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## Structure and operation of local and regional democracy

Spain

**SPAIN**  
*Territorial set-up*



# **Structure and operation of local and regional democracy**

## **Spain**

Situation in 1997

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## **1. LEGAL BASIS**

### **1.1. Constitutional provisions relating to local/regional authorities**

#### **a) At regional level**

Spanish Constitution of 1978, Articles 2, 137, 138 and 139, from Article 143 to Article 158, first additional provision and transitory provisions 1, 2, 4 and 5.

#### **b) At local level**

Spanish Constitution of 1978, Articles 137, 140, 141, 142, 149.1.18 and 152.3, and Article 13.2 instituting the right of foreigners to stand as candidates at local elections under the reform of Article 13 of the Constitution approved on 27 August 1992.

### **1.2. Main legislative texts**

#### **a) Regional government**

- Law 12/1983 of 14 October on the process of self-government.
- Organic Law 8/1980 of 22 September on the funding of the Autonomous Communities
- Organic Law 3/1979 of 18 December. Autonomy Statute of the Basque Country.
- Organic Law 4/1979 of 18 December. Autonomy Statute of Catalonia.
- Organic Law 1/1981 of 6 April. Autonomy Statute of Galicia.
- Organic Law 6/1981 of 30 December. Autonomy Statute of Andalusia.
- Organic Law 7/1981 of 30 December. Autonomy Statute of Asturias.
- Organic Law 8/1981 of 30 December. Autonomy Statute of Cantabria.
- Organic Law 3/1982 of 9 June. Autonomy Statute of La Rioja.
- Organic Law 4/1982 of 9 June. Autonomy Statute of the region of Murcia.
- Organic Law 5/1982 of 1 July. Autonomy Statute of the País Valenciano.
- Organic Law 8/1982 of 10 August. Autonomy Statute of Aragon.
- Organic Law 9/1982 of 10 August. Autonomy Statute of Castilla-la Mancha.
- Organic Law 10/1982 of 10 August. Autonomy Statute of the Canary Islands.
- Organic Law 13/1982 of 10 August on the reintegration and enhancement of the *foral* structure of Navarra.
- Organic Law 1/1983 of 25 February. Autonomy Statute of Extremadura.
- Organic Law 2/1983 of 25 February. Autonomy Statute of the Balearic Islands.
- Organic Law 3/1983 of 25 February. Autonomy Statute of the Madrid Metropolitan Authority.
- Organic Law 4/1983 of 25 February. Autonomy Statute of Castilla y León.
- Organic Law 9/1992 of 23 December on devolution, under Article 150.2 of the Spanish Constitution, with regard to the powers of the Autonomous Communities having gained autonomy by application of Article 143 of the Constitution.
- Organic Laws 1 to 11/1994 of 24 March on reform of the Autonomy Statutes of Asturias, Cantabria, La Rioja, Murcia, Aragon, Castilla-la Mancha, Madrid and Castilla y León.
- Organic Law 1/1995 of 13 March. Autonomy Statute of Ceuta.
- Organic Law 2/1995 of 13 March. Autonomy Statute of Melilla.

**b) Local government**

***Fundamental and supplementary state legislation***

- Local Government Act 7/1985 of 2 April, governing the foundation of local structures (LRBRL) partially amended by Law 10/1993 of 21 April; Royal Legislative Decree 2./1994 of 25 June; Law 39/1994 of 30 December; Law 4/1996 of 10 January; Royal Legislative Decree 5/1996 of 7 June and Royal Legislative Decree 7/1996 of 7 June.
- Royal Legislative Decree 781/1986 of 18 April, amended by Royal Legislative Decree 2/1994 of 30 December and by Law 42/1994 of 30 December.
- Royal Decree 1372/1986 of 13 June on "Rules affecting the assets of local communities" (RB).
- Royal Decree 1690/1986 of 11 July on rules with regard to population and the territorial boundaries of local authorities (RP).
- Royal Decree 2568/1986 of 28 November on rules regarding the organisation, operation and legal structures of local authorities (ROF).
- Royal Decree 861/86 of 25 April on the remuneration of local authority civil servants.
- Royal Decree 1174/87 of 18 September on the legal status of civil servants appointed at national level, substantially amended by Royal Decree 732/94 of 29 July which was subsequently repealed in its entirety by Royal Decree 1732/94 of 29 July..
- Royal Decree 665/90 of 25 May on the economic contribution of central government to local authority investment.
- Royal Decree 896/91 of 7 June on the fundamental rules and minimum programmes with which the selection procedure for local authority civil servants must comply.
- Law 39/88 of 28 December governing local funds (LHL) amended by Law 42/1994 of 30 December.
- Organic Law 5/85 of 19 June on the general electoral system: Sections III, IV and V (Articles 176 to 209) amended by Organic Laws 1/1987 of 2 April, 8/1991 of 13 March, 6/1992 of 2 November, 13/1994 of 30 March and 3/1995 of 23 March.
- Organic Law 2/86 of 13 March, on the security forces: Section V (Articles 51 to 54).
- Special status:
  - Special law on the Madrid Metropolitan Council: Decree 1674/63 of 11 March.
  - Special law on the Barcelona Metropolitan Council: Decree 1166/60 of 23 May.
  - Autonomy Statutes of Ceuta and Melilla, respectively approved by Organic Laws 1/1995 and 2/1995 of 13 March.
- Law 4/1996 of 10 January amending Articles 12, 15, 16, 17 and 18.2 of Law 7/85 of 2 April and authorising the Government to make the necessary arrangements to bring up to date within six months by Royal Decree the Regulation on Population and Territorial Demarcation approved by Royal Decree 1690/86 of 11 July. Furthermore, the single exclusion clause derogates from Articles 12 to 16 inclusive of Royal Legislative Decree 781/86.

***Legislation regarding the Autonomous Communities:***

- Autonomous Community of Andalusia:
  - Law 7/93 of 27 July governing the municipal boundaries of Andalusia.
  - Law 1/994 on the territorial organisation of the Autonomous Community.
  
- Autonomous Community of Aragon:
  - Law 10/1993 of 4 November on the division of Aragon into districts ("*comarcalización*").
  
- Autonomous Community of Asturias:
  - Law 11/86 of 20 November recognising the legal personality of rural parishes.
  - Decree 65/1994 of 4 August approving rules of administrative procedure for the administration of the Principality of Asturias.
  - Law 2/1995 of 13 March on the legal system of the Principality of Asturias.
  
- Autonomous Community of the Balearic Islands:
  - Law 8/1993 of 1 December on assignment of local government powers to the Island Councils.
  - Decree 33/1994 of 28 March approving the Regulations on appointments and internal promotion of civil servants employed by the administration of the Autonomous Community.
  
- Autonomous Community of the Canary Islands:
  - Law 8/86 of 18 November, modified by Law 14/90 of 26 July on the legal structure of the public administrations.
  - Decree 154/1994 of 21 July on transfer of public administration functions relating to local government, police and entertainment from the Autonomous Community to the Island Councils.
  - Decree 164/1994 of 29 July harmonising the Community's administrative procedures with Law 30/92.
  
- Autonomous Community of Cantabria:
  - Law 6/94 of 1994 governing the municipal divisions of Cantabria.
  - Law 7/1994 of 19 May on co-ordination of local police forces.
  - Law 8/1994 of 28 June harmonising the regulations with state Law 30/1992 and Law 10/1994 amending Law 8/1994.
  
- Autonomous Community of Castilla-la-Mancha:
  - Law 3/91 of 14 March on local authorities.
  
- Autonomous Community of Castilla y León:
  - Law 3/1995 of 22 November amending Legislative Decree 1/88 of 21 July approving the revised text of the Law on the government and administration of Castilla y León.
  - Law 2/1994 of 9 March on the office of municipal solicitor in Castilla y León.
  - Decree 183/1994 of 25 August governing procedures and time-limits for settlements.
  - Decree 189/1994 of 25 August approving the regulations governing the sanctioning procedure of the administration of the Community of Castilla y León.

- Autonomous Community of Catalonia:
  - Law 8387 of 15 April, on the municipal and local structure of Catalonia.
  - Law 16/90 of 13 July on the special status of the Aran Valley.
  - Law 10/1994 on the "Mossos d'Esquadra" Police.
  - Law 2/1994 harmonising the regulations under the Autonomy Law with state Law 30/1992.
  
