Law in Spain is the idea of local "self-government" or "autonomy" (in Spanish, *autonomía local*). Broadly described, this concept means that the local administration units (as identified *supra*) have the right to take decisions for the running of local interests and services and for the well-being of their citizens, without political interference from Regions or State agencies and departments. "Local autonomy" involves the idea that local authorities are fully empowered to frame policies, programs and measures of their own to solve the local problems and to carry out long-term planning of different aspects of community life (land use and zoning, culture, transportation, environmental protection, transit, etc.). Beyond this vague idea, however, the concept of "local autonomy" is difficult to encapsulate in a precise and detailed legal way. To do so, different legal elements must be taken into consideration: (a) the Spanish Constitution; (b) the European Charter of local self-government (ECLSG); (c) the case-law of the Spanish Constitutional court; (d) the laws and regulations approved by the national and regional Parliaments and executives; (e) the case-law of the Supreme Court.

To begin with, constitutional provisions on local government must be considered. Thus, the Spanish Constitution of 1978 explicitly recognises local self-government (*autonomía local*) and devotes several provisions to local self-government: section 137 identifies the basic local government units that are present in the country, and recognises them as constituent parts of the Kingdom (State, *el Estado*):

"*The State is territorially organized into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests*".

Separate provisions lay down the constitutional foundations for the municipalities (section 140) and for the provinces (section 141).
Section 140:

"*The Constitution guarantees the autonomy of municipalities. These shall enjoy full legal personality. Their government and administration shall be vested in their Town Councils, consisting of Mayors and councillors. Councillors shall be elected by residents of the municipality by universal, equal, free, direct and secret suffrage, in the manner provided for by the law. The Mayors shall be elected by the councillors or by the residents. The law shall lay down the terms under which an open council of all residents may proceed*".

Section 141**:**

"1.- *The province is a local entity, with its own legal personality, arising from the grouping of municipalities, and a territorial division designed to carry out the activities of the State. Any alteration of provincial boundaries must be approved by the* Cortes Generales *in an organic act. 2.- The government and autonomous administration of the provinces shall be entrusted to Provincial Councils* (Diputaciones) *or other Corporations that must be representative in character. 3.- Other groups of municipalities other than provinces may be formed. 4.- In the archipelagos, each island shall also have its own administration in the form of* Cabildo *or Insular Council*."

Finally, local finances are dealt with by section 142:

"*Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Self-governing Communities*"

Second, Spain has signed and ratified the European Charter on Local Self government, "ECLSG" (Instrument of ratification of 20 January 1988). In the field of international treaties, Spain is a country with a moderate monist model and tradition. Therefore, the Charter, after the deposit of the instrument of ratification and the full publication in the national Official Journal (*Boletín Oficial del Estado*, commonly known as "BOE") became "the law of the land" and enjoys the legal protection and specific normative strength of any other international treaty, under section 93 of the Constitution. The ECLSG was published in the "BOE" on 24 February 1989.

At the time of ratification of the ECLSG, Spain made only one declaration stating that it did not consider itself bound by art. 3 par. 2 of the Charter, which declares that the system of direct election should be implemented in all local authorities falling within the scope of the Charter. This declaration reflected the view of Spain not to extend the direct election principle to the councils of the Provinces (*diputaciones*), whose members are not elected directly by the voters, but in an indirect way (see *infra*, point 1.3.1.2.). Therefore, the Charter is a key legal rule in the Spanish system of local government. From a historical point of view, it inspired the national basic legislation on the matter in the eighties. On the other hand, it has frequently been used as an interpretative authority by the courts. Nevertheless, the fact that most of its provisions

do not have a self-executing nature prevents the charter to be applied directly in courtrooms.

Third, the case-law of the Supreme Court and, especially, that of the Constitutional Court is an essential element of Spanish Local Government Law. As the national Constitution merely states general formulae as regards local autonomy (and does not provide a definition of it) one can support the proposition that the Constitutional Court is the ultimate recipient of the idea of local autonomy that is embodied in the Spanish *Carta Magna.* Since 1981, the Court has issued a series of key rulings in the field. In doing so, it has built, stone by stone, the actual constitutional concept of local autonomy (see the rulings listed at the Appendix, *infra*). Some of the most important rulings in this area are:

- Ruling ("STC") 4/1981, of 2 February 1981: local autonomy is a general principle of the territorial organisation of the state. This implies, among other elements, the right of the local government units to participate y the governance and decision-making on matters that affect the local citizens. The organs of the said units must have powers and competences. On the contrary, the legislator (either national or regional) can not minimise or reduce this autonomous domain of decision making below a recognisable level.
- Ruling 35/1982, of 14 June 1982: local government autonomy is construed as the capacity of local bodies to formulate their own public policies.
- STC 240/2006, of 20 July: Local self-government is identified as a guarantee, involving a constitutional protection of the minimum content of local decision-making.

Last, but not least, attention must be paid to the flesh-and-bones legislation and implementing regulations, which define the nitty-gritty of local government in Spain. This issue is addressed in the next point.

1.1.2: Domestic laws and regulations: origins and date of the law

Before identifying the most important domestic laws and regulations in the field of local government, it is essential to clarify a preliminary question: in Spain, legislative powers in the domain of "local government" (*administración local*) are shared between the State (*el Estado*) and the regions (*Comunidades Autónomas*). This issue is depicted in Spain by saying that local government is a "dual-front" matter (*régimen bifronte*). The main reason for this situation of shared regulatory responsibilities is the fact that the 1978 Constitution frames Spain as a country whose territorial structure stands between a "federal" and a "unitary/centralist" model. The regulatory powers of the regions are very wide, and the national legislature can only set the basic rules governing Municipalities and Provinces. For instance, Islands and other types of local authorities (as presented *supra*) can be regulated extensively by the regional parliaments. Regions, thus, enjoy a wide domain of discretion to regulate local government, but they must respect the "baseline" of the basic legislation of the State. The details of the dividing line for this allocation of regulatory powers between the State and the Regions is far to be clear, and it has often been the subject of political discussion, as well as of constitutional adjudication. The last episode of the Constitutional case-law on this issue is represented by its ruling 31/2010, of 28 June 2010, on the constitutionality of the Statute of Autonomy of Catalonia, as amended.

- *(A) National legislation* may be divided into statutes (*leyes*) and administrative regulations (*reglamentos*). Furthermore, in Spain the Executive may pass, under certain conditions, legal rules having the same binding force as an Act of Parliament (Royal legislative-decree, *Real Decreto Legislativo*).

Among the statutes are worth mentioning the key Act 7/1985, of April 2nd, 1985, on the basic provisions on local government (*Ley reguladora de las Bases del Régimen Local).* This national piece of legislation is the most important one in the domain of local government, its very "legal backbone". It has been amended several times, and the most important recent amended was performed by the Act of 16 December 2003. This statute should be read and applied in connection with Royal legislative-decree 781/1986, of April 18th, 1986 (consolidated set of legal provisions on local government).

On the other hand, the "Organic" Act 5/1985, of June 19th, regulates the general electoral system and controls also the local elections. This is an important statute for Local Government because, on top of prescribing the electoral procedures, it determines the number of councilors in municipal and provincial councils. The Royal legislative-decree 2/2004, of March 5th, 2004, concerns local finances, and therefore is also a key national legal rule governing the whole financial aspects of local authorities.

Apart from parliamentary legislation, it is worth mentioning that, in Spain, the central cabinet (*Gobierno de la Nación*) has a strong regulatory power to approve implementing regulations ("reglamentos"), which supplement the general provisions of the Acts of Parliament. For the most important administrative regulations in the field of local government, see Annex Nº3 below.

- *(B) Regional legislation*: after more than three decades of devolution, nowadays all regions have a comprehensive set of legislation about local authorities, headed by a general law on the subject. As noted *supra*, Spanish regions (*Comunidades Autónomas*) enjoy a large domain of regulatory powers in the field of local government, and the only limit for these laws and regulations are the Constitution and the national legislation embodying the "basic rules" (*legislación básica*) on local government. Therefore, regions:

- may pass laws and regulations enshrining more precise and detailed rules than those of the State;
- can regulate the relations between the region and the local authorities present in that region;
- may establish specific registers for their own local authorities;
- can set up structures for the coordination of local authorities;
- can regulate local police services;
- can regulate almost entirely local authorities that are not included in the national legislation, such as: islands, "county-type" authorities (such as the *comarcas*) and joint municipal authorities, etc.;
- they can establish specific, joint local authorities in the case of metropolitan areas (*áreas metropolitanas),* etc.

However, Spain is not a federal country and the extension of regulatory powers of regions in this domain is not as large as the one enjoyed by *Länder* in countries such as Germany or Austria.

Therefore, Spanish Local Government Law is far from being uniform around the country. There is, certainly a core legal system established by the State, but there are also seventeen different sets of regional laws and regulations: there is not "one" Spanish legal system on local authorities, but "eighteen". For a selection of some representative regional statutes in the field of local government, see Annex Nº3 below.

Annex Nº3: List of legal sources

National legal rules (*)		**Regional legal rules**
Statutes	**Regulations**	**(a selection of statutes)**
-Act 7/1985, of April 2nd, 1985, on the basic provisions on local government (*LRBRL)* -Royal legislative-decree 781/1986, of April 18th, 1986 - Royal legislative-decree 2/2004, of March 5th, 2004, on local authorities finance.	- Royal decree of 17 June 1955, on the public services provided by local authorities - Royal decree 2568/1986, of November 28th, on the organization and functioning of local authorities - Royal decree 1372/1986, of June 13th, 1986, on the property and assets of local authorities; - Royal decree 1690/1986, of July 11th, on the local population and the territory of local authorities.	- Catalonia: Legislative decree 2/2003, of 28 April 2003 - Galicia: Act of 22 July 1997 - Aragón: Act of 9 April 1999 - Madrid: Act 2/2003, of 11 March 2003 - Andalucía.: Act 5/2010, of 11 June 2010 - Valencia: Act 8/2010, of 23 June 2010 - Balearic Islands: Act 8/2000, of 27 October.

(*) National legal rules on local government are accessible (in Spanish) at this internet link: http://legislacion.060.es/administracion_local-ides-idweb.html.
Regional legal rules are accessible in each of the regional websites

1.2. Local government organisation

1.2.1. A detailed presentation of local government institutions (tier by tier)

As pointed out *supra*, in Spain there are three main types of local authorities (*Entidades Locales*, in Spanish): Municipalities (*municipios*), Provinces (*provincias*) and Islands (*islas*). Municipalities make up the "first tier" of local government. In a colloquial way, municipalities are seldom characterised as towns (*pueblos*) or cities (*ciudades*) according to their size and population, but this difference (apart from being imprecise) has no legal implications whatsoever (taking apart the case of the formal "big cities", see below, point 1.2.2.1). Provinces and Islands form the "second tier" of local government.

The Basic Local government Act, *Ley 7/1985, de 2 de abril, reguladora de las bases de régimen local* (hereinafter, "the 7/85 Act") identifies these bodies as "territorial local entities" (*entidales locales territoriales*). They enjoy something called "institutional guarantee" (*garantía institucional*), a concept that has been taken from German Public Law. The Spanish Constitutional Court adopted this concept in one its earliest rulings involving local autonomy (Ruling 32/1981, of 28 July 1981). This means, *grosso modo*, that those bodies are recognised and protected by the Constitution as a integral part of the territorial structure of the kingdom.

