



Recommendation 121 (2002)¹ on local and regional democracy in Spain

The Congress,

A. Having regard to:

1. Article 2.3 of Statutory Resolution (2001) 1 relating to the Congress of Local and Regional Authorities of Europe (hereafter the CLRAE or the Congress), adopted on 15 March 2000, whereby the Committee of Ministers asked the Congress to prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states having applied to join the Council of Europe and to ensure, in particular, that the principles of the European Charter of Local Self-Government (hereafter the Charter) were effectively being implemented;

2. The report on local and regional democracy in Spain prepared by Mr Alan Lloyd (United Kingdom, L) and Mr Jan Olbrycht (Poland, R) following two official visits to Madrid, Leganés, Barcelona and Lleida in January and May 2002;

B. Welcoming the Spanish Government's will to pursue political dialogue on the distribution of powers among national, regional and local authorities in Spain, *inter alia* through negotiations conducted in the context of the *Pacto local*, with a view to improving the legislative basis for and conditions of exercise of power at local level, and wishing to make a constructive contribution to that debate;

C. Is most grateful to all the representatives of the Spanish delegation to the Congress, central government, in particular the State Secretary for Territorial Organisation, local and regional authorities, the parliament of Catalonia and national and regional associations of local authorities and to the academics, the experts and the representatives of national political parties for having agreed to hold meetings with the rapporteurs during their visits to Spain, thereby showing their interest in the activities of the Congress, and for their kind and valuable assistance with the preparation of the report;

D. Deems it appropriate to submit the following observations and recommendations to Spain's national and regional authorities concerning the situation of local and regional democracy in that country;

E. With regard to the Constitution and the decentralisation process, the Congress:

1. Welcomes the fact that Spain, formerly a highly centralised state with essentially marginal local government, has, over the slightly more than twenty years since the new democratic Constitution came into force in 1978, become one of the most decentralised countries in Europe;

2. Expresses its satisfaction at Spain's ratification of the European Charter of Local Self-Government in 1988 and notes the Charter's considerable influence on primary legislation concerning local self-government and the recognition given to it by the Spanish courts;

3. Notes the fundamental option taken in the Spanish Constitution of establishing autonomous communities (hereafter *Comunidades Autónomas*) as entities of the system of government with a strong potential for innovation;

4. Notes at the same time that this was done without denying local authorities specific constitutional guarantees;

5. Notes that the decisive factor in this reform was the granting of considerable legislative power in important fields (listed in Article 148 of the Constitution) to the *Comunidades Autónomas* and that since 1978 (under the two *Pactos autonómicos* of 1981 and 1992) it has above all been the regional tier which has benefited from the impressive decentralisation process in terms of transfers of administrative powers and responsibilities and of financial and human resources (which would seem to have resulted in some imbalance in the distribution of powers among the decentralised tiers of government to the advantage of the *Comunidades Autónomas*);

6. Notes also that the 1978 Constitution did not transform Spain into a federal state;

F. With regard to local self-government, the Congress:

1. Observes that the situation resulting from primary legislation on local authorities and the genuinely democratic nature of local government make Spain an example of full, proper application of the principles set out in the Charter, from which it can be deduced that, on the whole, the legal framework and actual practice of local self-government in Spain are substantially consistent with those principles, sometimes even entailing innovative, progressive solutions;

2. Notes none the less that there are a number of limited, but significant aspects of the legal situation of local authorities which would merit further consideration;

3. Observes that power to lay down rules governing local authorities is shared between central government and the *Comunidades Autónomas*, the former determining the main, uniform characteristics and the latter deciding local variants;

4. Notes that the principle of free election of the Local Authority Assembly by secret ballot and direct, equal, universal suffrage (Article 3 of the Charter) is partly undermined by the indirect election of the Plenary Councils (*Pleno Diputaciones*) in the Provinces (*Provincias*) and the Councils (*Consejos*) of the *Comarcas* (supra-municipal authorities) in certain regions (and moreover that, on ratifying the Charter, the Kingdom of Spain declared that it did not consider itself bound by Article 3.2 should the system of direct suffrage provided for therein be applicable to all local authorities coming within its scope);