- Autonomous Community of Extremadura:
  - Law 5/1995 of 20 April on the urgent partial amendment of the revised text of the Law on the civil service in Extremadura.
  
- Autonomous Community of Galicia:
  - Law 3/1992 of 23 March on co-ordination of local police forces.
  - Law 3/1995 of 10 April amending Law 4/88 of 26 May on the civil service in Galicia.
  
- Autonomous Community of Madrid:
  - Law 4/1992 of 8 July on co-ordination of local police forces.
  
- Autonomous Community of the region of Murcia:
  - Law 6/88 of 25 August on local structure.
  - Law 9/1994 of 30 December setting up the Local Co-operation Council to introduce permanent flexible collaboration between the administration of the Autonomous Community and its local authorities.
  - Decree 72/1994 harmonising the administrative procedures of the region of Murcia with state Law 30/1992.
  
- *foral* Community of Navarra:
  - *foral* Law 6/90 of 2 July on local government.
  - *foral* Law of 2 July 1992 amending that of 13 February 1987 on the police forces of Navarra.
  - Decree 57/1994 of 7 March reformulating the implementing regulations of the *foral* Law on local government as regards contestation of acts and agreements of the Navarra local authorities.
  
- Autonomous Community of La Rioja:
  - Law 3/93 of 22 September on the local structure of La Rioja.
  - Law 10/1995 of 29 December amending the Autonomous Community's legislation on taxation, the legal system, local structure and the civil service.
  - Law 8/1994 of 30 November amending Law 3/1990 of 29 June on the government civil service of the Autonomous Community of La Rioja.
  - Law 3/1995 of 8 March on the legal arrangements applicable to the government and administration of the Autonomous Community of La Rioja.
  - Law 7/1995 of 30 March on co-ordination of the local police.

- Autonomous Community of the Basque Country:
  - Law 5/1993 of 16 July modifying relations between the common institutions of the Autonomous Community and the "*foral*" entities (holding special status) within their historical boundaries (amending Article 7.c.5 of Law 27/83).
  - Decree 326/1944 of 28 July setting up the Euskadi Municipal Council as a deliberative body of government throughout the Basque county.
  - Law governing the Basque Parliament of 17 July 1992, laying down arrangements for the security of the Autonomous Community, co-ordination of local police forces and regulations concerning the specific status of the staff of authorities answerable to the Basque government bodies. This law was amplified by the Basque Government Decree of 3 May 1994.
  
- País Valenciano:
  - Law 5/1994 of 24 October on the urgent partial amendment of the revised text of the Law on the civil service in the País Valenciano.
  - Law 10/1994 of 19 December setting up an Advisory Legal Council of the País Valenciano as a body advising the Government of the Autonomous Community and also the local authorities where appropriate.
  - Decree 166/1994 of 19 August harmonising the regulations with state Law 30/1992.
  
- c) General state regulations affecting the Autonomous Communities and the local authorities**
  - Organic Law 1/1993 of 21 February on urban security.
  - Royal Legislative Decree 1/1992 of 26 June approving the revised text of the Law on land use and urban development.
  - Law 30/1992 of 26 November on the statutory framework for public authorities and on common administrative procedure; the third supplementary provision and the second transitory provision were amended by Royal Legislative Decree 14/1993 of 4 August.
  - Royal Decree 429/1993 of 6 March approving the Regulations on pecuniary responsibility.
  - Royal Decree 1398/1993 of 4 August approving the Regulations on procedures for exercising the power of sanction.
  - Law 13/1995 on public contracts, fully repealing the Regulations on commitments of local corporations of 9 January 1953.
  - Royal Decree 155/1996 of 2 February approving the implementing regulations of Organic Law 7/1985.

## 2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

### 2.1. Main subdivisions

According to Article 137 of the Spanish Constitution, there are three local and regional authorities:

- Autonomous Community
- Province
- Municipality

### 2.2. Statistical data

#### Local and Regional Authorities

Authority	in 1950	in 1996
Autonomous Communities	0	17
Provinces	50	50
Municipalities	9 214	8 097
Infra municipal local authorities	2 223	3 722
Metropolitan areas	0	2*
<i>comarcas</i>	0	45
Consortia of municipalities	50	815

\* Valencia and Barcelona

\* In Catalonia (37), Castilla y León (1) and the Basque Country (7).

#### a) Regional Authorities

Regional administration	Size	Population
Andalusia	87 559 sq. km	7 314 644 inhabitants
Aragon	47 720 sq. km	1 205 663 inhabitants
Asturias	10 604 sq. km	1 117 370 inhabitants
Balearic Islands	4 992 sq. km	787 984 inhabitants
Canary Islands	7 447 sq. km	1 631 498 inhabitants
Cantabria	5 321 sq. km	541 885 inhabitants
Castilla-la-Mancha	79 461 sq. km	1 730 717 inhabitants
Castille y León	94 224 sq. km	2 584 407 inhabitants
Catalonia	32 113 sq. km	6 226 869 inhabitants
País Valenciano	23 255 sq. km	4 028 774 inhabitants
Extremadura	41 634 sq. km	1 100 538 inhabitants
Galicia	29 575 sq. km	2 825 020 inhabitants
Madrid	8 028 sq. km	5 181 659 inhabitants
Murcia	11 314 sq. km	1 109 977 inhabitants
Navarra	10 391 sq. km	536 192 inhabitants
Basque Country	7 234 sq. km	2 130 783 inhabitants
La Rioja	5 045 sq. km	268 206 inhabitants
Ceuta	12 sq. km	73 142 inhabitants
Melilla	20 sq. km	64 727 inhabitants
Average	29 764 sq. km	2 380 003 inhabitants
TOTAL	505 990 sq. km	40 460 055 inhabitants

## b) Provinces:

Area	Size	Population
Largest	21 766.31 sq. km (Badajoz)	5 181 659 inhabitants (Madrid)
Smallest	1 980.33 sq. km (Guipúzcoa)	94 396 inhabitants (Soria)
Average	10 119.80 sq. km	809 201 inhabitants

## c) Municipalities:

Area	Size	Population
Largest	1 750,33 sq. km (Cáceres)	3 029 734 inhabitants (Madrid)
Smallest	0.03 sq. km (Emperador)	4 inhabitants (Cerveruela)
Average	62.50 sq. km	4 997 inhabitants

## Local authorities with a given population

Distribution of municipalities	Number
<1 000 inhabitants	4 886
1 000-5 000 inhabitants	2 065
5 000-10 000 inhabitants	524
10 000-50 000 inhabitants	506
50 000-100 000 inhabitants	61
100 000-500 000 inhabitants	49
>500 000 inhabitants	6
TOTAL	8 097

## 2.3. Special structures for particular areas

### a) Metropolitan areas

The Autonomous Communities, after consulting the state administration and the municipalities and provinces concerned, may, by means of a law, create, modify or do away with metropolitan areas in accordance with the provisions of their respective statutes. Autonomous Community legislation lays down the organs of government and administration in which all the municipalities in the area must be represented, the economic and functional system which ensures participation in decision-making by all the municipalities and an equitable distribution between those municipalities of financial commitments, the services provided and works conducted at the metropolitan area level and the relevant implementation procedure (LRBRL, Articles 43 and LHL, Articles 133 and 135).

#### ***Catalonia: Law 7/87 of 4 April***

- Metropolitan transport body responsible for public transport services (Article 15.1, a):
  - Number of municipalities: 18
  - Surface area: 332.03 sq. km
  - Population: 2 796 216 inhabitants
- Metropolitan hydraulic and waste disposal services responsible for water distribution, sewage disposal and treatment and waste disposal and treatment (Article 15.1, b):
  - Number of municipalities: 33
  - Surface area: 585.87 sq. km
  - Population: 3 033 511 inhabitants

#### ***País Valencià: Law 12/86 of 31 December***

- Metropolitan crop irrigation board:
  - Number of municipalities: 44
  - Surface area: 628.27 sq. km
  - Population: 1 364 155 inhabitants

### b) **Balearic Islands: Law 7/85 of 2 April: Article 41.3 (Organic Law 2/83 of 25 February)**

- Island Council of Majorca: Island of Majorca
  - Municipalities: 53
  - Surface area: 3 640 sq. km
  - Population: 629 445 inhabitants

- Island Council of Minorca: Island of Minorca
  - Municipalities: 8
  - Surface area: 702 sq. km
  - Population: 68 731 inhabitants
  