This constitutional characterisation of those local government units implies two important consequences: (a) their existence is guaranteed by the Constitution, which means that neither the national Parliament nor the regional ones can pass legislation providing for their suppression (we mean here the suppression of the "abstract category" of Municipalities, Provinces or Islands, not the actual suppression of one given town or city, which is perfectly possible); and (b) the core legal regime of these bodies may be regulated by the State, not by the regions (*Comunidades Autónomas*). The only exception to this rule is the case of the Islands, whose governing bodies are mainly regulated by regional law (for instance, Act of the Parliament of the Balearic Islands No. 8/2000, of 27 October). In fact, the 7/85 Act only contains a couple of substantive provisions on these local authorities. The regions may "develop" or approve rules and regulations on specific aspects of local entities, as long as they respect the "ground" or "basic" rules laid down by the State (*see* point 1.1.2). This situation means that the core system of local government –at least in the domain of these "essential" local entities- is more or less uniform in the whole kingdom (especially in the case of municipalities), but the regions may introduce variations and special provisions. Therefore, the Spanish system governing this type of local administration is not monolithic: it is heterogeneous, but respects a common, basic regulation.

Apart from Municipalities, Provinces and Islands, there are other local government bodies, which will not be analysed in depth in this contribution. They may be characterised as "contingent" or optional. As opposed to the "essential" local bodies, these units share some different features:

- They are not explicitly mentioned by the Constitution;
- Their name and legal status may be entirely regulated by the Regions, as State legislation only provides for broad general principles in the matter;
- They do not enjoy the "institutional guarantee" that protects Municipalities, Provinces and Islands: the regional legislature may decide at any moment to create or to terminate those types of bodies;
- They keep up relations mainly with the regional Administration, not with the State departments and agencies;
- Their territory may be bigger or smaller than the territory of a municipality. They may have an infra-municipal scope, like the "parishes" (*parroquias*), to be found in some parts of Spain, or they may embrace a supra-municipal territory in a way similar to an English "county". In this latter category, different types of entities may be mentioned, like the "districts" (*distritos*) or the "comarcas".
- They can be established by the regional legislation (example: *comarcas* or counties) or by the initiative of other local entities: for instance, the joint authorities crated by Municipalities (*Mancomunidades*) or by the regional legislature (*Areas Metropolitanas*).

Therefore, the legal regime on these types of local government units is highly heterogeneous, as there may exist up to seventeen different legal schemes on the matter, one for each region.

1.2.2. Main aspects of the governing bodies and their relationships with one another, at each local government tier

In Spain, the internal organisation of local authorities is determined by up to four different types of legal rules:

(a) the key provisions of the Constitution on this matter:Sections 140 (on municipal organisation) and 141 (on provincial organisation) of the Spanish Constitution, which have been quoted *supra.*
(b) the basic provisions of State legislation in the matter, as well as the implementing regulations approved by the national Executive (see Annex Nº3);
(c) the provisions of regional legislation in the matter, as well as the implementing regulations approved by the regional executives (see Annex Nº3);
(d) the organisational by-laws (*reglamento orgánico*) approved by municipalities and provinces, by which each local authority may set up supplementary bodies and organs.

1.2.2.1: "First tier" local authorities: basic organisation of municipalities, under national legislation

- (A) Common organisation

In municipalities (*municipios*), the most important decision-making body is the Plenary Council (*Pleno del ayuntamiento*). The members of the council (*Concejales)* are directly elected by the citizens of Spanish and other nationalities every four years, in the framework of the national, local elections (see below, point 1.3.1). The Plenary Council elects and, eventually, dismisses the mayor (upon a successful censure motion); it approves the annual budget and the most relevant and strategic measures, decisions, plans and programs; it passes local regulations and ordinances; it agrees the staff planning and strategy; it controls the mayor, deputy-mayors and the executive organs, etc.

For what concerns the "executive" organs of municipalities, these are the mayor (*alcalde*), the executive committee (*Junta de Gobierno*), and the vice-mayors (*tenientes de alcalde*). The mayor is the political leader of the city and its visible head. Contrary to what happens in other European countries, in Spain the Mayor is not elected directly by the citizens: he is elected by the plenary council and may be removed by it, following a censure motion (*moción de censura*). This feature, though, should not lead to the wrong assumption that the mayor is a subordinate political figure. All the contrary*:* in Spain, the mayor is by far the most important and key political official in the city, beyond legal formalism. He is usually the real political leader in the city or town and the only politician who is really accountable. "Simple" or "regular" Council members remain largely unknown and ignored by the people at large, by "the man in the street", and have a limited weight in the electoral decisions of the voters.

The mayor is always (or almost) the running head of the local section of the political party, something which gives him an extra "auctoritas" and a real domain of political decision and leadership at the local level. This is a determining factor in properly understanding the political "de facto" pre-eminence of the mayor. This important feature should be coupled with the fact that the Spanish electoral system (based on the so called "D´Hondt rule") provides usually stable majorities (since small parties are under-represented by that system). The combined force of these two factors (over-representation of large parties, plus political "de facto" leadership of the local running candidate) produces the result that, in a big portion of Spanish local authorities, the Mayor is the decisive political ruler, and the council is in fact a subordinate organ, dominated by his will and by his priorities. The situation is very paradoxical: a "parliamentarist" system produces, at the end of the day, a "presidentialist" working system, with the mayor as the prevailing and dominant figure.

The mayor carries the most important executive functions: he is the legal representative of the municipality and the director of its human resources; he determines the political agenda of the council; he is the chief of the police force; he is in charge of the treasury and cash&bank services, etc. The mayor is at the same time the president of the council: it calls for its meetings and chairs them, establishes their agendas, oversees the discussions, etc. The vice-mayors (*tenientes de alcaldes*) take the place of the mayor in the case of travels, long absences, health problems, etc. They are freely appointed and removed by the mayor, and they must be members of the Council. Finally, individual council members (*concejales delegados*) may receive broad delegations and decisional powers on specific sectors of the local life from the Mayor. As a result, they take the responsibility for running a concrete department of the local administration (land use and housing, personnel, environmental protection, cultural events, etc.).

On the other hand, the municipal steering committee (*Junta de Gobierno Local*) does exist in all local bodies having more than 5,000 inhabitants, and in those who, below that figure, decide to establish it by means of a plenary council´s decision. This multi-member organ is composed by local council members, who are freely appointed by the mayor for this additional position, and may be removed by him. In municipalities having the legal status of "big cities" (see below) the Mayor may appoint as a member of the steering committee someone who is not an elected member of the council.

The number of steering committee members must not exceed one third of the total number of members of the municipal council. The steering committee is basically an organ designed for the assistance to the mayor, and has numerous executive competences, for instance: approval of the draft budget, agreement of draft municipal regulations and ordinances; management of contracts; economic management of the city; the power to sanction and to impose fines for the infringements of municipal regulations and ordinances; issuing permits and licenses, etc. The steering committee may also receive delegated powers from the mayor.

- (B) Other special organisational models for municipalities

Apart from the general organisational model presented above, in Spain there are other forms or municipal structure, depending upon the type, size and population of the municipality:

- (1) *The municipal organisation in "big cities"*

In 2003, the 7/85 Act was amended by Act of 16 December 2003 (*Ley 57/2003, de 16 de diciembre de medidas para la modernización del gobierno local*) in order to introduce specific provisions for some cities, which are referred as "big cities" (*grandes ciudades).* This special status is an optional one, and can be voluntarily attained by large municipalities complying with certain requisites (for instance, if they have more than 250.000 inhabitants). Apart from having a Mayor and a Plenary Council, "big cities" present specific organisational features which, for reasons of space, can only be mentioned here.

- (2) *Small towns.*

At the other end of municipalities stand those very small towns (having less than 100 inhabitants). They may organise themselves according to specific rules (a regime called *Concejo Abierto*, or "open council"). The key point is that there is certainly a mayor, but decisions are taken by means of assemblies (there is not a "city council" as such"), which all citizens may attend and where they may express their positions.

- (3) *Ceuta and Melilla*.

These two cities are situated in the northern coast of Africa and they also enjoy a special regime, which stands in between a "true" local government unit and an Autonomous Community. Technically, they are local authorities but in fact, and like the rest of the regions, they have their own "estatuto de autonomía" (statute of autonomy) and their legal name is that of "autonomous city" (Ciudad Autónoma).

- (4) *Madrid and Barcelona.*

Since 1606, Madrid has permanently been the capital of Spain. Currently, the Spanish Constitution of 1978 simply recognises this situation (article 5). However, the Constitution does not establish a specific, special or privileged regime for the city, since this matter must be handled by a regular statute. The peculiar features of Madrid, not only as the capital of the country but also the most populated and prominent city in the country, have justified for years a special legal regime, which was highly demanded, but never concretised. In 2006 and after several political attempts, a specific regime was eventually approved by means of a bespoke statute of the national Parliament: the Act 22/2006, of July the 4th 2006. This piece of legislation lays down specific provisions for Madrid in the domain of internal organisation, administrative structure, powers, competences of the mayor, etc, which can only be briefly mentioned here. Barcelona, the second largest city in the kingdom has also specific institutional and organisational features, laid down in Act 22/1998, of 29 December 1998, on the municipal charter of Barcelona, and Act 31/2010, of 3 August 2010, on the metropolitan area of Barcelona.

1.2.2.2: "Second tier" local authorities: provinces and islands

- **(A): Basic organisation of provinces, under the national legislation**

Most of Spanish provinces have the same internal organisation: the governing and representative body is the *Diputación provincial*, which is the equivalent to the *Ayuntamientos* for municipalities. The Plenary Council (*Pleno*) is the most important decision-making body. Similarly to what happens in municipalities, the Plenary Council elects and, eventually, dismisses the chairman or president of the *Diputación* (upon a successful censure motion); it approves the annual budget and the most relevant and strategic measures, decisions, plans and programs of the province; it agrees the staff planning and strategy; it controls the president, vice-presidents and the rest of the executive organs, etc.

The council is composed of a chairman (*Presidente de la diputación*) and of members of the said provincial council (*diputados provinciales*, provincial councilors), in a number which is proportional to the province´s population. Again, the number of councilors for each provincial council is determined by the General Law on elections, passed in 1985: In provinces with less than 500,000 residents, the number of councilors is 25. This figure increases in proportion with the number of residents: in provinces having more than 3,500,001 residents, the number of "deputies" is 51. An important feature of the provincial councils is that their members (*diputados provinciales*) are not directly elected by voters, but derive from the results of the local elections (see point 1.3.1).

The foremost executive organ of the Province is the chairman or president of the provincial council, (*Presidente de la Diputación Provincial*), who is elected by the Plenary Council and assisted by vice-presidents and by the executive committee (*junta de gobierno*). The latter is composed by the President and by a number of members equal to one third of the legal number of councilors. The members of this *junta de gobierno* are freely appointed and dismissed by the president. This body assists the President in discharging his functions. As in the case of municipalities, individual provincial deputies may receive delegations of decisional powers from the President, to run specific departments or services of the provincial administration (public works, personnel, etc.).

Apart from this general model, in Spain there are also three special regimes for some provinces in Spain, which deserve just a summary mention here:

(1) *In the Basque Country*, the three constituent provinces (*territorios históricos*) enjoy a specific regime, which is regulated by special and old laws and regulations that go back to the Middle Ages. The key feature is that the Basque provinces have much more powers and autonomy than those regulated by the general system. Each province is ruled by a "*Diputación foral*". The organisation is also different than the one present in "regular" provinces: there is an assembly or council (called "*juntas generales*") composed of 51 members (called "*junteros*"), directly elected by the voters in the local elections (held every four years). This assembly elects the President of the *Diputación Foral*. The name of this position is "*Diputado General*". The assembly not only controls the activities of the provincial president but, unlike the regular provincial councils, has true legislative powers in several domains. The legal rules they pass are named "*normas forales*". For instance, each Basque province has its own tax system (which includes personal income tax and corporate tax) regulated by provincial rules.

