



More power for Spain's municipalities?

Spain is ready to assign more genuine responsibility to the towns and cities.

BY VIOLETA RUIZ ALMENDRAL

The local governments of Spain are seeking more authority. After more than twenty years as part of the decentralized system put in place by the 1978 constitution, they think the time has come for them to step forward and play a more relevant and active role. This is what the so-called "*Pactos Locales*" (Local Pacts) are aimed at. They are a set of agreements between the central government, the Autonomous Communities, and the local governments with the purpose of both redefining and broadening the authority bestowed upon local entities.

Even though such agreements are not legally binding on any tier of government, they have played a very important role in preparing the groundwork for legislative changes that have resulted in more autonomy for municipalities. The Spanish Constitutional Court has often recognized the relevant role that agreements of this sort play in the Spanish model of government (among others, in Decision 181/1988). (see Box 1)

Under the central government's 1985 Local Government Act, municipalities must be in charge of a number of functions, such as public lighting, refuse collection, sewers or pavements. Depending on their population, they are expected to provide additional services to citizens, such as public libraries, markets, or police and social services. Furthermore, municipalities are granted the possibility of offering citizens additional services in a series of matters that are actually shared between the central government and the Communities – among others, education, culture, housing, health, and environmental protection.

Municipalities are now seeking a new assignment of authority. Given the cooperative nature of the Spanish decentralised system, the only way to attain this redistribution is through an agreement between the three

How Spanish local government works

There are two main kinds of local entities (within the Communities) in Spain: provinces and municipalities. Only the latter have authority of their own; the provincial role is merely one of coordination and "Local Pacts" concern mainly the municipalities.

Following the ancient Napoleonic division, there are 38 Provinces in Spain, each of which is formed by a number of municipalities. There are 8,101 municipalities in Spain. As many as 6,954 have less than 5,000 inhabitants and only 115 have more than 50,000. There are 54 municipalities of more than 100,000 inhabitants that make up 42% of the country's more than 40 million people.

The municipalities have access to the central government and the Communities' governments through the local government associations created to represent local interests – the most important at the moment being the FEMP (*Federación Española de Municipios y Provincias*) which represents more than fifty percent of municipalities in Spain. This association has played a most relevant role promoting the interests of local government and negotiating with the central government in the first Local Pact. It is expected that it will also play a major role in the second Local Pacts.

Furthermore, the Local Government Act of 1985 created the *Council of Local Authorities of Spain* - a statutory body whose role is to promote cooperation between the central government, Communities, and municipalities. Among other functions, it takes part in the establishment of criteria for the allocation of resources to municipalities.

Until very recently, the attention had been mainly on the Communities. The end of Franco's dictatorial regime and the subsequent passing of the Constitution of 1978 brought about an important decentralization process that ended with the creation of seventeen Autonomous Communities. The optional structure of the decentralization process - the fact that most authority is shared between the central government and the Communities and the different interest in autonomy shown by the latter - has given place to a model that can be defined as an asymmetric and cooperative federation.

The Constitution dedicates far more attention to setting the rules for the decentralization process of the Communities, than to laying out the framework for the autonomy of municipalities. Nevertheless, the autonomy of municipalities is guaranteed both in section 137, that states that, together with the other tiers of government, they "*shall enjoy self-government for the management of their respective interests*", and section 140.

The authority to define what municipalities are – and what matters they shall be in charge of – is bestowed by the Constitution upon the central government. However, Communities may also regulate this matter, which makes it, in practice, a shared matter between both tiers of government, although the Constitutional Court has – of late – broadly interpreted the central government's authority upon municipalities (in Decision 233/1999).

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existing tiers of government. This is what the Local Pacts are aimed at.

Much power devolved in late '90s

There has already been one Local Pact, and another one is being negotiated at the present time. The first Pact was agreed between the central government and the municipalities in the mid-nineties. As a result, between 1998 and 1999 the central government passed a set of laws that redefined and increased municipal authority. Among other changes, this Pact dealt with matters such as security in public places, transport and parking, environmental protection, tourism, health, and housing.