- Island Council of Ibiza-Formentera: Islands of Ibiza and Formentera
  - Municipalities: 6
  - Surface area: 645 sq. km
  - Population: 89 808 inhabitants
  
- c) **Canary Islands: Law 7/85 of 2 April: Article 41.1 (Organic Law 10/82 of 10 August)**
  - Island Community of Las Palmas***
    - Island Council of Gran Canaria. Island of Gran Canaria
      - Municipalities: 21
      - Surface area: 1 531 sq. km
      - Population: 724 845 inhabitants
  
    - Island Council of Lanzarote. Island of Lanzarote
      - Municipalities: 7
      - Surface area: 856 sq. km
      - Population: 76 413 inhabitants
  
    - Island Council of Fuerteventura. Island of Fuerteventura
      - Municipalities: 6
      - Surface area: 1 633 sq. km
      - Population: 42 882 inhabitants
  
    - Island Community of Tenerife***
      - Island Council of Tenerife. Island of Tenerife
        - Municipalities: 31
        - Surface area: 2 108 sq. km
        - Population: 680 190 inhabitants
  
      - Island Council of La Gomera. Island of La Gomera
        - Municipalities: 6
        - Surface area: 378 sq. km
        - Population: 17 028 inhabitants

– Island Council of Las Palmas. Island of La Palma

- Municipalities: 14
- Surface area: 727 sq. km
- Population: 82 113 inhabitants

– Island Council of Hierro. Island of Hierro

- Municipalities: 2
- Surface area: 278 sq. km
- Population: 7 957 inhabitants

**d) "Diputaciones forales" (provinces with special status) (LRBRL, Article 39)**

- Vizcaya
- Guipúzcoa
- Alava

**e) Municipalities of Ceuta and Melilla**

These two municipalities each hold a special individual Autonomy Status, approved on 13 March 1995 by Organic Laws 1/95 and 2/95 respectively, which established a specific institutional system (Assembly, President and Governing Council), their responsibilities and their own economic and financial structure. They are municipalities in the true sense, but their organisation and powers are akin to those of an Autonomous Community.

**f) Districts (*comarcas*)**

In accordance with the provisions of their respective statutes, Autonomous Communities may establish on their territory *comarcas* (supra-municipal or district authorities) or other entities grouping several municipalities having common interests requiring separate management or calling for the provision of services covering the area in question. A *comarca* may be created at the initiative of the municipalities concerned provided that two-fifths of them are not opposed to it and those two-fifths represent half of the population under census, (with the exception of Catalonia where this initiative may be imposed automatically). The legislation of the Autonomous Communities defines the territorial boundaries of the *comarcas*, the composition and operation of their executive organs, which must represent the municipalities which they group together, as well as the powers, authority and economic resources assigned to them. The creation of the district shall not entail, for the municipalities, any curtailment of their powers to supply compulsory minimum services (LRBRL, Articles 4.2, 42 and additional provision 4a).

Legislation on *comarcas* has been adopted by the Autonomous Communities of Catalonia, Aragon, Asturias and Castilla y León which have granted their respective *comarcas* the status of local territorial authorities answerable to the Autonomous Community.

Within the context of this section, attention must be drawn to the special status granted to the Aran Valley under legislation of the Autonomous Community of Catalonia (Law 19/90 of 13 July).

### **g) Infra municipal Local authorities**

Legislation of the Autonomous Communities with regard to local government governs the operation of local authorities whose territorial boundaries are smaller than a municipality, with a view to decentralised administration of separate population nuclei, referred to traditionally as "caserios" (hamlets), "*parroquias*" (parishes), "aldeas" (boroughs), "barrios, anteiglesias, consejos, pedanias, lugares anejos", etc. Their creation is based on the initiative of either the population concerned or the relevant municipality which, in all cases, must be consulted (LRBRL, Article 45).

### **h) Autonomous Communities comprising a single province**

They hold the powers, at local level, of the former provincial councils (LRBRL, Article 40):

- Navarra
- Madrid
- La Rioja
- Murcia
- Asturias
- Cantabria
- Balearic Islands

## **2.4. Regulations governing changes in structures and boundaries**

### **a) Regional level**

In the national interest, the *cortes* (Parliament) may, by means of an organic law, authorise the adoption of or decide to grant, self-governing status in respect of territories which are not part of the provincial organisation, and also supersede the initiative of local bodies seeking self-government (Article 144 of the Spanish Constitution).

In accordance with the fifth transitory provision of the Constitution, Ceuta and Melilla may form Autonomous Communities if their respective municipal councils so decide. This requires an agreement to be reached by an absolute majority of their members, in addition to consent of the *cortes* as referred to in the previous paragraph. The legislator has nevertheless chosen to grant these municipalities an Autonomy Statute under Article 144 of the Constitution which enables the National Assembly (*cortes*), on grounds of national interest, to enact an organic law authorising or granting an Autonomy Statute for territories not part of the provincial system.

Provision has also been made for the possible incorporation of Navarra into the Autonomous Community of the Basque Country with the agreement of an absolute majority of the members of its assembly and subsequently ratified by referendum approved by a majority of the valid votes cast (4th transitory provision of the Constitution).

Under Article 145 of the Constitution, the federation of autonomous communities is prohibited.

Various autonomous statutes have partly implemented these provisions. For example, the statutes of Cantabria, La Rioja, Murcia, Aragon, Castilla y León, the Basque Country and Andalusia provide for the separation or incorporation of all or part of the territory of the Autonomous Community or another Autonomous Community or territories not incorporated in such a community, where appropriate, and have set up a procedure which generally provides for the participation of the municipalities concerned, and that of the population by referendum and the *cortes* by means of an organic law.

**b) Local level**

***Provinces***

Modifications to boundaries shall be agreed within the framework of a state organic law approved by the *cortes* (Spanish Constitution, Article 141.1).

***Municipalities***

Competence resides with the Autonomous Communities (LRBRL, Article 13.1) by right or at the initiative of the municipal councils, after consultation with the municipalities concerned and through provision of appropriate public information. Cases of incorporation, merger and separation are governed by additional national legislation (TR, Articles 3-10 and RP, Article 2-16). The criteria applied are as follows: when municipalities do not individually have the resources required for providing compulsory minimum services; when their urban nuclei overlap; or when there are major reasons related to an economic or administrative advantage.

**2.5. General units of state administration at local/regional level and their relationship to local/regional authorities**

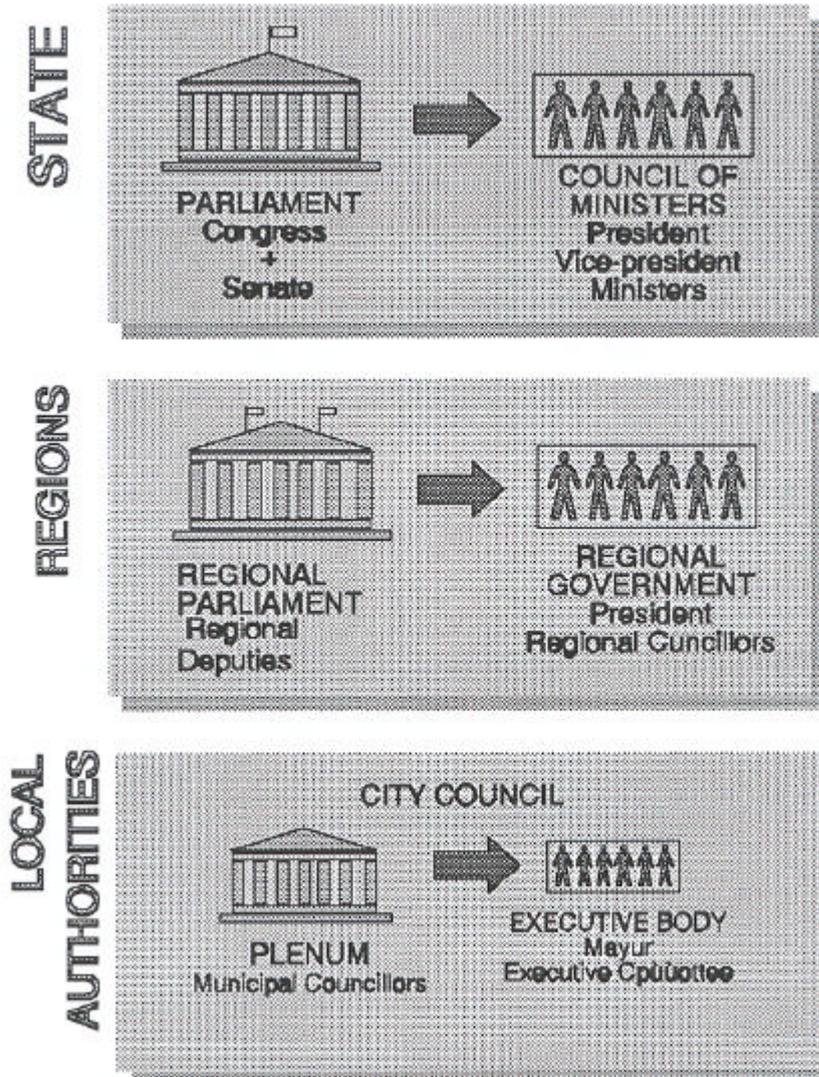
**a) Regional level**

A government delegate is appointed to the territory of each of the Autonomous Communities, with responsibility for the state administrative services and, where appropriate, for co-ordination with the services of the Community itself, as provided for under Article 154 of the Spanish Constitution and the law of 16 November 1983.