(2) Those provinces who transformed themselves into regions (*Comunidades Autónomas)* in the period 1979-1983 (seven out of 50) do not have a "provincial" organisation as such, but are completely organised as a regular region;

(3) In the *Canary Islands*, there are technically two "provinces" but they don´t have a truly "provincial organisation" as such, since there the predominant second tier type of local government is the Island, with a governing body called "cabildos" (council of the island). These bodies are also regulated by regional laws and regulations (see next).

- **(B): Basic organisation of Islands**

As noted *supra*, Spain has two archipelagos, the Canary Islands and the Balearic Islands. Each one of the major islands is considered to be a local authority, a "second tier" one. There are four island-type local authorities in the Balearic Islands (which is a single-province Region of its own), and seven in the Canary Islands (a Region composed of two provinces). Since the provisions of national legislation are rather scarce on this matter, the Island as a local authority is regulated independently by each Archipelago-Region through its own laws and regulations: In the Canary Islands, by Act of 26 July 1990; in the Balearic Islands Region, by the Act of 27 October 2000. As a matter of fact, the governing body of the islands receive different names in the two regions: in the Balearic Islands Region, they are called Insular councils (*consejos insulares*), while in the Canary Islands they are called "*Cabildos*", an old Spanish word. They share a common feature, though: the members of the councils are directly elected by the voters in the general, local elections (see Annex Nº 6, below). The members of "cabildos" and "consejos" elect in turn the President of those councils.

1.2.3. Overview of the organisation and procedures of controls exercised by the State on local authorities

- (A) Introduction

In Spain, there are different types of "control" or oversight mechanisms on local authorities´ activity, performed by different actors and institutional players: other levels of government, the courts, or the Ombudsman. For what concerns the latter, it is worth underlying that the Ombudsman may be found in the three levels of territorial government: (a) at the State, national level; (b) at the regional level; and (c) at the local level. The national Ombudsman ("*Defensor del Pueblo*", literally, "defender of the people"), was the first to be incepted. Later, many regions have established their own *ombudsmen* (13 out of 17 in total). On the other hand, some local authorities have also established an office which holds the name of Ombudsman or "*defensor del pueblo*" (cities of Barcelona, Cornellá, provinces of Córdoba and Málaga), but it is hard to know where this position exists actually, since there is no official account of this. Each local authority decides in a free manner, and there is no clear or common pattern whatsoever.

Under the Spanish constitutional system, *local autonomy* means, above all, a realm of decision-making in the hands of local authorities, which can be exercised free from intervention, "authorisation" of "approval" by the upper levels of government (the regional and the national agencies). This basic assumption does not mean that each

municipality is an "independent" entity, or a "city-state" in the old Greek historical meaning. Local autonomy does not mean absence of external control. In fact, *lato sensu*, the activity of local authorities may be "checked", controlled or supervised by different types of bodies, with a different degree of scrutiny.

First of all, local authorities, as units of the executive branch, may be controlled by the courts. The most important judicial control is performed by the administrative courts (*jurisdicción contencioso-administrativa*), which, as in other European countries, is a specific jurisdictional track within the judicial power. The highest court in administrative litigation is the Supreme Court (*Tribunal Supremo*). In this field, the Spanish situation is different to that in Holland, France, Greece, Belgium or Luxembourg, in the sense that the Council of State (*Consejo de Estado*) does not have any jurisdictional powers.

Any affected person, company or organisation may file a lawsuit challenging a Local authority's decision, a regulation or a plan, if they comply with the general requirements (*i.e. locus standi)* established in the law on judicial review of governmental activity (*Ley de la Jurisdicción Contencioso-Administrativa,* enacted in 1998). It is also interesting to note that any local council member who voted against any decision taken by the Plenary Council is also granted access to justice. Furthermore, other governmental authorities (either the regional or the state ones) may also sue the local authority in courts, if the local body's action is illegal or if there is a discussion on competences (see *infra*).

Second, the national court of auditors (*Tribunal de Cuentas*) also performs a "post facto" control on the lawfulness and regularity of the expenses made by local authorities, on the basis of the applicable law on budgeting and accountancy. If the municipality or the province is located in a Region which has its own Court of Auditors, then they are also controlled by that body. However, this form of oversight is rather slow, and it usually takes place several years after the end of the fiscal year controlled. When illegalities or irregularities are found, responsibilities may follow on the part of the mayor, the deputy-mayors, etc. Thirdly, there is a complex and delicate set of inter-administrative controls, which is analysed below.

- (B) Inter-administrative control by the Regions and by the State

Local authorities are autonomous under the Constitution, but by no mean "independent" or watertight administrative compartments. As in other countries, the Spanish system has established some mechanisms by which either the region of the State (the "higher levels of government") may exercise a "control", supervision or just an "information-gathering" activity over what local authorities do or decide. For instance, all municipalities and provinces must communicate the decisions or legal measures that they adopt to the regions and to the respective regional offices of the State administration. This duty to just "communicate" has been found compatible with local autonomy by the Constitutional Court´s case-law.

Therefore, local self-government does not exclude interventions of the region or of the national agencies in the decision-making process of local bodies. The key point is that, as a general rule, the type of control over the activities of local authorities that can

be exercised by regional or State authorities is a control of legality, not a control of opportunity or of expediency. Contrary to countries such as Belgium or Luxembourg, the Spanish system does not recognise the administrative "tutelle" on local authorities, for this is understood to be incompatible with local autonomy.

Indeed, local autonomy excludes the possibility for the Region or the State to annul or modify the decisions, rules and plans of local authorities on grounds of expediency or opportunity. Those "higher" governmental levels can implement a control of legality, whose correct exercise is in any case controlled by the courts. In other words, inter-administrative control over local authorities is: (a) as a rule, limited to questions of legality; (b) subject to the scrutiny of the administrative courts. Although the "theory" is clear, the practice is complex, and the inter-administrative litigation is abundant. The following principles should be here briefly presented:

- (a) As a general principle, local authorities are free from external intervention to take any adjudication, rule, by-law, ordinance, plan or initiative in the domain of their competences and responsibilities. This is considered to be the core of local autonomy.

- (b) However, in some fields of governmental action, sectoral legislation establishes the need for the municipality to get the agreement from either the regional or State agencies. The cases are few, but important. Thus, for example, in the domain of land use and planning policy, the approval procedure for municipal land use plans is two-fold: municipalities are free to decide on and to approve their own plans, but this approval is just a sort of "preliminary" or "initial" one. To be fully binding and executive, the plan needs the "definitive" agreement of the regional agency on land use and territorial policy. In the case of Ceuta and Melilla, this "final" approval must be awarded by the State Department. Theory still tells that regional control over municipalities is restricted to legality issues, but in practice the border between "legality" and "expediency" is murky. Municipalities, however, may adopt more detailed or small plans and construction projects, without the control or agreement of the region.

Another example may be found in financial matters. Municipalities must obtain the blessing of regional or State finance&budget authorities if they want to take loans or to engage in public debt beyond certain ceilings, or if they want to convey property. Finally, the performance of popular consultations ("local referendums") must also be approved by the Council of Ministers (art. 71, Act 7/85).

- (c) *Supervision and control* by central and (especially) regional authorities on grounds of expediency is increasing during the last years, although in an indirect, subtle or "disguised" way. Thus, under the legislation on strategic assessment for land use plans every municipal master land use plan needs a Strategic assessment, which is performed by the region. Within this environmental assessment, several questions and aspects must be evaluated, which are not purely "legality" matters. For instance: does the plan provide for a *sufficient* protection of soils? Is the path of urban growth *sustainable*?, etc. When the regional agency identifies these questions, it may arrive to different conclusions than the local body. In any case, the municipality has to introduce in the master plan the "remarks", the "suggestions" or the "recommendations"

expressed by the regional agency; otherwise, the plan will not get the "final", regional approval required by the law.

On the other hand, certain recent laws and regulations have established criteria, guidelines and rules in the domain of budgeting and expenses. Finally, another way to condition or determine the "free" choices of local authorities comes from the "inter-administrative coordination", where the regions have the power to coordinate different local plans or programs. This happens especially in the domain of public infrastructures, local police, education, etc.

- (d) The *system of inter-administrative control of legality* is mainly regulated at arts. 65 and ff. of the Act 7/85, on Local government. Different possibilities must be here considered:

(d.1) – First possibility: The Region or the State may believe that a local authority has taken a measure (an individual decision, a rule or a plan) that is illegal. In this case, the regional or State agency issues a warning to the local body, asking for the annulment of the contested measure. The local authority has a one-month period for either rectifying the measure or sustaining it. In the latter case, the regional or State agency may sue the local body in the administrative courts. A direct judicial claim (without the need to issuing a warning) is also possible. Although this is not explicitly regulated by the legal scheme on local government, the general law on judicial control of administrative action allows the State/Region attorney to ask the court to issue an injunction (suspension of the execution of the contested measure).

(d.2) – Second possibility: The Region or the State understands that a local authority has taken a measure (either an individual decision, a rule or a plan) for which the local body does not have competence, or which encroaches with competences of the "higher" administrations. In this case, the regional or State agency, without the need of issuing a warning, may sue the local body in the administrative courts. In the complaint, the Region or the State may ask the court to suspend the execution and enforcement of such a measure. However, that suspension is not automatically granted by the court. The administrative judge is free to decide whether the suspension is justified or not. If granted, the suspension lasts until the case is adjudicated on the merits. The state agency has the duty to provide arguments and evidence that the suspension is necessary.

(d.3) – Third possibility: The State (through its territorial delegates) believes that a local authority has taken a measure (either an individual decision, a rule or a plan) that endangers seriously the general interest of Spain: in this case, the delegate of the national government must address a warning to the local body, which has a ten-day period to either rectify or to sustain the contested measure. In the latter case, the national government's delegate has the power to suspend the contested decision by its own power, but he must immediately sue (within a ten-day period) the local authority in the administrative court. In this litigation, thus, the State delegate will ask the court to confirm the suspension that he has already declared. However, the central government holds the burden of persuading the court that the suspension already declared must be extended.

- (e) *Substitution*: in exceptional cases, the Region or the State may take action or adopt measures in the place of a local authority, if the said local body consistently and unlawfully refused to adopt a measure which is obligatory under the law. Substitution is an extraordinary mechanism. Therefore, it has to be time-limited, and restrained to a given file or a concrete decision.

- (f) *Dissolution*: in very extreme cases, the Council of Ministers, which is the top central government agency, may decide to dissolve the governing body of a local authority, when the local authority runs the local affairs in a way which seriously damages the general interest and which constitute a violation of the constitutional duties of the local body. This has happened only once in the last 35 years: in 2006, the Council of Ministers decided the dissolution of the city council of Marbella, due to massive corruption linked to land use and housing construction practices.

Annex Nº4
Table on the local government system (1st tier)

Name of the local authority	**Council-type organ**	**Number of councillors**	**Duration of mandate**
Municipio	*Pleno del Ayuntamiento*	Less than 100 inhabitants: 3 101-250 inhabitants: 5 251-1000 inhabitants : 7 1000-2000 inhabitants : 9 2000-5000 inhabitants : 11 5000-10000 inhabitants : 13 10000-20000 inhabitants : 17 20000-50000 inhabitants : 21 50000-100000 : 25 More than 100000 inhabitants: one councillor every 1000000	4 years

Annex Nº5
Table on the local government system (2nd tier)

Name	**Council-type organ**	**Number of councillors**	**Duration of mandate**
Provincia	*Diputación provincial*	Less than 500 000 inhabitants: 25 500 000 – 1000 000 inhabitants: 27 1000 001- 3500 000: 31 More than 3 500 000: 51	4 years

Annex Nº6
Table on the local government system (2nd tier)

Legal name of the type of local authority	Council-type organ		Number of councillors(*)		Duration of mandate	
Isla	In the Canary Islands	In the Balearic Islands	In the Canary Islands	In the Balearic Islands	In the Canary Islands	In the Balearic Islands
	Cabildo insular	*Consejo Insular*	11 - 29	13-33	4 years	4 years

(*) The number of members of the island councils depends on the number of inhabitants of each island

1.3 Local councillors´s status

1.3.1: How are they nominated or appointed or elected?