However, this first Local Pact could not deal with most of the matters that had been proposed by the municipalities, as they were matters under the jurisdiction of the Communities, and they did not participate in that first Pact. Thus, out of 92 proposals to broaden and redefine authority that had been introduced by the municipalities, the central government was only able to deal with 32, as the 60 other proposals concerned authority belonging to the Communities.

The moment has come to undertake this second reform of the municipalities' autonomy. The present time is quite propitious because the devolution process for the Communities has just been completed. As of January 1st, 2002, and for the first time in Spain's history, all Communities, (with the exception of the Basque Country and Navarre, that have special regimes) have the same level of authority as well as the same financing system. Therefore, they do not need to worry about obtaining further authority and can finally pay the deserved attention to the hitherto somewhat neglected needs of the municipalities.

A Second Decentralization?

The second Local Pact is being negotiated now and will actually consist of a series of pacts between the Communities and their municipalities. The central government will also play a relevant role, as its task is to define the general principles under which the new authority shall be given to Communities.

The main idea of the second Local Pact or, as it is more often referred to, the *Second Decentralization*, is that the Communities will have to give some of their authority to the municipalities. Among other areas, municipalities now seek more authority in matters such as consumer protection, sports, education, and employment.

This process will not be an easy one, as there is great variety in the needs and capacities of the different municipalities and, most of all, because the spirit of cooperation between the central government and the Communities is still not all it could be.

From a technical perspective, the legal procedure to bring about this "Second Decentralization" will be the passing of new laws by the legislative bodies of the Communities, once the pacts have been agreed to. These laws will have to abide by the central government's Local Autonomy Law of 1985, and will have to establish the procedures for the increase of the municipalities' authority.

Evolution of decentralization of public expenditures (% of participation of total public expenditures)

| Year | Central government | Autonomous Communities | Municipalities |
|-------------|---------------------------|-------------------------------|-----------------------|
| 1978 | 89 | – | 11 |
| 1984 | 72.6 | 14.4 | 13 |
| 1987 | 66.7 | 18.7 | 14.6 |
| 1990 | 59.6 | 23.9 | 16.5 |
| 1992 | 57 | 26.6 | 16.4 |
| 2000 | 51 | 32.5 | 16.5 |

The money issue

One last, but by no means least, aspect of the second decentralization is its financing. In principle, the funds for these new authorities should come from the Communities' funds; it will be their authority that will be transferred onto the municipalities. However logical as this may seem, there is no agreement in this regard, which has become one of the most controversial sticking points of the Local Pacts.

Municipalities have always claimed that they do not have sufficient means for carrying out their authority, although their fiscal behaviour is far better than the Communities'. In effect, it is quite paradoxical that Communities – whose powers to raise new resources are by far larger than the municipalities – are still quite financially dependent on the central government, while municipalities (with a much smaller power to raise income) have traditionally shown much more fiscally responsible behaviour.

In 2001, the resources of the municipalities deriving from their own taxes accounted for 60% of their total income; the other 40% was transfers from the central government and the Communities. In the case of the Communities, less than 20% of their resources are derived from their own taxes and income; the other 80% comes from transfers by the central government and the European Union Funds.

It is quite clear that financing is a crucial issue in any decentralization process. The Constitution recognizes the relevance of financing in the guaranteeing of the Municipalities' autonomy, and stipulates that both the central government and the Communities provide sufficient funds to them. Section 142 states that "*Local Treasuries must have sufficient funds available in order to discharge the functions assigned by law to the respective Corporations, and shall mainly be financed by their own taxation as well as by their share of Central government taxes and those of the Autonomous Communities*".

The special relevance of the Local Pact resides in that it reinforces the autonomy of the municipalities, as it both increases and redefines their authority. However and most importantly, Local Pacts are an excellent example of an instrument of cooperation. In the *quasi-federal* Spanish model of territorial organisation, most authority is shared between the different tiers of government. This explains the significant role played by agreements; they are indispensable to avoid role confusion. It is not an exaggeration to say that, without cooperation, no system with shared authority can adequately function.

This reality is both the dark and the bright side of the Local Pacts. If they work adequately, they may serve to encourage a high level of cooperation among the different tiers of government. The dark side is that, without cooperation, the Local Pact is not likely to produce any result at all. ☺