**b) Local level**

The province and municipality constitute general territorial divisions of the state administration (Article 137 of the Constitution) and, as such, are used by the latter for implementing certain state administrative services (national conscription, statistics, general elections, maintenance of geodesic markers, etc.).

### 3. ORGANS OF EACH CATEGORY OF LOCAL OR REGIONAL AUTHORITIES



#### 3.1 Deliberative body

##### a) Regional level: Autonomous Communities

- Title: Assembly or Parliament
- Composition: an unspecified number of deputies or members, calculated as a proportion of the population and territory of the Autonomous Community.
- Method of election: the members are elected by universal, free, equal, direct and secret suffrage, in accordance with a system of proportional representation of the population which provides representation for the various areas of the national territory. The members are elected every four years. The electoral constituency is the province and the ballot is conducted on the basis of a system of blocked lists.

**b) Local level*****Provinces:***

- Title: Provincial council
- Composition:
  - Plenary council: President and deputies (according to the population).
  - Administrative committee: the president and a number of deputies not exceeding one third of the total number.
- Method of election:
  - Plenary council: members elected by the provincial councillors from amongst themselves, on the basis of political groups; the electoral constituency is based on the municipal constituency with the allocation of vacant seats according to successive coefficients of votes obtained in relation to vacant seats.
  - Administrative committee: members appointed freely by the president from amongst the deputies.

***Municipalities:***

- Title: Municipal council
- Composition:
  - Plenary council: President and councillors (according to the population).
  - Administrative committee (compulsory in municipalities of over 5 000 inhabitants): a mayor and a number of councillors not exceeding one third of the total number.
- Method of election:
  - Plenary council:
    - 100 to 250 inhabitants: open lists and electoral constituency co-extensive with the municipality.
    - Over 250 inhabitants: blocked lists and electoral constituency co-extensive with the municipality, with the allocation of vacant seats according to successive coefficients of votes obtained in relation to the vacant seats.
- Administrative committees: members appointed freely by the mayor from amongst the councillors.

**3.2. Executive body****a) Regional level**

- Title: Governing council
- Composition: the council is composed of a president and councillors, the number of whom does not usually exceed 10. Some Autonomous Communities have vice-presidents.
- Method of election or appointment: the president freely appoints and dismisses the councillors, as well as the vice-president where that office

exists.

**b) Local level**

***Provinces:***

- Title: President of the provincial council (assisted by vice-presidents and the administrative committee).
- Method of election or appointment: the president is elected by the deputies from their own number.

***Municipalities:***

- Title: Mayor (assisted by the deputy mayors and the administrative committee).
- Method of election or appointment:
  - Under 100 inhabitants: Mayor directly elected by the citizens' majority vote; electoral constituency co-extensive with the municipality.
  - 100 to 250 inhabitants: elected by the municipal councillors from amongst themselves, by an absolute majority or, failing that, according to the largest number of votes obtained.
  - Over 250 inhabitants: elected by the councillors from amongst the heads of the lists of elected councillors, by an absolute majority or, failing that, according to the largest number of votes obtained at the election.

**3.3. Political head**

**a) Regional authority**

- Title: President of the Autonomous Community
- Nature of the function: the president directs and co-ordinates the action of the governing council, represents the Autonomous Community at the highest level and the state within the Community.
- Relations with the other statutory bodies:
  - With regard to the executive body, the president presides over, directs and co-ordinates its activities; furthermore, he has discretionary powers for choosing and dismissing the members of that body.
  - With regard to the legislative body, he is elected president thereof by the members of the assembly from amongst themselves; furthermore, he is answerable to that body, by virtue of the fact that the assembly supervises the action of the governing council, including its president, and that it may, by means of a censure motion, demand his resignation and/or that of other members of the council.

- Method of election or appointment: he is elected by the assembly from amongst its members and appointed by the King.

#### **b) Local authority**

- Denomination:
  - Province: President of the provincial council
  - Municipalities: Mayor
- Nature of the function and relationship to the other statutory bodies

The political head of the local authority is president by right of all the collegial bodies and is responsible for implementing their decisions. He may be removed from office by a motion of censure which is endorsed and passed by an absolute majority of members of the corporation and which must be constructive and include the name of an alternative candidate.

### **3.4. Head of the administration**

#### **a) Regional authority**

The governing council exercises executive and administrative functions in such a way that each councillor is the supervisor of each of the departments established under the self-governing authority. The president of the Autonomous Community has discretionary powers for appointing councillors and for dismissing them from their functions.

#### **b) Local authority**

This duty is invested in the presidents of the provincial councils and mayors of municipalities and, by explicit delegation, the vice-presidents (in the case of provinces), deputy mayors (in the case of municipalities) and deputies or delegate councillors, all of whom can be freely appointed from among the members of the local body concerned, and likewise removed from office.

### **3.5. Division of powers and responsibilities between the different organs of the local or regional authority**

#### **a) Regional level**

- The Regional Assembly or Parliament provides political representation for the population of the Autonomous Community, exercises legislative powers, approves the budgets and guides and controls the action of the government. These provisions are implemented in the statutes in which the following attributions are specified:
  - Delegate legislative power to the governing council.
  - Set and levy taxes.
  - Approve agreements with other Autonomous Communities concluded by the governing council.
  - Elect the senators who represent the Autonomous Community.
  - Elect the president of the Autonomous Community.

- Table and approve censure motions against the president of the Autonomous Community or against its own members in certain instances.
  - Lodge an appeal for unconstitutionality with the Constitutional Court.
  - Request the national government to adopt certain bills; or submit draft legislation to parliament by designating the deputies who shall be responsible for defending the relevant texts before that assembly.
  - Authorise certain disbursements and approve the general accounts of the Autonomous Community and its budgets.
  - Institute the procedure for the reform of the statute and approve it in an initial phase.
- The President directs and co-ordinates the action of the governing council and represents the Autonomous Community at the highest level and looks after state affairs within the Community. More specifically, his attributions are as follows:
- Appoint and dismiss freely the vice-president, where applicable, and other members of the governing council.
  - Assume political responsibility before the assembly.
  - Ask for a vote of confidence on any political issue of special importance.
  - Launch the procedure for the reform of the statute.
- The governing council: this collegial body assumes the executive and administrative functions of the Autonomous Community. It is composed of the president and councillors. Its attributions are as follows:
- Statutory power and legislative initiative.
  - Regional policy planning.
  - Power to lodge appeals for unconstitutionality before the Constitutional Court and to refer to that court any conflicts of competence with the state.
  - Power of review by administrative channels before legal proceedings are instituted.
  - Authority over the Autonomous Community police force, where this applies.
  - Preparation and management of the budget of the Autonomous Community.
  - Issuing of public loans and conduct of funding operations.
  - Exercise of powers assigned under the rules governing judicial authority.
  - Initiating the procedure for reform of the statute.

**b) Local level**

***Provinces:***

- The plenary provincial council (LRBRL, Article 33.2) has the following attributions:
- Organisation of the province.
  - Approval of the fiscal system.
  - Approval and modification of the budgets, authorisation of expenditure within the limits of its competence and provisional approval of accounts.
  - Approval of plans at provincial level.
  - Control and supervision of the organs of government.
- Approval of the staffing, the list of posts to be filled, regulations regarding recruitment examinations for staff and competitive examinations for vacant

posts, the supplementary pay scale for civil servants and the number and status of ancillary personnel if any, as well as the cessation of duties for civil servants and the dismissal of contractual staff.