1.3.1.1: Introduction: a short historical account

Spain has not a strong democratic tradition. During the XIXth century, local elections were alternatively introduced or eliminated, according to the dominant political trend of the moment (see, *Introduction*). When they were called, the right to vote was restricted to the wealthy or qualified people (*sufragio censitario*), and the first "general" and "open" local elections did not take place until 1869. Even on that occasion, only men had the right to cast ballots, for the vote for women in local elections was only recognised (in a partial way) in 1924: the Act of 8 March, 1924 (*estatuto de Calvo Sotelo)* recognised the right to vote for all women from the age of 23, as long as they were emancipated from parental or marital control and they had "a house open in the town", that is, that they had a household of their own. The provisions of this act on local democracy were, though, never put into practice. The right to vote for women was recognised in a general way in the 1931 Constitution. At local level, the provisions on universal suffrage were put into practice for the first time in the local elections of 1933.Thus, during the period 1812-1975, different general rules on local government were promulgated in 1812/1823, 1840, 1845 (inspired by a centralist model), 1870 (following a progressive model) 1877 (centralist model), 1924 ("*estatuto municipal de Calvo Sotelo"* following a progressive model, but largely unimplemented), and 1935 (progressive and democratic model).

The regime of General Franco (1936-1975), reinstated a centralist model of local government. Free and direct elections were suppressed at all levels (local, regional and national). Mayors (in municipalities) and Presidents of the councils (in the provinces), were directly appointed by the *civil governor* in each Province. At the local level, though, some forms of quasi-electoral procedures were maintained by the legislation of the time. In fact, local elections took place at different times, but the right to vote was restricted to male "heads of family", who could only designate a portion of local council members (the so-called "family" representatives).

The reintroduction of Monarchy and the "political transition" (*la transición política*, 1975-1978) eventually allowed the recuperation of Democracy and the promulgation of a modern Constitution (voted by the people on 6 December, 1978). For what concerns democratic procedures, the Constitution reinstated direct, open and free

elections for all level of territorial government. At the local level, universal and open elections were called in 1979, after the promulgation of the Constitution. Since that date, local elections have been called nationwide every four years. The last local elections took place in May 2011. Therefore, local politicians will remain in their positions until May 2015. In overall terms the center-conservative party "Partido Popular" (PP) won the 2011 local elections, whose results are accessible at the following website: http://elecciones.mir.es/locales2011/.

1.3.1.2: Present situation

- (A) Election of councillors for municipalities, islands, and provinces in the Basque Country

In the municipalities (*municipios*), the most important decision-making body is the Plenary Council (*Pleno del ayuntamiento*). The members of the council (*Concejales)* are directly elected by the citizens of Spanish and other nationalities every four years, in the framework of the national, local elections. Apart from the nationals from the other 26 member states of the European Union, the right to vote belongs also to nationals coming from the following countries: Norway, Ecuador New Zealand, Colombia, Chile, Perú, Paraguay, Iceland, Bolivia and Cabo verde. The number of councillors and the electoral procedures are regulated by the General Electoral Act (*Ley Electoral General*). The number of Municipal Council members depends on the legal population of the city or town: from 3 (in the case of small towns with less than 100 inhabitants) to 41 in Barcelona, or 57 in Madrid. For more detail, see Annex Nº4, *supra*.

Similar rules apply for the election of council members in the Islands and in the three Basque provinces.

- (B) Appointment of councillors for regular provinces

An important feature of the provincial governments is that the members of the Plenary Council (*diputados provinciales*) are not directly elected by the voters in the local elections, but by the local council members (*concejales*) of the several municipalities of the province. The procedure to appoint provincial councilors is somehow complex, and is ignored by the regular citizen. Briefly explained, the process is as follows: the appointment of provincial councilors is made at the level of judicial districts (each province has several judicial districts or *partidos judiciales*); the number of seats of the provincial council is distributed among the different judicial districts of the province, in proportion to the total populations of the municipalities included in each judicial district. For instance, in a province having less than 500 000 inhabitants, the provincial council will have 25 seats. If there are five judicial districts in that province, and all five have a balanced population, five provincial councilors will be designated in each of the judicial districts. The *d´Hondt rule* applies. Just after the local elections and the proclamation of the official results, the members of the local councils of all the municipalities in each judicial district are called and they get together in a session where they elect those local councilors who will become members of the provincial council *(diputados provinciales*). Theoretically, the local councilors elect the

diputados provinciales, but in reality this is just a formality, since each political party decides *de facto* who will run as candidate for a position of *diputado provincial*, and the voting discipline makes the rest.

It is important to underline that the local councilors who are elected as provincial councilors still keep their positions in the municipalities. Therefore, the same person may discharge at the same time two positions: the position of local councilor (or even that of mayor) in a given municipality of the province, and the position of member of the provincial council (or even that of President of the said council).

Once the provincial Plenary Council has been duly established, the provincial councillors elect their Chairman or President from amongst them. The structure of the provincial council tends to reflect the overall results of the local elections in the municipalities of the province. Since proportionality rules apply, the political party who manages to get the highest number of city council members (*concejales*) at the municipal level usually gets the Chairmanship of the Provincial Council.

Concerning this feature of unelected provincial councils (at least not *directly* elected), it is important to remember, as noted *supra*, that when Spain ratified the European Charter on Local Self-Government, it included a declaration saying that "this charter is applicable to the local administration bodies which are mentioned at sections 140 and 141 of the Constitution, with the exception of a section 3, § 2 since the system of direct election should be implemented in all local authorities included in the scope of the charter. This statement was applicable to local second-tier bodies such as provinces. Therefore, the Spanish situation is compatible with the Charter.

1.3.2: Local councillors´ rights. Role and functions. Controls

As full members of local authorities' councils, local councillors have some basic rights, which are regulated by the national and regional laws and regulations. One of the most important provisions in this field is Royal Decree 2568/1986, of 28 November.

Local councillors have, in a nutshell, two basic types of rights: political and economic ones. For what concerns the political rights, every local council member is ensured the right to fully participate in the institutional and decisional life of the local authority. However, it would be important to underline that, in Spain, the political life of local authorities is dominated by two distinctive features:

- On the one hand, the system is highly "presidential", in the sense that the mayor (or the president of the Island or Province) is the real political leader and decision-maker, for he is usually supported by a stable political majority or coalition. Successful censure motions are rare.
- On the other hand, the internal processes of local authorities are rationalised, in the sense that there is little room for "solo" or individual activities or initiatives on the part of local councilors. As a rule, every local councillor must be integrated in one, and only one, "political group" within the council, and he or she must work within the plans, strategies and initiatives of the group where he is integrated.

The first and foremost right of every councilor is to attend the meetings of the council, to take an active role in the debates and to vote in favor or against the proposals made. This includes, of course, the most important decisions taken by the council: the election of the mayor (in municipalities) and of the president (in provinces in Islands) and, eventually, to vote in the censure motions; to vote the annual budget, the land use plans, etc. Furthermore, if a councilor votes against a given decision, he has also *locus standi* to file an appeal against that decision in the administrative courts.

Beyond this general right to participate in the activities of the plenary sessions of the council (*Pleno del Ayuntamiento, Diputación*), the actual possibilities for a local councilor to get involved in the activities and decisions of the local authority will largely depend on the fact whether he is a member of the party or coalition that won the local elections, or not. If he does not, he will have few chances to play any significant role in the institutional life of the local authority, beyond sitting in the bench of the opposition. Although he is entitled to support the motions and initiatives filed by his political group, there are usually few possibilities of success for them, for the reasons advanced earlier.

On the contrary, if the local councilor belongs to the winning political party or coalition, he will have many possibilities to get involved in high-responsibility tasks connected with the governance of the local authority: he may be appointed by the mayor as a member of the steering committee (*Junta de Gobierno Local*); he may be appointed as a vice-mayor (*teniente de alcalde*) in municipalities, or as *vice-president* in Provinces and Islands; and he may receive broad delegations and responsibilities for the running of specific fields of the local body's activities (environmental protection, housing, police, etc.). Such councillors are usually called "councilor-delegates" (*concejal- delegado*) and they are fully responsible for a given local body´s department or division. Therefore, even among the local councilors integrated in the winning party, it is possible to make a broad classification: councilors who, on top of that position, hold a managerial position within the local body's structure, and those who are just "regular" council members. All this appointments are strictly made by the mayor (in municipalities) or by the president (in Provinces and islands), something which reinforces dramatically the "presidentialist" character of the governance model for local authorities in Spain. Of course, this duality is only possible in bide cities, where the number of councilors is large enough. In medium-size and small municipalities, all councilors belonging to the winning political party are in a certain way "obliged" to take managerial positions.

As for the economic rights of local councilors, the matter has raised some controversy in recent times, due to he high salaries earned by some mayors. The fact is that there is no general rule on the matter across the country, and every local authority is free to determine the economic rights or salaries for their members, as long as they have the monies. Moreover, the councils have the competence to determine which positions of the local organisation (the mayor or vice-mayors, the deputy mayors, etc.) will be considered to be "full-time" ones (*dedicación exclusiva*), and therefore will be paid by salary, and which ones will not. The overall practice, though, is that in small and medium-size municipalities, the local councilors (or even the mayor) do not have a fixed salary (at least in monthly terms) since no position is considered to be "full-time". Consequently, the mayor and the councillors keep their previous jobs or positions.

However, they do at least receive allowances (*dietas*) for attending the meetings of the council.

In large cities the situation is different, for several positions are usually considered to be "full-time" ones: the mayor, the vice-mayors and deputy-mayors, etc. Therefore, only in those municipalities can the holders of those positions live as "professional" politicians. Local councils establish the pay or salaries for these positions. Here, local councils have absolute freedom, since this is considered to be a manifestation of local autonomy. It seems that there has been a certain abuse of this decisional power, in the light of some pieces of information that have appeared in the media in the last months of 2012. According that, certain mayors have a pay higher than the Prime Minister himself: the mayor of Barcelona makes 110.000€ a year; the mayor of Madrid, 100.000€; the mayor of Zaragoza, 92.000€, etc. These figures do not include extraordinary or special allowances or compensations. This situation has produced a social scandal and is perceived by the citizens as been especially hard in the present situation of economic crisis and skyrocketing unemployment.

In the light of these facts, the national government has been preparing since late 2012 a legislative reform, which would put a "cap" in the local politicians´ salaries. The initial idea would be to link the actual salary of the mayor to the population of the municipality, but in no case a mayor should earn more than the annual gross salary of a Secretary of State (roughly some 67.000€, 2012 figures). However, at the time this contribution is written (January 2013) this proposal has not crystallised yet. What is more, the second version of the proposal would establish a maximum cap of 100.000€ for mayors of big cities. Still a good pay, indeed….

Finally, local councilors are subject to several types of controls. To begin with, all local councilors must declare their properties and assets, and file a comprehensive statement about his economic situation and interests (*declaración de intereses)*, at the beginning of his mandate. These declarations are included in the local register of interest, which is kept under the responsibility of the Secretary General of the local authority.

Second, local councilors are controlled by political groups. If they behave improperly, they may be sanctioned, fined or even expelled by the political group. In that case, the local councilor must joint another political group, or remain "independent" (unattached).