5. In this connection, calls on the regional authorities to give thought to a system for electing the councils of the *Comarcas*, where these exist, which would establish a fair balance in the representation of municipalities of different types (urban and rural), taking account of the size of their population and of political representation;

6. At the same time questions the need in certain regions for parallel local government bodies, the *Provincias* and the *Comarcas*, with virtually the same roles in assisting small municipalities but different methods of financing;

7. Is pleased that, on the whole, the Spanish system of local self-government is consistent from a legal standpoint with the provisions of Article 4 of the Charter concerning powers and responsibilities;

8. Observes that the Spanish legal order provides, firstly, for the attribution of own and delegated powers and responsibilities to local authorities under laws of the state or of the *Comunidades Autónomas* (Article 4.1 of the Charter) and, secondly, for local authorities to be generally empowered to represent the interests of their population and, consequently, to assume functions other than those expressly assigned to them by law (without encroaching on those assigned to other authorities) (Article 4.2 of the Charter);

9. Is none the less concerned to note a frequent tendency to delegate powers under sectoral legislation (in particular at the level of the *Comunidades Autónomas*) rather than attributing powers directly to local authorities, in which case supervision of local authority activities may become focused on expediency, which is less in keeping with the principles of the Charter (see also paragraphs 16 and 25 below);

10. Notes with satisfaction that the principle of subsidiarity (Article 4.3 of the Charter) is clearly upheld in national law as a guiding principle for state and regional legislation assigning powers to local authorities;

11. At the same time notes that this principle is not reflected in the same way in the statutes of the *Comunidades Autónomas*;

12. Considers that effective compliance with the principle of subsidiarity would appear to require a radical improvement in the devolution to local authorities (the municipalities and the provinces) of a number of administrative powers and responsibilities currently still concentrated at the level of the *Comunidades Autónomas*;

13. Recommends, on a formal level, that this principle be explicitly introduced into the statutes of all the *Comunidades Autónomas*, which would then permit a substantive assessment of the impact of the decentralisation process initiated in recent years;

14. Considers that this principle can be seen to be observed as regards local authorities' autonomy in the exercise of their own powers;

15. Notes none the less that a number of problems subsist with regard to the effective exercise of local authority autonomy in regulatory matters and that this autonomy may be restricted by two concurrent phenomena: firstly, the existence, upstream from the point of exercise of the devolved regulatory power, of a large number of detailed provisions contained in national law or the law of the *Comunidades Autónomas*; secondly, provisions of national law or the law of the *Comunidades Autónomas* pertaining to compulsory enforcement, inspections or penalties, which severely curtail local authorities' ability to regulate the exercise of their own powers;

16. Considers, in this respect, that excessive reliance on delegation rather than allocation of full, exclusive powers and the frequent practice of parcelling out powers and responsibilities among the different tiers of government (national law requires the allocation of powers and responsibilities in certain fields, but this may also be confined to local authority participation in the exercise of powers conferred on other levels of government) run counter to the principle of granting full and exclusive powers and the principle of the attribution to local authorities of responsibility for a "substantial share of public affairs", as stipulated in Article 3.1 of the Charter;

17. Calls on the national and the regional authorities to consider means of giving local authorities full and exclusive powers;

18. Believes that the provisions on delegated powers are in compliance with the Charter from a procedural standpoint, since the agreement of the local authority to which powers are being delegated is required;

19. With regard to local finances, notes some imbalance in favour of the *Comunidades Autónomas* and an inadequacy of local authority resources, above all where the higher tiers of government transfer new powers and responsibilities to local authorities without changing the local budget base;

20. Considers, in this respect, that the principle of concomitant financing, as laid down in CLRAE Recommendation 79,² should be applied;

21. Shares the municipalities' legitimate concern to know which other tax could replace the business tax, guaranteeing the same tax revenue;

22. Asks central government to step up consultation with the municipalities' representatives so as to find a solution which ensures that municipalities enjoy the same level of revenue;

23. From the same point of view, calls on the national authorities to take into account the fact that local authorities are often obliged, under the principle of proximity, to assume a number of responsibilities not assigned to them by basic national law, for which they receive neither fair compensation nor the appropriate resources (the most recent example is receiving and taking care of asylum seekers and immigrants);