- Modification of the legal status of public assets.
  - Alienation of public property.
  - Notification of conflicts of competence with regard to other local bodies and public administrations.
  - Instituting legal and administrative proceedings.
  - Powers requiring a majority vote to be approved.
  - Voting a censure motion against the president.
- The administrative committee (LRBRL, Article 35.2) has the following attributions:
- Assisting the president in the exercise of his functions.
  - Attributions which the President or plenary body delegates to the committee.
  - Attributions assigned to it by law.
- The president of the provincial council (LRBRL, Article 34.1) has the following attributions:
- Lead the executive and the administration of the province.
  - Represent the province.
  - Convene and chair the plenary sessions, together with those of the administrative committee and any other provincial organ.
  - Lead, inspect and guide the public works services for which the provincial council is responsible.
  - Ensure management of the services coming directly under the Autonomous Community, for which day-to-day management is assigned by the latter to the province.
  - Authorise expenditure, within the limits of his powers; authorise payments and submit accounts.
  - Act as executive head of the provincial civil service staff.
  - Institute legal and administrative proceedings of an urgent nature.
  - Conclude contracts with regard to works and services in so far as the corresponding expense does not exceed 5% of regular budgetary resources, nor 50% of the overall ceiling applicable to directly concluded contracts, in accordance with the procedure laid down by law.
  - Authorise the publication and enforcement of decisions of the provincial council and ensure their implementation.
  - Other attributions conferred on him by law.
  - Other powers which, not being expressly attributed to other bodies, are assigned to the province.
  - Appointment of vice-presidents.
  - The president may delegate his powers to the vice-presidents and deputies.

**Municipalities:**

- The plenary municipal council (LRBRL, Article 22) has the following attributions:
  - Control and supervision of the municipal executive organs.
  - Decisions relating to participation in supra-municipal organisations; modification of the municipal constituency, creation or suppression of subsidiary municipalities and local authorities; creation of decentralised bodies; modification of the chief town and change of its name; adoption of the flag, ensign or coat of arms of the municipality.
  - Approval of plans and other legally established planning and management instruments for town-planning.
  - Approval of fundamental rules of procedure of by-laws.
  - Definition of the fiscal resources of the municipality, approval and modification of budgets, authorisation of expenditure in those areas within its competence and approval of the accounts.
  - Approval of the management methods for municipal services and applications for municipalisation.
  - Acceptance of the power delegated by other public administrative services.
  - Notification of conflicts of competence with regard to other local authorities and public administrations.
  - Approval of the staffing, the list of posts to be filled, regulations regarding recruitment examinations for staff and competitive examinations for vacant posts, the supplementary pay scale for civil servants and the number and status of ancillary personnel if any, as well as the cessation of duties for civil servants and the dismissal of contractual staff.
  - Instituting legal and administrative proceedings.
  - Modification of the legal status of public assets.
  - Alienation of public property.
  - Attributions requiring a majority vote to be approved.
  - Voting a censure motion against the mayor.
  - Other attributions assigned to it by law.
  
- The administrative committee (LRBRL, Article 23.2) has the following functions:
  - Assistance provided to the mayor in the exercise of his duties.
  - The functions which the mayor or plenary council delegates to the committee.
  - Attributions as provided for by law.
  
- The mayor (LRBRL, Article 21) has the following duties:
  - Head the municipal authorities and administrative services.
  - Represent the municipality.
  - Convene and chair meetings of the plenary council, the administrative committee and any other municipal organ.
  - Lead, inspect and guide municipal services and operations.
  - Issue by-laws.

- Authorise expenditure within the limits of his powers; authorise payments and submit accounts.
- Act as the head of the municipal staff.
- Act as the head of the municipal police and appoint and approve officials entitled to carry fire-arms.
- Institute legal and administrative proceedings in urgent cases.
- Adopt personally and under his own responsibility, in the event of a catastrophe or public disasters or a threat thereof, all necessary and appropriate measures and report immediately to the plenary council.
- Punish any failure to obey his authority or infringement of municipal by-laws, except where that competence lies with other organs.
- Conclude contracts with regard to works and services in so far as the corresponding expenditure does not exceed 5% of regular budgetary resources, or 50% of the overall ceiling applicable to directly concluded contracts, in accordance with the procedure laid down by law.
- Grant permits in circumstances defined by the by-laws.
- Exercise other powers conferred on him by law.
- Exercise those powers available to municipalities, and not delegated to other bodies.
- Appointment of deputy mayors.
- The mayor may delegate his powers to his deputies and councillors.

### **3.6. Legal provisions concerning the internal structures of local/regional authorities**

#### **a) Regional level**

The Constitution provides that groups of municipalities other than those of the provinces may be formed (Article 141.3). It further provides that by grouping adjacent municipalities together, the Statutes may set up distinct territorial districts enjoying full legal personality (Article 152.3).

Various statutes have provided for the existence of territorial groupings different from those of the province and municipality or having particular features. These features have been included in their self-government statutes and have been developed within the context of Autonomous Community legislation.

The particular features are essentially as follows:

- In the case of the Basque Country, there are historical territories the boundaries of which coincide with those of the provinces but are endowed with different powers (Article 2 of the statute).
- In the Canary Islands, there are *cabildos* (councils) whose activities are governed by specific rules and which constitute the organs of government of each of the islands in the archipelago (Article 7 of the statute).
- In the Balearic Islands, there are councils which are also the organs of government of each island (Article 5.1 of the Statute).

- In the Asturias, there are *consejos* (councils) in addition to *comarcas* and *parroquias rurales* (rural parishes) (Article 6 of the statute).
- In Catalonia, there is a special system of government for the Aran Valley (Law of 13 July, 1990), and one is also prescribed for the city of Barcelona (1st transitory provision, Law 8/87 of 15 April).
- In the case of the Madrid metropolitan area, provision has been made for instituting a special system of government for the city of Madrid by virtue of its status as capital city of the state (article 6 of the Statute).

Furthermore, most Statutes contain a general provision whereby *comarcas* (supra-municipal authorities) may be instituted, to be defined according to the rules of the Autonomous Community concerned.

## **b) Local level**

The LRBRL defines the basic structural organs of: firstly the municipalities (Articles 19 and 20: municipal council for municipalities with more than 100 inhabitants, composed of a mayor and councillors; and "open council" for municipalities with less than 100 inhabitants; with, furthermore, deputy mayors and, in municipalities of over 5,000 inhabitants, an administrative committee); and, secondly, the provinces (Article 33.1: president, vice-presidents, administrative committee and plenary body). Furthermore, under the terms of the law, the local authorities in question are granted the power of self-government and are therefore given responsibility for establishing their own complementary organisation (Articles 20.1,c and 33.2), without prejudice to what the Autonomous Communities may legislate in regard of such matters, or to their powers with regard to the *comarcas*, metropolitan authorities and local authorities whose territorial area is smaller than that of the municipality (Articles 42.3, 43.3 and 45); as regards associations of municipalities, the municipalities concerned take decisions within the framework of the "statutes drawn up and approved by themselves" (Article 44).

## **4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING**

### **4.1. Local/regional referendums**

#### **a) Regional level**

The Constitution provides for several procedures for citizen participation through referendums. This applies, firstly, to the institution of the Autonomous Community as such, as in the case of Andalusia (Article 151) or for the possible incorporation of Navarra into the Autonomous Community of the Basque Country (fourth transitory provision).

In general, provision is also made for a referendum for modifying autonomy statutes with regard to the Basque Country, Catalonia, Galicia and Andalusia, in so far as it would constitute a fundamental reform and not merely modification of the organisation of government of the Autonomous Community.

Furthermore, the statutes of Catalonia, Andalusia, Valencia, the Canary Islands, Asturias, Murcia and Extremadura provide for implementation of the state rules with regard to popular consultations by referendum. In such cases, the state is responsible for authorising the holding of a referendum while responsibility lies with the Autonomous Community for actually implementing the procedure.

**b) Local level**

A plebiscite may be requested by the inhabitants (LRBRL, Article 18.1,f) and consented to by the mayors, with the agreement of an absolute majority of the plenary municipal council and preliminary authorisation from the national government, for issues of a local nature under the responsibility of the municipality as such and of particular importance for the interests of the inhabitants, excluding issues relating to local finance (LRBRL, Article 71).