Thirdly, local councilors must comply at any time with applicable administrative laws and regulations governing the functioning of the local authorities (award of contracts, issuance of licences, recruitment of human resources, etc.). If they don't do so, they are potentially subject to criminal prosecution, something which, unfortunately has not been uncommon due to the high rate of corruption in local governments: according to some media, there are currently more than one hundred mayors indicted or prosecuted with charges of corruption. *See* the following internet link: www.20minutos.es/noticia/1603039/o/alcaldes/corrupcion/imputados/

2. Local authorities´ policies and resources

2.1. Local Government responsibilities

2.1.1: A brief description of each local government tier´s responsibilities

All Spanish local authorities have the legal nature of Public Law bodies (*entes de derecho público*). Therefore, their decision-making processes, their activities and the measures they take are mainly governed by Administrative Law. In this capacity, local authorities do carry out a huge array of activities to satisfy the general needs of their citizens and to advance the well-being of the local community. From a technical point of view, though, a difference can be drawn between three different legal concepts:

a) *Legal powers* enjoyed by the local authorities as governmental bodies (in Spanish public law: *potestades administrativas*);
b) *Local services* provided by those authorities (in Spanish: *servicios públicos locales*);
c) Competences, in the narrow sense (*competencias*).

Each one of these concepts is considered separately below, for the two basic types of local authorities: municipalities and provinces. The analysis is limited to the legal scheme stemming from national, basic legislation for reasons of space, but it is important to note that regional statutes and regulations on local government may attribute additional powers and services to "their" local bodies. Therefore, the picture on local services and competences is far from being uniform around the kingdom.

- (A) First tier: Municipalities

A.1). Legal powers

Municipalities (as well as provinces and islands), enjoy several powers and prerogatives which are usual for "territorial" governmental bodies (*entes territoriales*):

- They enjoy the power of eminent domain, that is, they can expropriate private property for different justified purposes (urban policies, construction of public infrastructures, etc.).
- They have rulemaking capacity. The regulations and ordinances approved by Municipalities (*ordenanzas municipales*) regulate important aspects of social life and governmental action. Those municipal rules may also establish administrative penalties and fines for those individuals and firms who break them.
- They can collect taxes, levies and special contributions, with due respect of the requirements laid down by national or regional legislation (see below).
- They can approve comprehensive and detailed plans in many fields, such as land use, environmental protection and transports.
- They have the power to impose administrative sanctions and fines on the wrongdoers.
- They have the capacity to determine their internal structure, with due respect to national and regional laws and regulations. To do so, they may approve "organization regulations" (*reglamento orgánico*), where they set up specific bodies, commissions, etc.

A.2). Public local services

The 7/85 Act (Art. 26) establishes a set of minimum, mandatory public services that must be provided by all municipalities, in accordance with their legal population. Thus:

- (a) All municipalities must provide the following services: public lightning, cemetery, waste collection, street cleaning, supply of drinking water; road access to the municipality; law and order; sewer system; pavement of the streets and control of food and drinks sold in town.
- (b) Municipalities having more than 5000 inhabitants must, in addition, provide the following public services: public park; public library; marketplace and waste treatment.
- (c) Municipalities with more than 20,000 inhabitants must, on top of the previous ones, provide the following public services: Civil protection; social services; prevention and extinction of fires; public sport facilities.
- (d) Finally, municipalities having more than 50,000 inhabitants must, in addition to the abovementioned services, provide those of public transportation within the city and environmental protection.

On top of this list of "mandatory" services, municipalities may of course provide (within their financial and operational capabilities) any other "complementary" service or activity which is not awarded on an exclusive basis to other levels of government (the Region or the State), and which satisfies the needs or the well-being of the local community, especially in the domains of culture, environmental protection, education, gender equality, housing and health protection (Art. 28, 7/85 Act).

Municipalities are free to choose the way in which they deliver their services: either using their own means and resources (*gestion directa*) o by having recourse to contracts with private companies, following the rules of Public Procurement. They may also set up local autonomous bodies (*organismos autónomos locales*) or even establish local public companies (*empresa pública local*) which, externally, will act like any other private firm and will be governed by commercial law. One municipality may be the only shareholder, but different shareholders combinations are usual: several municipalities, municipalities and private investors, etc. The usual domains where local companies are established are urban development and urban services, economic development, environmental services and cultural activities.

When it comes to satisfying the array of public, local services, inter-municipal cooperation plays a key role. Cooperative efforts may be channelled through different devices, such as agreements, or *de facto* mutual assistance. However, the most important way of cooperating is by forming a joint authority, called in Spain "Mancomunidad de Municipios". Other associative structures include the "consortium" (*consorcio*) which includes local authorities and other governmental bodies (regional departments, universities, etc.).

A "mancomunidad" is a Public Law body, created by the agreement of two or more municipalities. As shown at Annex Nº2 above (see, point 2), currently there are more than 1000 such *Mancomunidades* in the kingdom. With this type of partnerships, municipalities share and pool their resources, so that the "Mancomunidad" is the organisation that actually provides a given service in all the associated cities and towns. These joint authorities are considered by the Law as genuine local authorities by themselves, with their own legal personality (distinct from the associated

municipalities), assets and personnel. They may encompass municipalities from one or more provinces. They are brought into life by an agreement of the interested municipalities, following a decision taken by a majority of the respective local councils. The intervening municipalities also agree the by-laws, organisation and institutional matters of the *Mancomunidad*. In order to set up a "mancomunidad", the participating municipalities don´t need to get the approval of the region or the State, although the must comply with the applicable procedural and substantive requirements laid down in national and regional legislation. For instance, the by-laws of the "mancomunidad" must be published in the official gazette of the Province or of the Region (if this is a single-province region).

Although municipal joint authorities may be established for the provision of any kind of local services, they are most frequent in the domain of environmental protection, which involves several different services: depuration of residual waters; provision of potable water; collection of municipal waste; construction and running of environmental infrastructures for the treatment of waste, like landfills; fire extinction, etc.

On the other hand, the Regions may decide to establish a compulsory type of intermunicipal cooperation, by establishing "metropolitan areas" (*áreas metropolitanas*). These bodies are also considered as full local authorities, and they usually encompass a big city and "satellites" small ones, which have been absorbed over the decades by the big city. Metropolitan areas are set up by means of an Act of the regional parliaments and they may be single-purpose or multi-purpose structures /they may discharge one local service or several types of them. Currently, there are only three bodies of this type, two in Valencia Region and one in Catalonia, and they provide local services in the domain of transportation, waste management and water services.

Apart from associative structures, it should be stressed that many municipalities (especially the small and medium-sized ones) receive intensive technical and economic assistance from the provinces, without which the provision of local services would be virtually impossible. As a final remark, municipalities may ask the Region to be exempted from the provision of some mandatory public services, if the provision of such services is very hard or even impossible, for technical or economic reasons.

-A.3) Competences

Identifying the actual competences of local government units in Spain is not an easy task, since there is no systematic regulation or codification thereof. In reality, State legislation (Act 7/85, section 25) does not identify which are those competences. It rather identifies "matters" (*materias)* on which local government bodies *must* have competences. Those *matters* are those pertaining to the interest of the local government, and among them stand the following ones:

- public safety
- street crime;
- transit of vehicles and pedestrians;
- civil protection, fire prevention and extinction;
- land use and urban development;
- housing;
- public infrastructures such as streets, squares and parks

- environmental protection;
- slaughterhouses, fairs and marketplaces
- consumer protection;
- primary health care;
- cemeteries and funeral homes;
- social services;
- delivery of drinking water; depuration of waste water and sewers
- cleaning of streets and public places; public lightning
- public transportation within the city;
- cultural and sport activities
- promotion of tourism.

Therefore, the actual "competences" of local authorities are not identified by the laws and regulations on local government, but by sectoral legislation (land use legislation, environmental legislation, transport legislation, etc.). These rules are supposed to be established by the national or the regional Parliaments, every time they enact statutes dealing with the above referred "matters". Let us put the example of zoning, land use and urban policy. As stated above, this domain is a "matter", in which municipalities *must* have "competences". But if one would like to know which are the actual competences of Spanish municipalities in this domain, he should check eighteen sets of laws and regulations dealing with Land Use Law: the national legislation and the seventeen different statutes and regulations enacted by the regions on this matter. There is, then, a multiplying factor in this arena, with the consequent fragmentation and lack of uniformity of competences. Moreover, this diversity makes possible that municipalities in Region A might have different, or more competences on a given matter than municipalities in Region B.

- (B) Second tier: competences and services of the provinces

The most important and foremost feature of the province as a local government unit is that it was incepted to ensure that municipal public services are delivered by towns and cities in an efficient and integral manner, in all the territory of the province. Therefore, the provincial government is supposed to provide assistance and help to municipalities in discharging their services, duties and activities. Besides, there is also a "provincial" dimension of social life, and even a "provincial" identity felt by many citizens (especially in some parts of the country) which may be as important or even stronger than the "regional" identity, namely in those regions who are "new" from a historical point of view (Castilla-La Mancha, Extremadura), and where the provincial division is a traditional feature or is deeply rooted in the collective psychology (Basque Country). There are, then, "provincial" interests which are distinct from the "municipal" ones.

The competences and services of the provinces are discharged by their own governing bodies (*diputaciones provinciales*, see supra). In this domain, the national legislation is less detailed and exhaustive than when it deals with municipalities. Therefore, the role, services and responsibilities of the provinces are mainly regulated by regional legislation. As said earlier, in the case of the Basque country, the three historical provinces do enjoy a very large domain of powers and competences, much larger than the regular "provinces". They even have powers in taxation and fiscal

matters (each province has it own fiscal system, separate from the national system), which are even of higher degree and importance than those of the region to which they belong.

However, national legislation establishes a set of minimum competences to be discharged by the provinces:

- (a) The coordination of the provision of municipal services, in order to ensure that those service are provided effectively and in a comprehensive manner;

- (b) The provision of technical, economic and legal assistance and cooperation to municipalities, especially to small towns and cities. For instance, since most small municipalities lack the adequate personnel and operational capability to collect their own taxes, they usually ask the provincial government (*Diputación Provincial*) to do so. The province collects the local taxes and keeps an agreed percentage as a service fee. Another usual cooperation is the domain of land use and zoning activity (building permits), where the provincial government provides for an Architect and other qualified civil servants, who check the legality of building permits applications, land subdivisions, etc;

- (c) The delivery of public services having a provincial or supra-municipal dimension. Among these services, it is worth mentioning that the "Diputación Provincial" runs the Provincial Official Gazette (*Boletín oficial de la provincia*), which is an important official journal where all municipal regulations, ordinances and plans must be published. State offices in the province also publish their decisions in that journal. It should be stressed that, historically, provinces have provided a large number of services: provincial museums, libraries, hospitals, bullfight rings, roads, marketplaces, etc. Also, many important public infrastructures belonged to the Provinces: the provincial hospital, the provincial museum, the provincial library, the provincial orphanage, etc. Many of these infrastructures have been absorbed by the regions (for example in the domain of health).

- (d) Fostering and encouraging the social and economic development and planning of the territory of the province.

- (e) The promotion and management of the interests of the province (economic, cultural, urban, environmental, heritage, etc), which are different than those of the several municipalities.

2.1.2: Short account of issues related to overlap

In recent years, there has been an increasing concern about the high number of administrative levels present in Spain, and the likely results of overlap in the responsibilities and competences of each governmental level. For instance, in the area of Barcelona, the citizen is confronted with up to seven different governmental levels: the municipal district; the city council; the metropolitan area; the "comarca", the province, the Region and the State.

Different initiatives have been taken on this subject at the local, regional and State level. At local level, the different associations of local authorities have launched different initiatives to study the issue of overlapping competences. The resolution adopted by the Spanish Federation of Municipalities and Provinces (FEMP) by its 10th General Assembly (September 2011) can be cited as an example.