24. Welcomes the fact that the basic national legislation has done away with supervision of expediency of local authority decisions;

25. Reiterates, however, that an excessive tendency to rely on delegation rather than attribution of powers could reduce the impact of elimination of this form of supervision over local authorities' decisions;

26. Considers that the principles of the Charter relating to autonomy in matters of administrative organisation and personnel management (Article 6) are on the whole complied with;

27. Regrets to note a deficiency in the basic national legislation in that there are no rules or statutory or economic guarantees to facilitate, firstly, the holding of local elected office and, secondly, former local elected representatives' resumption of their occupational activities;

28. Considers that such a situation cannot but be to the disadvantage of a number of occupational categories, excluding them from local public elected office;

29. Notes with satisfaction that freedom of association of local authorities (Article 10 of the Charter) is fully upheld as regards both the adoption of forms of intermunicipal association and co-operation (where full freedom of association is the rule) and membership of national or regional associations representing local authorities and defending their interests;

30. On this subject, is pleased to see that the Spanish Federation of Municipalities and Provinces (hereafter the FEMP) enjoys considerable prestige and has a remarkable capacity to negotiate at national level;

31. Believes that Spain is among the European countries which have made considerable headway with legal protection of local self-government;

32. In this connection, welcomes the recent amendment to the national law on the Constitutional Court specifically aimed at enabling local authorities to appeal against national or regional laws deemed to interfere with rights of local self-government (a noteworthy innovation placing Spain in a leading position as regards compliance with the principle laid down in Article 11 of the Charter);

33. Notes, none the less, that the restrictions laid down by law may make it particularly difficult to reach the required number of more than one thousand municipalities at national level;

34. Believes that there is a real risk that the time needed to collect the minimum number of endorsements of an

appeal may in some cases weaken the importance of the Constitutional Court's decision;

35. Considers that it would accordingly be desirable for a similar appeal to be lodged by the region concerned, to ensure an effective appeal in as short a time as possible;

36. Wonders whether the public has a clear perception of the functioning of a number of consortia and agencies providing public services, which have replaced the metropolitan areas in certain regions;

G. With regard to regional self-government, the Congress:

1. Finds that the institutional reform process in Spain has been strongly marked by the formation of the *Comunidades Autónomas* and that the country succeeded in establishing, and subsequently consolidating, a thoroughly democratic system of government, at the same time consistent with respect for the regions' cultural and political diversity and capable of guaranteeing the necessary national unity even in the face of separatist agitation taking the form of terrorist violence, which the Congress strongly and unreservedly condemns;

2. Welcomes the fact that, up to the end of the year 2000, the decentralisation process which began with the adoption of the new Constitution enabled a major transfer of powers and human resources from the state to the *Comunidades Autónomas*, together with significant changes in financing arrangements, the most important of which was the conversion of the principal state tax – income tax – into a tax shared between the state and the *Comunidades Autónomas*;

3. Considers that, now considerable headway has been made with the transfer of responsibilities and resources to the *Comunidades Autónomas*, the problem arises of giving the new devolutionary state a more balanced organisation, taking account of the weight now acquired by the regional tier of government;

4. Notes that, from this standpoint, relations between the state and the *Comunidades Autónomas* have not been adapted to bring them into line with the material strengthening of the latter's position;

5. Observes that the issue of the regions' representation at national level (in the form of either a second chamber of parliament made up of regional representatives or consultative bodies allowing closer links between central government and the governments of the *Comunidades Autónomas*) has not been properly settled, which may hamper the regions' active participation in the most important institutional decisions affecting them;

6. Deems it possible that the above-mentioned limitations may become increasingly perceptible in future, for the very reason that natural growth in the powers and responsibilities of the *Comunidades Autónomas* tends to bring ever broader policy areas within the regions' preserve;

7. Believes that, in order to reform this institutional situation with a view to greater involvement of the

Comunidades Autónomas in decisions affecting the regions, thought might be given to amending the Constitution;

8. To that end, calls on the national authorities to hold discussions with the regions on a more far-reaching reform of the Senate to enable fairer representation of the interests of the *Comunidades Autónomas* at national level;