**4.2. Other forms of direct participation**

**a) Regional level**

The statutes provide for direct participation both in the election of members to the Parliament or Assembly, through universal direct, equal and secret suffrage and in putting forward citizens' legislative initiatives within the territory of the Autonomous Community which are the subject of specific rules laid down by each Autonomous Community.

**b) Local level**

The regulations governing municipal organisation may provide for citizen participation through local residents' associations at public sessions of the plenary council, for strictly informative purposes.

As regards territorial devolution through setting up districts, representatives of local residents' associations may be authorised to participate in the district council, independently of the fact that it may also be decided to set up sectoral councils as appropriate channels for the participation of citizens and their associations in municipal affairs (ROF, Articles 128 to 131). In all cases, decision-making in municipal affairs falls exclusively to the councillors (Spanish Constitution, Article 140 and LRBRL, Articles 24 and 69).

**5. STATUS OF LOCAL ELECTED REPRESENTATIVES**

**Regional level**

According to the autonomy statutes, the members of the assemblies enjoy immunity in the exercise of their duties. They may not be imprisoned, except in cases of *flagrante delicto*, and their indictment shall be the responsibility of the high court of justice of the Autonomous Community. Outside the territory of the Community, competence shall lie with the Supreme Court.

Members of assemblies are not bound by the rule of compulsory mandate.

They do not receive any fixed remuneration for the exercise of their duties, but are paid allowances. The other privileges and obligations specific to deputies arise out of the provisions of the regulations governing assemblies. The established framework is very similar, as in the cases above, to the provisions applicable to the deputies and senators of the *cortes generales*.

## **Local level**

### **5.1. Conditions for standing in local elections**

The right to stand for election is recognised in general terms in Article 23.2 of the Constitution which provides that all citizens have the right of access on equal terms to public appointments and offices in accordance with the law. Foreigners, under Article 13.2 of the Constitution, are secured the right to stand at local elections strictly according to principles of reciprocity as may be established by treaty or law. Council Directive 94/80 EC, laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in member states of which they are not nationals, is currently being incorporated into national law.

Residence in the constituency is not stipulated as a condition of eligibility for election to a local body. Candidates must nevertheless furnish proof of registration in another municipality or of qualification as electors.

To be eligible as a candidate, a person must be of full age and hold the status of a voter.

### **5.2. Functions and activities which are incompatible with the performance of a local elected representative's duties**

Eligibility also presupposes that none of the following disqualifications apply:

- Members of the Spanish royal family and their spouses.
- Presidents of the Constitutional Council, the Supreme Court or the Council of State; members of the Court of Audit and the Economic and Social Council.
- Members of the Constitutional Council and of the General Council of the Judiciary, permanent members of the Council of State and members of the Court of Audit.
- The Ombudsman and his Deputies.
- The State Public Prosecutor.
- Under-Secretaries, Secretaries-General, Directors-General of government departments or like appointments, in particular to the Private Office of the Head of the Government, and Directors of Private Offices of Ministers and Secretaries of State.
- Leaders of missions accredited with residential status to a foreign country or an international organisation.

- Serving Appeal Court Judges, Judges and Prosecutors.
- Regular service personnel and reserve officers, and serving members of the security forces and police.
- Presidents, Members and Secretaries of elected assemblies.
- Government Delegates in the Autonomous Communities, prefects heading provincial administrations, sub-prefects, and equivalent authorities holding various territorial powers.
- The Director-General of the RTVE broadcasting authority and company directors of this public corporation.
- Presidents, Directors and assimilated posts in independent state authorities (public establishments of the state) with nation-wide responsibilities.
- Presidents and Directors-General of the social security administration with nation-wide responsibilities.
- The Director of the Electoral Committee.
- The Governor and Deputy Governor of the Bank of Spain and the Presidents and Directors of the Official Credit Institute and other official lending institutions.
- The President, Councillors and Secretary General of the General Council for Nuclear Safety.

The following are also ineligible:

- Persons sentenced by final judgment to a term of imprisonment, for the duration thereof.
- Even where the judgment is not final, persons convicted of subversion or members of terrorist organisations convicted of offenses against the life, bodily integrity or freedom of individuals.

Nor may the following be elected during their term of office in electoral constituencies wholly or partly corresponding to their area of responsibility:

- The person holding the highest office of each Ministry in the various territorial divisions ranking below the state.
- Presidents, Directors and assimilated appointments in independent bodies with limited territorial authority, together with Government Delegates to such bodies.
- Local and regional delegates of RTVE and Directors of radio and television authorities answerable to the Autonomous Communities.

- Presidents and Directors of local offices of the social security administration.
- Secretaries-General to government delegations and to provincial prefects.
- Provincial delegates of the Electoral Rolls Office.

Apart from these causes of ineligibility, which apply to all elections by direct universal suffrage, in local elections any person who is a debtor or subsidiary of the body concerned and against whom a writ of execution has been issued by court ruling, is also ineligible.

In addition to the above, the electoral law defines other causes of incompatibility requiring the persons concerned to choose between declining the office of local councillor or provincial assembly member and relinquishing the status which gives rise to incompatibility. The following are concerned:

- Lawyers and prosecutors directing, or representing the parties in, judicial or administrative proceedings against the elected body.
- Heads of department, civil servants or other staff employed by the local authority.
- Directors-General, or assimilated staff, of the provincial and local savings banks operating within the boundaries of the local authority to which they are elected.
- Contractors and sub-contractors in the case of contracts wholly or partly financed by the authority or related institutions.

### **5.3. Regulations governing the financing of candidates' election campaigns to local or regional elections**

The Organic Law on the general electoral system regulates the limits of spending for election campaigns. In order to ensure observance, it lays down detailed rules of accounting and review by the elected assemblies and the Court of Audit.

It also provides for a state subsidy to defray expenses arising from election activities, in accordance with the following rules:

- 25 000 pesetas per elected local councillor.
- 50 pesetas per vote polled for each candidature in respect of which at least one candidate has been elected councillor.

In addition, the state makes a grant for election expenses arising from the direct personal mailing to electors of voting envelopes and ballot sheets or electoral propaganda and notices.

#### **5.4. Office of elected representatives**

The term of office of elected representatives runs for four years.

Local councillors can hold office as such concurrently with the office of member of parliament, senator and member of the legislative assemblies of the Autonomous Communities.

Furthermore, members of provincial assemblies are without exception local councillors who in the islands can be members of the Island Councils at the same time.

#### **5.5. Duties and responsibilities of local elected representatives**

- Local councillors are to attend all sessions of the bodies to which they belong.
- All members of local authorities, at the beginning of their term and before taking office, must make a declaration concerning any causes of incompatibility and any activity from which they derive or may derive financial gain.

They must also declare their property.

These two declarations are made, according to models approved by the plenary assemblies concerned, before taking and on relinquishing office and when any change occurs in the material circumstances.

The declarations are each recorded in a Register of Interests kept by every local authority. The register of possible causes of incompatibility and of economic activities is public.

- Subject to the causes of incompatibility defined by law, local government members must abstain from discussion, voting, decision and execution in any matter concerning which they are subject to a disqualification specified by the legislation on administrative procedure and by a public contract. Any decisive proceeding by members thus disqualified invalidates the acts in which they have participated.
- All local government members are required to bear the civil and criminal liability consequent on acts and omissions committed in the discharge of their mandate. They are answerable before the competent courts of justice according to the ordinary procedure applicable.

The persons liable in respect of local authorities' agreements are those who voted in favour of them.

Local authorities may bring liability action against any member if they or third parties compensated by them have sustained damage through fraud or gross negligence committed by the member.

- Presidents of local councils may fine members for unjustified absence from the sittings or for repeated failure to comply with their obligations, under the conditions specified by the law of the Autonomous Community and, subsidiarily, the state.

## **5.6. Resignation of local office**

As public office is held freely and without constraint, councillors may tender their resignation at any time without needing to fulfil any special conditions.

There is no expressly defined incompatibility for the performance of specific functions or activities once local councillors have completed their term of office.

No assistance is prescribed to help members who are not re-elected resume an occupation.

## **5.7. Working conditions of elected representatives**

Working conditions are settled at local level in accordance with a framework defined at national level; activity may be full-time or part-time. The workload varies widely because of the different circumstances which apply to each local authority. Timetabling of the sessions of local bodies is also highly variable, being determined by each local administration. On average, a local councillor serves on one to three committees.

Each local authority is required to provide offices and secretarial service for every group represented in the plenary assembly.