At regional level, mention should be made to the activities undertaken by the Madrid Region, where a Study Commission on duplicate powers was established by the regional parliament in July 2011 ("Working group on duplicate powers between municipalities and Madrid to improve efficiency in the delivery of public services"). The recommendations of this commission were approved by the chamber in May 2012.

At the State level, the central government set up in 2012 an experts Committee on duplicities and overlaps in government. This commission is supposed to release its recommendations in June 2013. On the other hand, the draft *Rationalisation and Sustainibility of Local Government Act* (see point 3.2) plans to reduce duplicities and overlaps in government, by clarifying the legal scheme on local competences and implementing the principle, "one competence-one governmental level". The practical results of these inspiring principles remain to be seen, however.

2.1.3: Existing mechanisms that aim at protecting local authorities´ sphere of responsibility

The Spanish system provides for different procedural and legal devices against any encroachment or reduction on local autonomy that might be performed by the executive or legislative branches of the national or regional governments. In Spain, local autonomy is not merely a rhetoric idea: it is a constitutional element, protected by legal and procedural devices. In this sense, local self-government represents a limit to the decisional powers of the State or of the several Regions. This key idea means that local authorities may use local autonomy as a claim, or as a shield, to challenge decisions or rules adopted by the two other levels of government. In this litigation scenario, there is a likely violation, encroachment or disregard of local self-government, crystallised by a legal rule or an administrative decision taken by the national or the regional powers. For the sake of a better presentation, two different legal devices must be examined here: (a) – "ordinary" protection of local autonomy, which is enforced by regular or administrative courts; and (b) – "constitutional" protection, carried out by means of a special appeal before the Constitutional Court.

-*(a) Ordinary protection:* Whenever the national or regional agencies adopt a decision or an administrative regulation which may impinge upon the local competences or on the legal realm of local self-government, the local authorities affected by that measure may sue the State or the regional agency in the Administrative courts, claiming that local autonomy has been violated. These courts may set aside and quash the contested State or regional measure, if they think that the violation of local autonomy is clear and evident. Therefore, this potential inter-administrative litigation is adjudicated by the administrative courts, which culminate in the Administrative Chamber of the Supreme Court. The case-law of this court of justice is consequently very important, and constitutes an unavoidable element of the legal content of "local autonomy".

-*(b) Constitutional protection:* The protection of local autonomy against violations performed by statutes (passed either by the national or the regional legislatures) presents additional difficulties. The key point is that regular Administrative courts do not have powers to annul Acts of parliaments. This function is in Spain reserved to the Constitutional Court. However, *locus standi* in this Court has been traditionally very restricted and was not recognized to local authorities. Therefore, when the national or the regional parliaments passed a statute involving some type of violation of local autonomy (for instance, an expediency control over local government´s activity) the local administration could not react and could not bring a constitutional challenge against that piece of legislation. This situation changed dramatically in 1999, when the Constitutional Court Act (*Ley orgánica del tribunal constitutional,* of 1979) was amended to provide for a specific procedure which allows local authorities to protect their autonomy. This litigation device is called "Conflict in defense of local autonomy" ("Conflicto en defensa de la autonomía local", in Spanish).

This challenge may only be triggered against legal rules consisting of "acts of parliament" (national or regional) or other types of rules having the said nature. As for the *locus standi*, it is enjoyed by different types of local authorities:

- (a) one Municipality or Province, if the challenged statute affects only that body.

- (b) a minimum number of Spanish Municipalities and Provinces, when the statute is addressed to all said units, *in abstracto* or in a general way (for instance, an Act of the national parliament providing for a specific form of control over the activity of all Spanish towns and cities). This minimum number of plaintiffs varies according to the type of affected local authorities:

(b.1) one seventh of the total number of municipalities affected, which means: one seventh part of the total number of Spanish municipalities if the statute is approved by the national Parliament, or one seventh part of the total number of municipalities present in the Region, if the statute is approved by the regional Parliament.

(b.2) half of the provinces affected by the statute, which means: half of the total number of Spanish provinces if the statute is approved by the national Parliament, or half the number of provinces present in the Region, if the statute is approved by the regional Parliament.

The decision to trigger the "conflict" must be taken by the council of the concerned local authorities. At the end of the lawsuit the Constitutional Court may eventually declare that local self-government has been actually violated by the challenged statute and, in some cases, may even decide that the statute is unconstitutional for the said reason. Until 2011, only two "conflicts" have been adjudicated on the merits by the Constitutional Court, and in both cases the claim was rejected:

- Ruling 240/2006, of 20 July 2006, concerned the power of the central government to approve the land use plan of the autonomous city of Ceuta.
- Ruling 47/2008, of 11 March 2008 dealt with a regional statute, which eliminated a second-tier unit of local government, namely the metropolitan area of l´Horta, in Valencia.

Other claims have not been admitted by the Court for different reasons and thus have not been adjudicated on the merits. In a nutshell, there is a "constitutional" protection of local autonomy in Spain, which may be used under strict procedural requirements by local authorities. However, so far this device has but rarely been triggered, and has not produced one single declaration of unconstitutionality.

Annex Nº7
Distribution of responsibilities among local authorities

Municipalities	Provinces
State and regional law grant competences to municipalities on the following domains: - public safety, street crime; - transit of vehicles and pedestrians; - civil protection, fire prevention and extinction; - land use and urban development, housing; - public infrastructures such as streets, squares and parks - environmental protection; - slaughterhouses, fairs and marketplaces - consumer protection; - primary health care; - cemeteries and funeral homes; - social services; - delivery of drinking water; depuration of waste water and sewers - cleaning of streets and public places; public lightning - public transportation within the city; - cultural and sport activities - promotion of tourism.	(a) Under State Law: - Coordination of municipal services, - Provision of technical, economic and legal assistance and cooperation to municipalities - Provision of public services having a provincial or supra-municipal dimension. - Fostering and encouraging the social and economic development and planning of the territory of the province. - Promotion and management of the provincial interests (b) Regional laws may grant the provinces additional competences

2.2 Local government resources (Human and financial resources)

2.2.1: Local government staff

As a part of their autonomy, local authorities do have their own personnel, and they have the power to recruit and to manage their own human resources, a power that, unfortunately, has produced many cases of corruption and political patronage. According to recent data published by the Ministry of Finance and Public Administration (*Boletín estadístico del personal al servicio de las Administraciones públicas*, 2012) currently there are roughly 647,500 public employees working at local government level (all local authorities combined), which represents almost 24,2% of the total number of public employees in the Spanish public administration (roughly 2,7

million people). This share is even higher than the number of employees working at the national administration (only 22%). For more details, see Annex Nº 9, below.

From a legal point of view, local government personnel may be mainly of two different types: civil servants (*funcionarios)* and contractual employees (*personal laboral*). Civil servants are considered to be "administrative law" personnel, enjoying a special legal status (in principle, they cannot be fired or made redundant). The recruitment of this type of employees, their rights, services, duties and responsibilities are regulated by Administrative law (see Annex Nº8, below). On the contrary, contractual employees are governed by "private" employment and labour law. Their salaries and working conditions are regulated in a different way: they sign individual contracts and they do bargain and negotiate collective agreements with the corresponding local authority (usually the big ones). In overall quantitative terms, the number of contractual employees is much higher than that of "civil servants" in Spanish local authorities (see Annex Nº9). This is especially clear in small towns and villages, where almost all employees are usually "contractual" personnel. Only medium and large-scale cities and provinces have their own divisions and ranks of civil servants (*cuerpos y escalas de funcionarios*). In terms of personnel management, each local authority is supposed to work like an independent "company", with its own personnel.

Notwithstanding this general situation, it is important to stress that, in Spain, there is a special type of local employees, who have traditionally been recruited and managed by the national government. They are called "civil servants having a state qualification" or being "state-wide qualified" (*funcionarios con habilitación de carácter estatal*). These local civil servants are the only ones enjoying "professional mobility" across the Spanish territory. That is, during their career they may obtain positions in different local authorities across the country, by participating in vacancy-filling processes. The status of this special type of civil servants is also regulated by the State (the essential rules and elements) and by the regions.

The creation of this type of civil servants goes back to the Local Government Act of 1924 (see, supra, point 1). For decades, they were recruited by national agencies. Once recruited, nationwide transfer competitions were called by the competent central Department, which allowed those civil servants to get positions in other local authorities, in a structured way forming a professional "career" (*carrera administrativa*). Key regulations on this special group of civil servants were approved by the State: Royal Decree 1174/1987, of 17 September 1987, and Royal Decree 1732/1994, of 29 July 1994. Currently, and after a 2007 national statute on Civil Service (Act 7/2007), this type of personnel is not recruited by the State administration anymore, but by the regions, as a consequence of devolution. The new regulatory scheme has slightly changed the name of this group of civil servants: *funcionarios con habilitación de carácter estatal*, where the word "national" has been replaced by "state".

The role performed by these special civil servants is essential in every local authority, and the same type of public employees may be found in other European countries which follow the "Napoleonic" model of local administration (for instance, France, Belgium, Italy, etc.).They discharge (in an exclusive way) important legal and managerial functions:

- (a) That of Secretary (*Secretario)* of the local authority: in this capacity, they provide legal advice to the different local bodies and organs; they keep the records of all decisions of the mayor and the discussions and measures adopted at the Town Hall meetings; they are the natural attorneys-at-law of the local authority; they are in charge of the overall local administration, etc. Local government secretaries also play a key role in the organisation and logistics in all electoral processes and they are delegates of the electoral administration.

- (b) That of accountant and comptroller (*tesorero, interventor*) of the local treasury and budget. The Accountant-comptroller is in charge of the revenues and chash-flow, and oversees that the expenses made by the local authority do comply with substantive and procedural requirements established by the law.

In small towns, this "statewide qualified" civil servants discharge functions (a) and (b) simultaneously. In medium and large-size authorities, each function is discharged by different civil servants, who follow "specialised" professional tracks and promotion echelons. According to official data, in 2011 there were 5,682 of these "statewide qualified" civil servants working in the whole kingdom. This number only represents 0,9% of the total number of local government employees.

These civil servants are supposed to ensure that local authorities´ measures and decisions follow the procedural and substantive standards established by the Law. Although they are "statewide qualified" they cannot be considered *stricto sensu* as State employees, but genuine local government staff. They are not paid neither by the State nor by the region, but by each local authority where they work. An important issue to be considered in this contribution is whether the very existence of this group of civil servants (traditionally recruited and staffed by the State) and, especially, the control that they perform over the activities of the local authorities, is consistent not only with the essential content of "local autonomy", but also with the principles of devolution. These questions were strongly discussed in the eighties, but currently they are settled: on the one hand, the Constitutional Court has clarified that the existence of these civil servants is compatible with local self-government. Moreover, it has upheld the existence and the exclusive functions of these civil servants (the main decisions in this area are: ruling 214/1989 and ruling 25/1983, of 7 April 1983).

2.2.2: Local government goods and properties

From the perspective of local autonomy, local property does not present noticeable of unsatisfactory features in Spain. Local authorities are entitled to own and use any kind of property, goods and assets (tangible and non-tangible, moveable and non moveable) for the discharge of their responsibilities and the delivery of local services. What is more, local property may be the source of substantial revenue for the local body, by charging fees and public prices for their use (see below). Local authorities may acquire property through any legal way, including the use of eminent domain (*expropiación forzosa*), something that is very usual in land development processes. Therefore, the legal scheme of local property (Act 7/85, Royal Decree 1372/1986, of 13 June 1986 and additional regional rules) provides a fair and sufficient room for the development of local policies and programs. In fact, local authorities own a considerable amount of property and assets, even more than regions.