9. Considers that the changes already made (creation of a special Senate committee for the *Comunidades Autónomas* and holding of sectoral conferences) are proving somewhat inadequate to allow effective participation by the *Comunidades Autónomas* in the most important legislative and administrative decisions;

10. In this respect, considers it appropriate to envisage an in-depth reform of the legislation on means of liaison and consultation between central government and the *Comunidades Autónomas*, which currently seem to be insufficient;

11. Believes that action in the legislative sphere alone cannot be deemed enough and that new solutions must also be found to enable involvement of the *Comunidades Autónomas* in framing all national policies that may affect their development and functioning (along the lines of the standing conferences, at which the national and regional executives are represented);

12. Expresses satisfaction at the significant role played by the Constitutional Court in the regionalisation process and in settling disputes over jurisdiction between the state and the regions;

H. With regard to relations between the *Comunidades Autónomas* and local authorities, the Congress:

1. Believes that the *Comunidades Autónomas* in turn attach scant importance to direct relations with local authorities in each region and, in particular, to the establishment of means of participation by local authorities in decisions of the *Comunidades Autónomas* affecting them;

2. Is surprised to note that little heed is paid to the issue of closer links between the *Comunidades Autónomas* and local authorities, which seems to be in contradiction with the regions' extensive regulatory powers in local government matters;

3. Considers that the future will hold ever greater opportunities for co-ordination of policies and administrative action, which must be framed under appropriate procedures, precisely in order to guarantee full decision-making autonomy for all parties to such co-operation;

I. As regards negotiations in the context of the *Pacto local*, the Congress:

1. Notes that the *Pacto local*, which was launched in 1996 at the instigation of the FEMP, has brought some

significant initial results in terms of consolidation of local democracy but is making only painful progress with regard to powers and responsibilities;

2. Considers that negotiations in this context remain fully open and welcomes the proposal made to all Spanish political parties for a general political agreement on the second stage of decentralisation;

3. Notes that consultation with the *Comunidades Autónomas* on these issues is very slow-moving;

4. Considers that the *Pacto local* has acted as a catalyst, facilitating the process and making for greater openness, but that its effective application must be a matter for each *Comunidad Autónoma*;

5. To that end calls on all of the *Comunidades Autónomas* to continue or initiate negotiations with local authorities at regional level;

6. Remains persuaded that the *Pacto local* could become broader in scope if, at the same time, the role of the *Comunidades Autónomas* as guarantor of local authorities' legal and financial status were reinforced, in other words if the system were put on a more openly regional footing;

7. Considers that if a process of genuine devolution of powers and responsibilities to local authorities was really well in hand, with the adoption of all the requisite measures at the levels of both central government and the *Comunidades Autónomas*, appropriate solutions would then have to be found for the necessary transfer of human and financial resources to the local authorities (in accordance with the principle of concomitant financing) and the implementation of more effective links between the *Comunidades Autónomas* and local authorities;

8. Believes that, in the longer term, the establishment of closer relations between regional and local authorities could lead to a greater role for the regions in the exercise of regulatory powers concerning local government (in financial matters, for instance), in accordance with the general principles laid down in the Constitution and national law with a view to safeguarding local self-government;

J. Welcomes Spain's signature and ratification of the following European conventions drawn up under the aegis of the Council of Europe:

– the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), and

– the European Charter for Regional or Minority Languages (ETS No. 148);

K. Calls on the Spanish authorities to consider the possibility of signing and ratifying the European Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

L. Calls on the Spanish Government to give its backing to the draft European charter of regional self-government in future discussions on this legal instrument;

M. Invites Spain's national and regional authorities to take account of the above recommendations

and observations in the context of future institutional reforms.

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1. Debated and adopted by the Standing Committee of the Congress on 14 November 2002 (see Doc. CG (9) 22, draft recommendation presented by MM. J. Olbrycht and A. Lloyd, rapporteurs).
 2. Paragraph 3.e of Appendix 1 to Recommendation 79 states that the principle of concomitant financing requires that, in order to maintain a balance between responsibilities and the requisite resources for fulfilling these, each new transfer of responsibility should be accompanied by a corresponding means of funding, regardless of whether this entails the transfer of a new tax resource, the provision of a new transfer resource, the assignment of new staff or the transfer of physical facilities.