Local councillors are entitled to take leave (from both public and private sector occupations) for as long as needed to discharge their elected office, ie to attend the plenary sessions of the council or committees and look after the functions for which they are personally or jointly responsible.

In addition, local councillors may take holidays and leave the municipality. However, any absence over a week must be reported in writing to the council president, stating the expected duration thereof.

## **5.8. Training of candidates or elected representatives**

The administration is under no formal obligation to train candidates for the office of local councillor. However, all the major parties have schools for local officials where their local councillors receive instruction. Certain administrative colleges and institutes run by the Autonomous Communities devote part of their syllabus to the office of local councillor. Likewise, certain private colleges and institutions conduct activities for the training of local representatives.

There is no unified "official" documentation on the operation of these local bodies and on the responsibilities of local councillors. However, numerous publications dealing with some or all aspects of these subjects are produced by public or private bodies and are usually held by all local authorities.

## **5.9. Remuneration of elected representatives**

- Local government members are entitled to receive the appropriate remuneration and allowances under the local authority's budget, on the terms described below.

- Local government members who discharge their duties full-time are entitled to receive remuneration and to be registered with the general social security scheme. In this case, payment of the remuneration is incompatible with receipt of any other remuneration borne by the budgets of any public authority and of any related enterprise or body. This full-time service entails attending principally to the duties which pertain to their office, though not to the exclusion of secondary pursuits which may in no circumstances interfere with their activity in the service of the local authority.

It remains with the plenary assembly to determine the list of municipal functions to be discharged on a full-time basis, together with the amount of the remuneration payable for each, according to the level of responsibility.

- Only those council members not serving full-time are entitled to allowances, referred to as "assistance", for their effective participation in the sessions of the bodies to which they belong when convened in their entirety. The amount thereof is fixed by the plenary assembly of the local authority.

However, all members, whether or not serving full-time, are entitled to draw this type of allowance when they belong to the management of bodies answerable to the local authority which have independent legal status, the boards of firms with municipal capital or a municipal controlling interest, or selection committees conducting staff recruitment examinations.

- Likewise, all are entitled to receive allowances for expenses genuinely incurred in the discharge of their duties (travel, accommodation outside the municipality, etc) for which vouchers have been submitted in accordance with the rules generally applicable to public administrative departments and with such rules as may be approved for this purpose by the plenary assembly of the local authority.

Local councillors' remuneration is subject to contributions in the same cases and under the same conditions as prescribed for other wage-earners.

A local councillor serving full-time must be declared as such to the general social security scheme and contributions must be deducted from the remuneration to qualify for health services and allow calculation of the contribution period for the purpose of awarding a retirement pension.

#### **5.10. The representation of sexes**

Equal conditions of access are stipulated by law for local elected office, irrespective of sex. In order to ensure women's effective equality and access to public office, the most representative of the political forces reserve a minimum percentage of the electoral lists for women in practice, generally ranging from one-quarter to one-third of the candidates. This "reserve" is not stipulated by law, but is in keeping with agreements made by the political parties.

## **6. DISTRIBUTION OF POWERS BETWEEN THE VARIOUS CATEGORIES OF LOCAL AND REGIONAL AUTHORITIES**

### **6.1. General principles**

The Spanish Constitution of 1978 defines the distribution of powers between the state (Article 149), the Autonomous Communities (Articles 137 and 148) and the provinces and municipalities (Article 137, 140, 141 and 152). Provision is also made for a system of transfer and delegation of power (Article 150).

The principle of the distribution of powers is based on that of "the greatest national, regional or local interest" corresponding to each of the public administrative departments and gives rise to "inherent and assigned" powers of an "exclusive or shared" nature.

The Constitution embodies the principle whereby all the Autonomous Communities may assume exclusive responsibility for all powers listed under Article 148.1, if so provided for by their statute. Failing that, responsibility for exercising those powers remains with the state.

Nevertheless, provision is made for assigning a pre-established list of powers: the Autonomous Communities which have acceded to that status through practical procedures, as laid down in Article 143 of the Spanish Constitution (slow procedure) are governed by this initial limitation. After a period of five years and by amending their statute, they may assume responsibility for the powers which are not assigned to the state, such as those described in Article 149.1 or other powers which are not referred to in either of the lists.

The attribution of powers is subject to different rules depending on the list concerned on account of the fact that, in the case of Article 148.1, the selected criterion is that of exclusive jurisdiction for the matter under consideration, whereas, under Article 149.1, the criterion is that of the distribution of various powers over the same matter, which enables the state to assume responsibility for basic legislative power, the power to enact legislation, executive power, regulatory power or the power of co-ordination or authorisation of payment. Any powers which do not fall to the state may be assumed by the Autonomous Communities (directly and specifically defined in their statute in the case of Autonomous Communities established in accordance with the rapid procedure described in Article 151 or by means of the above-mentioned amendment of the statute within five years in the case of Autonomous Communities established according to the slow procedure).

Furthermore, the state may widen the scope of the powers of the Autonomous Communities by having recourse to instruments provided for in Article 150, paragraphs 1 and 2 (through organic laws, or by the transfer or delegation of power).

With regard to local administrative departments, constitutional principles are applied through the LRBRL which recognises specific or delegated powers. The former, for territorial local authorities (provinces, municipalities and islands), may only be laid down by law and are exercised on an autonomous basis and under the responsibility of those authorities, on the understanding that their planning and execution are constantly the subject of co-ordination with the other public administrative departments as required (LRBRL, Article 7.1 and 2); the delegated powers are exercised according to the accompanying conditions which may provide for guiding and supervisory machinery which must, at all events, be compatible with the self-governing power of the relevant local authority departments (LRBRL, Article 7.3).

To ensure the autonomy of the local authorities as guaranteed by the Constitution, the legislation of the state and the Autonomous Communities which regulates the various sectors of public intervention in accordance with the constitutional distribution of powers, must provide the municipalities, provinces and islands with their inherent right to act in all matters which directly affect their interests, by assigning them the relevant powers commensurate with the specific nature of the public activities involved and the management capacity of the local body, in compliance with the principles of decentralisation and of making administrative practices as accessible as possible to the population. In accordance with the Constitution, the fundamental laws of the state shall define the powers which they attribute or which are automatically exercised by the local bodies in the fields which they regulate (Article 2, LRBRL).

For the management of its interests and within the limits of its powers, a municipality may promote all kinds of activities and provide all public services which help to meet the needs and aspirations of the local community (LRBRL, Article 25.1).

In general, the province is responsible for promoting and administering its own interests and has the specific aim of guaranteeing the principles of inter-municipal solidarity and equilibrium within the framework of economic and social policy (LRBRL, Article 31.2).

Local government bodies pursue specific and practical rather than general aims, even if they do so within a given territory. Those aims are laid down in their constitutive laws or statutes.

## **6.2. Competencies of local and regional authorities in their own right**

### **a) Regional level**

In accordance with what has been stated above, those fields in which the Autonomous Communities can exercise their competence are listed in Articles 148.1 and 149.1 of the Constitution. With regard to the latter article, it has already been specified that the Autonomous Communities may assume powers not exercised by the state, within the limits described above.

Article 148.1 lists the powers which, once they have been embodied in the respective statutes are enjoyed by all Autonomous Communities without distinction and, hence, constitute the minimum powers exercised by all such Communities.

Those powers are as follows:

- Organisation of their institutions of self-government;
- Changes in municipal boundaries within their territory, and, in general, the duties normally incumbent on the state administrative services with regard to local authorities, whose transfer has been authorised by local government acts;
- Spatial planning, town planning and housing;
- Public works of interest to the Autonomous Community within its own territory;

- The rail and road network located totally within the territory of the Autonomous Community and, within the same limits, transport conducted by such means or by cable;
- Ports of refuge, recreational ports and airports and, in general terms, those not engaged in commercial activities;
- Agriculture and livestock-breeding, in accordance with economic planning;
- Woodlands and forestry;
- Management of environmental protection;
- The planning, construction and exploitation of hydraulic facilities, canals and irrigation systems; mineral and thermal waters;
- Inland water fishing, the shellfish industry, aquaculture, hunting and angling;
- Local fairs;
- Promotion of the economic development of the Autonomous Community within the objectives set by national economic policy;
- Handicrafts;
- Museums, libraries and colleges of music of interest to the Autonomous Community;
- The architectural heritage of interest to the Autonomous Community;
- Promotion of culture and research and, where appropriate, the teaching of the local language;
- Promotion and planning of tourism within the territorial limits of the Autonomous Community;
- Promotion of sport and the judicious use of leisure facilities;
- Social assistance;
- Health and hygiene;
- Supervision and protection of Community buildings and facilities. Co-ordination and other powers relating to local police forces in accordance with an organic law.