Like in other European countries with a "continental", *droit administratif* tradition, local property is regulated by a special legal regime, to which regular Civil Law applies in a subsidiary way. Also, local property may be divided into two main groups of goods and assets: (a) public domain property (*dominio público*); and (b) private property (*bienes patrimoniales)*. The first group is constituted by those goods that are devoted to a specific local service (for instance, the town hall and other local infrastructures and facilities such as slaughterhouses, marketplaces, museums, schools, cemeteries, sport facilities, public swimming pools, etc.), or which are open to the general use of the public at large (the streets, squares, parks, bridges, etc). This type of local property is especially protected by the Law, as it cannot be sold, transferred or cannot be subject to mortgages. Neither can it be seized or executed. What is more, local authorities enjoy special rights and unilateral prerogatives for protecting these goods: they can investigate the legal situation of these goods; they can impose sanctions and fines on those who damage or use them improperly; they can recuperate the possession of these goods and they can even evict unlawful users of the said property. All these powers may be exercised by the local authority without the need of going to the courts, although the affected citizen may of course challenge the local decisions if they are illegal. Public domain property may be used by citizens and firms in a free way, or under certain legal schemes (licenses, authorizations, etc.) which grant them more or less exclusive rights (although they must be limited in time), the strongest being the "administrative concession". Again, in these legal schemes the local authority is not considered just as a "regular landlord", but its position is qualified and is plenty of governmental prerogatives, alien to regular civil law relationships.

On the other hand, the local "private property" (*bienes patrimoniales*) is formed by those goods and assets which are neither connected with a public service nor open to the public enjoyment. The shares of corporations owned by local authorities have this legal nature, as so do the slots of land owned by municipalities which are not in use but are supposed to be kept in order to influencing the local real estate market (*patrimonios municipales de suelo*). Local "private" property is regulated, as a rule, by Civil Law, but Administrative law devices and procedures apply, too. Even in this case the local authority is not depicted by the Law just as a regular "private" owner, since it enjoys a set of special rights and prerogatives for the protection of the public interest, although in an attenuated manner. Contrary to public domain goods, local private property may be sold or transferred. Some limitations, again, here apply: local authorities need to obtain the approval of the regional competent body if they want to sell goods and assets whose value exceeds of 25% the regular annual income of the local budget.

2.2.3: Local government financial resources

2.2.3.1: Introduction

The field of financial resources is certainly one of the most critical issues in local self-government in every country. Without financial resources, local autonomy is largely more theoretical than real. In Spain, this aspect is so important that the Constitution contains specific provisions stressing the principle of financial sufficiency**: "***Local treasuries must have sufficient funds available in order to perform the tasks assigned by law to the respective local bodies, and shall mainly be financed by their own taxation as well as by their share of State taxes and those of Self-governing*

Communities" (Section 142). Besides these specific constitutional provisions, Act 2/2004, of 5 March, on local finances provides a comprehensive regulation of this matter.

As a rule, all decisions concerning the revenues and the distribution of expenses are taken in an autonomous way by local authorities and must be decided in the municipal budget, which must be approved by the plenary session of the Council. Local authorities do approve their own budgets without the need of a prior approval by the regional or State agencies. However, for some budgetary operations local authorities require such blessing, for instance when a local body envisages having recourse to borrowing, above a given ceiling. As for expenditure, it is also decided in an autonomous way (see Annex Nº 11). The local Comptroller (*interventor*) takes care that the expenses comply with procedural and substantive legal requirements. The revenues of local authorities may come from different sources (own taxes and fees, transfers, other sources), and they are summarily presented here.

2.2.3.2: Own revenue

"Own revenue" (*recursos propios*) include all the different types of income generated by the activity of local authorities either of a fiscal or non fiscal nature. Within this group we may distinguish between fiscal income (taxes, charges and fees) and non-fiscal income. As a measure of financial autonomy, it should be stated that, according to information released by the national tax administration, and corresponding to 2010 figures, own resources amount to 48% of the total income of municipalities and 20% in the case of provinces (see annex Nº10, below).

-(1) Taxes, charges and fees:

As stated above, municipalities enjoy taxing powers. Provinces do not have "taxes", but they may establish a surcharge (*recargo*) on the municipal tax on economic activities, plus they may collect charges and fees, and special contributions. In reality, municipalities cannot "create" or establish freely those taxes (*impuestos*), but it is necessary a piece of national or regional legislation establishing such tax. Municipalities may decide to "set" or to "impose" the taxes created by the Law (namely, Act 2/2004). In addition, they may regulate key operational aspects of such taxes. Municipalities (usually medium and large cities) enjoy a large domain of regulatory discretion in the concretisation of those taxes, since they approve specific regulations for each type of local taxes, called *"Ordenanzas fiscales"*. These rules contain all the necessary legal and operational information for the organisation and the collection of the tax. For instance, each municipal council determines the rate of the local tax in its municipality, within a legal limit. They may also establish specific assessment boards for land property, or specific appeals boards.

According to the 2004 Local Finances Act, municipal taxes are divided into "mandatory" and "optional" ones. The mandatory taxes are:

- (a) the tax on real estate, which is the most important local tax;
- (b) the tax on motor vehicles;
- (c) the tax on economic activities.

Optional local taxes include the tax on constructions and installations and the tax on capital gains in urban areas. As stated above, small towns lack the organisation and

resources to collect their own taxes, so these activities are performed by the tax collection service of the province.

On the other hand, local authorities may establish a number of charges and fees (*tasas, precios públicos*) for the use of municipal or provincial properties (for instance: cultural or sport facilities such as swimming pools, athletics tracks, football grounds, etc), or for the provision of certain services (for instance, depuration of residual waters, collection of waste, planning application fees, use of local sport facilities, etc.). Finally, they can impose special contributions (*contribuciones especiales*) for the financing of public works (improvement of sidewalks and streets, etc.) payable by the citizens who benefit from the improvement.

-*(2) Other sources of own revenue:* Besides the above mentioned sources of revenues, municipalities get income from different sources:

- (2.a) *Penalties and fines*. Municipalities may impose administrative sanctions of different sort on individuals and firms, for the contravention of statutes or the breach of local regulations and ordinances. The most important ones are monetary fines. This source of income is especially relevant in big cities (transit and parking tickets, environmental fines, etc.).

- (2.b) *Sale of property and assets.* Within certain limits, municipalities may sell the goods and assets that do not belong to the public domain (see supra), such as old and abandoned facilities, shares of private companies, etc.

- (2.c) *The profits produced by economic activities.* Municipalities and provinces may carry out economic activities, usually by means of public, local companies.

Special attention should be given to the income generated by *urban and land development activities*. During many years, this has been a key source of income for municipalities, especially for those located in areas that have experienced the land development and housing "boom" (touristic cities on the seaside, Madrid and Barcelona, etc.). Municipal income derived from land development and construction activities came basically from two sources: on the one hand, the municipality participated in the land development process, by expropriating rural land and selling it as a "buildable" or "suitable for development" land, thus making a huge profit (difference between the compensation paid for rural land and the price obtained from selling the transformed "urban" slots to the private market). Second, all development and building activities generated different sources of income for municipalities, in form of different taxes, charges and fees that hit different aspects of the building process. When the housing "bubble" suddenly collapsed in 2008-9, the whole development and housing sector got paralysed and the income for municipalities sank dramatically, a factor that aggravated the already chronic problem of financial insufficiency of municipalities (see point 2.2.3.4, below).

2.2.3.3: Transfers

An important portion of municipal and provincial revenues still comes from transfers awarded by the State (which grants 63,5% of all transfers), and, to a minor

extent, by the regions. In 2010, transfers amounted roughly to 45% of the total revenues of the municipalities. This proportion is much higher in the case of provinces: 65% (see Annex Nº10).

The main amount comes from a specific transfer awarded by the national government, by which municipalities participate in the tax revenues of the State ("*partipación en los tributos del estado*"). This grant, which is not earmarked, is calculated according to a complex statutory formula, which is amended and updated over the years. In addition, municipalities over a certain population, or meeting certain requirements, receive a portion of the collection of some State taxes (cesión de recaudación de impuestos del Estado). This source of funding is regulated at arts. 111 and ff. Local finances Act

Apart from the precedent funding sources, there are different State and regional funds whose monies are partially or totally aimed at financing or co-financing local works and services (earmarked grants). Here, again, the most important funds are run by the national government (for instance, the State fund for local investment, Fondo estatal de inversión local). Also noticeable was the State-run "Program E", which in 2010 transferred several million € to municipalities, to fund public works with the aim of revitalizing the economy and fighting unemployment.

There are also a number of "ad hoc" cooperative or multilateral arrangements for financing local authorities´ plans and projects, either at the regional or state level, usually co-financed by the EU structural funds. In this domain, it should be stressed that some EU funding schemes are implemented by means of "Community initiatives" and specific programs that are addressed directly to local authorities. Spanish local authorities have received substantial amounts of these programs over the last two decades. Indeed, since the accession of Spain to the European Communities in 1986 many municipalities and provinces have been recipients of huge amounts of funds coming from the different European programs and plans. In general, they participate actively in the design and (partially) in the implementation of eligible projects for financial help, which are mainly framed, proposed and managed by the Regions. Moreover, some EU funding programs have been specifically designed for local authorities, like FEDER and the Cohesion fund.

For what concerns FEDER, projects under this program are managed by the Ministry of Finance and Public Administration, and they are addressed to municipalities under 50,000 inhabitants. The current phase of this fund (2007-2013) plans an overall amount of 346,77 million€ for Spain. The cities of Ceuta and Melilla are entitled to an additional financing of 50 million€. With regard to the Cohesion Fund, the current phase of this fund (2007-2013) plans an overall amount of 3,543 million € for Spain (Decision of the European Council of 16 December 2005).

Moreover, some programs are implemented by means of European Commission "Initiatives" (example: the URBAN initiative). Since 1994, URBAN promotes integrated projects on sustainable local development in Spanish cities that are capitals of the province or that have more than 50,000 inhabitants. The third phase of URBAN (now renamed "URBANA") covers the period 2007-2013 and plans and overall assistance of 344,66 million€ for Spanish local authorities. 138 authorities are eligible

under this scheme. In those cases, municipalities may apply directly to the funds, without taking part in a more comprehensive, regional plan.

Summing up, EU funding is an important part for the carrying out of many projects of infrastructures and municipal services. Therefore, the world of local authorities has been so far an enthusiastic supporter of the European integration. This situation might change starting 2012, when Spain will no longer be a neat receiver of funds, but a neat contributor, in favor of the new Central and Eastern European member states.

2.2.3.4: The public deficit and the debt of the local sector

As a general rule, local authorities may have recourse to the private sector, to ask for loans and credits from the banking system, and they may also issue bonds. The Local Finances Act establishes several prudential control mechanisms on this source of financing, to prevent an excessive debt of the local sector. Among others: (a) some statutory caps on the local debt are established for short-term loans, they cannot exceed 30% of the previous year operating revenue; (b) Prior authorisation from the state of from the autonomous communities is required whenever annual repayments of long-term loans and credits exceeds 125% of the operating revenue in the previous year; (c) long-term credit operations are severely limited (art. 53, Local Finances Act).

In spite of these prudential rules, one critical aspect of current local authorities´ finances consists of the accumulated debt they drag along. The fact is that local authorities have been increasing their structural debt with private contractors and banks over the last decades (short and long-term loans), due to expansive budgetary policies linked to electoralism, the construction of pharaonic projects, excessive borrowing and the housing *bubble* which dominated the Spanish economy during the last twenty years. In the wake of the current economic and financial crisis, the figures have become a matter of national political concern. Thus, by the end of 2009, the whole group of local authorities accumulated a debt of 34,594 million € according to the Central Bank of Spain (*Banco de España*). This amount represented 3,3% of Spain´s GDP. More than 80% of such figure (28,770 millions) corresponded to municipalities and municipal joint authorities, while the rest (5,825 millions) corresponded to Provinces and Island councils. Municipal companies accumulated a debt of 7,885 million€. In the first quarter of 2011, the figures were even worse. The total accumulated debt of Spanish local authorities amounted to 37,352 million €, which represented an increase of 3,2% over previous figures (Source: Report of the Spanish Central Bank of June, 2011). A noticeable fact is that the city of Madrid alone had an accumulated debt of 7,008 million €, which represents 23,23% of the whole figure of local government debt.

This stringent situation has triggered the enactment of different rules, some inspired by a feeling of urgency. For instance, a 2007 statute on budgetary stability introduced provisions to combat local authorities´ deficit and imposing further budget discipline: Royal Legislative Decree 2/2007, of 28 December 2007. Later, Royal Decree-Law 8/2010, of 20 May 2010 established exceptional measures for the reduction of the public deficit. What is more, and in the wake of growing political concern about this state of facts, the Constitution itself (art. 135) was amended in September 2011, to

introduce further limitations on the public debt and to stabilise the public budgets, a provision that binds all governmental bodies, including local authorities.

After the general elections (November 2011) the new government proposed additional pieces of legislation, which eventually were enacted by Parliament. The most important is the Organic Law on Budgetary Stability and Financial Sustainability (*Ley de estabilidad presupuestaria y de sostenibilidad financiera*), passed in 2012. This statute took a series of measures consisting either of reductions of transfers of public resources or of strengthening the capacity of public administrations to control their own expenses. Another key governmental initiative has been the "Payments to Suppliers Plan" (*plan de pago a proveedores*) an extraordinary mechanism for the payment of pending invoiced to private companies that had provided goods and services to local authorities. The plan was signed by 4 622 local authorities, which submitted almost two million invoices pending payment, for a total value of 9 584 million euros. According to data released by the Department of Finance and Public Administration, the cash-flow deficit was almost neutralised by the beginning of 2013, but the structural deficit will need more time (and a good economic scenario) to be fixed.

Annex Nº8
List of legal sources for the various positions of local government staff

Legal rule	Subject matter
-Act 7/1985, of April 2nd, 1985	Basic provisions on local government
-Royal legislative-decree 781/1986, of April 18th, 1986	Consolidated text on legal provisions in force on local government
- Act 7/2007, of 12 April 2007	Civil Service Law
- Royal Decree 1174/1987, of 17 September 1987	Local civil servants with a national qualification
- Royal Decree 158/1996, of 2 February 1996	Pay and salaries for local authorities´employees
- Act 31/1995, 8 November.	Occupational safety and health law

Annex Nº9
Table showing the number of staff related to each tier of local government

Tier	Number of staff	Civil servants	Contractual employees	Other employees
1st tier: Municipalities	573,223 (21,4%)	187,448	350,753	35,024
2nd tier: Provinces and Islands	74, 265(2,8%)	30,339	35,399	8,527
Total	647,488 (100%)	217,787	386,152	43,551

Annex N°10
Table showing financial resources of local authorities (in €)
(2010 figures. Source: *Haciendas locales en cifras*,
Ministry of Finance and Public Administration, 2010)

Type of local authorities	Own Taxes (in million €)	Property revenue (in million €)	Transfers (in million €)	Financial revenue (in million €)
Municipalities	27 173 (48% of total income)	2 045 (4% of total income)	23 495 (43% of total income)	3 730 (5% of total income)
Regular provincial councils	1 230 (18% of total income)	91,3 (2% of total income)	4 002 (65% of total income)	894 (15% of total income)
Basque provincial councils	11 789 (86% of total income)	12,8 (1% of total income)	1 274 (10% of total income)	533 (3% of total income)
Island councils (Balearic islands)	48,3 (7% of total income)	5 (2% of total income)	505 (80% of total income)	34,2 (11% of total income
Island councils (Canary islands)	493 (35%of total income)	16 (3% of total income)	742 (50% of total income)	187 (12% of total income)
Total aggregate national figures	40 733	2 170	30 020	5 380

Annex N°11
Table showing expenses according to each category (in €)
(2010 figures. Source: *Haciendas locales en cifras*,
Ministry of Finance and Public Administration, 2010)

Type of local authorities	Operational expenses (personnel, purchase of goods and services)	Investment expenses (land, infrastructures, facilities, services)	Financial expenses (Payment of debt, interests, etc.)
Municipalities (% of total expenses)	70, 37%	24,79%	4,84%
Regular provincial councils (% of total expenses)	60,49%	30,18%	9,34%
Basque provincial councils (% of total expenses)	91,96%	6,38%	1,67%
Island councils,	65,76	29,08%	5,16%

Balearic islands (% of total expenses)			
Island councils, Canary islands (% of total expenses)	64,39%	26,98%	8,63%
Total national figures	57,324 billion €	17,363 billion €	4,165 billion €

3.- Conclusion: assessment and perspectives

Over the last 37 years, a deep decentralisation and a true democratic system has been implemented Spain, moving from a centralist and authoritarian model of government. Local self-government is in place, complying with the most advanced and European standards on the matter (namely those embodied in the ECLSG).

The resulting system of local authorities is complex and derives from political and legislative options taken both by the State powers and by the regions (*Comunidades Autónomas*). However, a basic or core system is enshrined in the State legislation, which applies across the kingdom.

In general terms, the reinstatement of open, democratic local authorities has been a success, and they are seen as the level of government which stands closest to the citizen. However, this overall picture does not mean that the system is peaceful and closed to discussion. As a matter of fact, in the last decade local government has continued to trigger many debates and political discussions. The hottest issues are the following ones:

- (1) The excessive number of municipalities (more than 8100, many of them having less than 1000 inhabitants, see *supra*). Amalgamation of neighbouring towns has frequently been suggested as a solution, but never tried seriously;
- (2) The right role and profile of the province as a local government unit, placed between the municipal level and the regions (*Comunidades Autónomas*); there are contradictory views of this, as some political parties claim that they should be suppressed, while others want to reinvigorate their functions.
- (3) In the context of the never-ending devolution, the allocation of powers between the State and the Regions in the field of local government is still a matter of political and constitutional discussion, as the 2010 ruling of the Constitutional Court on the Statute of Autonomy for Catalonia has showed;
- (4) In the last years, the positive popular perception of local government has been severely tarnished by many cases of corruption on the part of local politicians, who have seldom invoked local autonomy to justify their decisions. This corruption has taken place in three main fields: (a) land development and housing plans and policies; (b) public procurement; and (c) recruitment of local authorities´staff.
- (5) The structural, unsatisfactory situation of local government finances and resources is a recurrent topic. Moreover, it has been aggravated by the economic crisis and the explosion of the construction and housing "bubble" (2007-2010), which was a key source of funding for municipalities. Although the cash-flow deficit seems to be tamed according to recent figures, the structural deficit is a hot issue, whose satisfactory solution will take at least several years.

Against this background, the general elections held in Spain in November 2011 triggered an important change in the Spanish political scenario, as the Popular Party won the elections and got an absolute majority at the national Parliament. Moreover, some months earlier (May 2011) the same party had clearly won the local elections.

The new government in power launched in April 2012 a comprehensive and far-reaching program of reforms, mainly addressed to fight the economic crisis and combat the impressive combined structural public debt of the several public administrations (local, regional and state).

Among those reforms stand the ones affecting local government. In this sense, the central government has been working for several months on a key legislative proposal, the draft "Rationalization and Sustainability of Local Government Act" (*Ley de racionalización y sostenibilidad de la Administración local*). However, the information about this proposal is uncertain and contradictory: A first version was available in May-June 2012, but was later rejected by the government. Other versions have been known subsequently (November 2012, January 2013). The fact is that, at the time this contribution is written (January 2013), no final document has been officially agreed on by the Government yet. Consequently, there is a lot of rumours and "gossip" on the web and in the social networks. If the legislative proposal is approved by the government in February-March 2013, it will be introduced in the Parliament for legislative adoption. Therefore, the new law should not become effective until Summer, 2013, the soonest. Anyway, it seems interesting to anticipate the major lines of this proposal. For the purpose of this contribution, we will use the text that was analysed and reported by the central government in July 2012, for this is – for the time being- the only official source or document (see the report under: http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/130712-enlacesostenibilidad.htm

According to that draft, the Government seems to have openly abandoned the original idea of imposing the compulsory amalgamation of small municipalities (for instance those having less than 5000 inhabitants). The strategy now seems to be the following one:

- Most of the joint municipal authorities (*mancomunidades*, of which there are more than 1000 in the country) would be dismantled and their resources transferred to the provinces. Efficiency standards and controls will become common.
- Provinces will be reinforced as providers of services for small municipalities.
- Local consortia will be thoroughly revised
- The "EATIM" (territorial entities smaller than municipalities) of which there are more than 3700 in the country, will be suppressed and amalgamated with "true" municipalities.
- The clause on residual powers for municipalities (now enshrined at art. 28 of the 7/85 Act) would be eliminated.
- The competences for local authorities would be clarified and overlaps reduced. The idea is that local authorities should no longer carry out "improper" competences.
- More than 21.000 positions of local councilors will be suppressed, as the average number of councilors per municipal council will be reduced in the next local elections, due in 2015.

It remains to be seen whether this proposal will become an actual statute, and which changes will be introduced during the legislative procedure in the two chambers of the national Parliament. In any case, local government in Spain faces important challenges and legislative reforms are expected in the months (or even years) to come.

APPENDIX: FURTHER READINGS

1.- Selected bibliography (Local Government Law treatises and manuals)

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- Yearbooks:
    - Sainz de Baranda Foundation: *Anuario Aragonés del Gobierno Local.* A yearly review of the most relevant developments in the domain of local government in Spain (with a focus on the Region of Aragon). 2nd edition, 2010
    - Instituto de Derecho Local: *Anuario de Derecho Municipal* (4th edition, 2011)

2. Landmark constitutional court rulings on local government

- Ruling of the Constitutional Court ("STC") 4/1981, of 2 February 1981: local autonomy is a general principle of the territorial organisation of the State.

- STC 32/1981, of 28 July 1981 and STC 27/1987, of 27 February 1981: local self-government is protected by the Law, as an "institutional guarantee" of the constitutional system. Local self-government cannot be diminished or disregarded by regional legislation

- STC 4/1981, of 2 February 1981, STC 14/1981, of 29 April 1981 and STC 11/1999, of 11 February 1999: some forms of control on the activity and administrative decisions of local government units (discharged by other levels of government) are constitutionally admissible.

- STC 35/1982, of 14 June 1982: the concept of self-government implies for the local government units the capacity to formulate public policies of their own.

- STC 84/1982, of 23 December, 1982: the matter of "local government" is shared between the State and the regions: local government is a "dual-front" matter

- STC 27/1987, of 27 February: local autonomy is an underlying technique of the constitutional model of the state

- STC 159/2001, of 5 July 2001

- STC 240/2006, of 20 July 2006: the statutory provision according to which the land use master plan of the city of Ceuta must be approved by the central government does not violate the Constitution.

- STC 25/1983, of 7 April 1983, 214/1989, of 21 December 1989 and STC 76/2003, of 23 April 2003: on the constitutionality of the activity of civil servants having a national accreditation. The national parliament may decide to reserve some basic and key administrative tasks to those civil servants. This fact does not diminish the regulatory competences of the regions in this field.

- STC 31/2010, of 28 June, 2010: the regulatory powers of the regions (in this case, those of Catalonia) must respect the limits represented by the national, basic legislation (in the matter of the provinces).