## **b) Local level**

***Municipalities:*** in all cases, they exercise their powers according to conditions laid down by the legislation of the state and the Autonomous Communities in the following domains (LRBRL, Article 25.2);

- Safety in public places;
- Organisation of traffic and pedestrians on public thoroughfares;
- Civil defence, fire prevention and fighting;
- Planning, management, execution and regulation of urban development; promotion and management of housing, parks and gardens, maintenance of the urban road network and conservation of rural roads and footpaths;
- Historic and artistic heritage;
- Environmental protection;
- Covered markets, abattoirs, fairs, street markets, protection of users and consumers;
- Protection of urban hygiene;
- Participation in the management of first aid and health care services;
- Cemeteries and funeral services;
- Provision of social services, including rehabilitation and resettlement;

- Water supplies, public lighting, street maintenance, collection and disposal of fluid waste;
- Public transport;
- Cultural and sports activities and facilities, recreational activities, tourism;
- Participation in educational planning, creation, construction and maintenance of public educational facilities, participation in the managerial bodies of those facilities and in the supervision of compulsory school attendance;
- Municipalities, whether individually or in association, are required, in all cases, to provide the following services (LRBRL, Article 26):
  - in all municipalities: public lighting, cemeteries, refuse collection, street maintenance, provision of domestic drinking water, sewers, access roads, maintenance of public thoroughfares and food and beverage quality inspection;
  - in municipalities of over 5 000 inhabitants, also: public parks, public libraries, markets and waste disposal;
  - In municipalities of over 20 000 inhabitants, also: civil defence, provision of social services, fire prevention and fighting, sports facilities for public use, abattoirs;
  - in municipalities of over 50 000 inhabitants, also: urban public transport and environmental protection.

**Provinces:** in all cases (LRBRL, Article 36):

- the co-ordination of the various municipal services in such a way as to ensure the comprehensive, appropriate provision of compulsory minimal services;
- the provision of legal, economic and technical assistance and co-operation for all municipalities, particularly those with more limited economic and managerial resources;
- provision of public services extending to several municipalities and, where appropriate, to several associations of municipalities (*comarcas*);
- In general, promotion and administration of provincial interests.

### **6.3. Participation of local/regional authorities in national economic and spatial planning**

#### **a) Regional level**

Under Article 131 of the Constitution, the state is responsible for the overall planning of economic activities. The government draws up economic planning projects in accordance with the forecasts supplied to it by the Autonomous Communities.

Under Article 149.1.13, the Constitution attributes powers to the state with regard to the bases and co-ordination of general economic planning, thereby enabling Autonomous Communities which have accepted the appropriate competence to develop such legislation further.

Spatial planning is the exclusive responsibility of the Autonomous Communities, under Article 148.1.3 of the Constitution. Town-planning legislation stipulates that guidelines issued in the context of Autonomous Community plans are subordinated to the provisions of a national plan devised by the state.

**b) Local level**

Those administrative departments to which competence for devising and approving planning instruments has been attributed must also give other departments the possibility of taking part in the process, in order to harmonise the public interests concerned (Article 58.2, LRBRL).

According to current town-planning legislation (i.e. that of the Autonomous Communities and, in an additional capacity, that of the state), while town-planning is the exclusive responsibility of the Autonomous Communities, provision is expressly made for consulting the local authorities during the procedure for approving instruments of spatial planning which, once they have been approved, have a binding effect on the overall urban development plans of the municipalities.

**6.4. Tasks delegated to local or regional authorities acting as agents of the central authority, as organs of decentralised state administration**

**a) Regional level**

Article 150.2 of the Constitution stipulates that the state may delegate the exercise of its powers to the Autonomous Communities.

**b) Local level**

Article 27 of Law 7/85 governing the fundamental principles of local government provides for the delegation to the municipalities of powers held by the state and by the Autonomous Communities in areas affecting specifically local interests, in so far as this will improve the effectiveness of public administration and ensure greater citizen participation. In Spain, local administrations have traditionally performed central government functions in respect of conscription (annual contingents); they are required to maintain arrangements for the remand of prisoners for trial in municipalities which form the centre of a judicial district and have no prison, and they provide secretarial services (assigned to the town clerk) for magistrates' courts in municipalities with fewer than 7 000 inhabitants.

**6.5. Proposals or bills leading to an important change in the distribution of powers between the local or regional authorities and central government**

**a) Regional level**

No bill in the matter is under consideration at present. Transfers of power are in hand, involving a virtually complete equalisation of the powers of the Autonomous Communities which gained autonomy pursuant to Article 143 of the Constitution with the powers of the Autonomous Communities constituted under Article 151 of the Constitution which have attained a greater degree of power since their foundation as provided in Organic Law 9/92 of 23 December on transfers under Article 150.2 of the Constitution, and the subsequent Organic Laws 1 to 11 of 24 March on reform of the Statutes of the Autonomous Communities assigning new powers to them.

**b) Local level**

Studies are currently being made to arrive at a "local pact" entailing a large-scale delegation of powers from the state to the local administrations (in areas such as traffic and security), and possibly from the Autonomous Communities in so far as they agree.

Function	Competent authority			Type of competence				Exercise of the competence				Remarks **
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
<b>General administration</b>												
Security, police	•	R	•		M, R	M	M, R	•		•		1
Fire protection		P	•	M	P	M	M, P	•		•		2
Civil protection	•	R	•		•	•	M	•		•		2
Justice	•		•	•		•		•			M	3
Civil status register	•		•	•		•		•		•		
Statistical office	•	R, P	•	•		M, R	•	•		•		
Electoral register	•			•		•		•		•		
<b>Education</b>												4
Pre-school education	•	R	•		•	•		•		•		
Primary education	•	R	•	•		•		•	R	•		
Secondary education	•	R	•	R	M	R	P, R	R	R	R		
Vocational and technical	•	R	•	R	M	R	P, R	R	R	R		
Higher education	•	R	•	R	M	R	M	R	R	R		
Adult education	•	R	•	R	M		M, R	R	R	R		
Other (Special education)	•	R	•	R	M	M	R	R	R	R		
<b>Public Health</b>												5
Hospitals	•	R, P	•	R	M, P	•		•	R	•	M, P	
Health protection	•	R	•	R	M, R	M, R		•	R	•		

Function	Competent authority			Type of competence				Exercise of the competence				Remarks
	State	Intermediate*	Municipality	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	**
<b>Social welfare</b>												
Kindergarten and nursery		R, P	●	R	M, P	M, R	P	●	●	●	M, P	2
Family welfare services		R, P	●	R	M, P	M, R	P	●	●	●	M, P	A
Welfare homes	●	R, P	●		●	M, R	P	●	●	●	M, P	A
Social security	●	R		●		●		●		●		6
Other	●	R, P	●		●		●	●	●	M, R	M, P	A
<b>Housing and town planning</b>												
Housing		R, P	●		●	●		●	●	●	M, P	7
Town planning		R, P	●		●	●		●	●	●	M, P	
Regional/spatial planning	●	R		●		R		●		●		
<b>Environment, public sanitation</b>												
Water & sewage			●	●		●		●	●	●	●	B
Refuse collection & disposal			●	●		●	●	●	●	●	●	8
Cemeteries & crematoria			●	●		●	●	●	●	●		
Slaughterhouses			●	●			●		●	●		
Environmental protection	●	R	●		●	M, R	M	●		●		9
Consumer protection	●	R	●		●	●		●		●		
<b>Culture, leisure &amp; sports</b>												
Theatres & concerts	●	R, P	●		●		●	●	●	●	M, P	
Museums & libraries	●	R, P	●		●	●	M	●		●		10
Parks & open spaces		R	●		●	M	●	●		●		9
Sports & leisure		R, P	●		●	M, P	●	●	●	●		

Function	Competent authority			Type of competence				Exercise of the competence				Remarks **
	State	Intermediate	Municipality (M)	Exclusive	Shared	Compulsory	Discretionary	Direct	Indirect	In own right	For another authority	
Religious facilities	•			•								
Other cultural facilities	•	R, P	•		•		•	•	•	•		C
<b>Traffic, transport</b>												11
Roads	•	R, P	•	•		•		•	R	•		12
Transport	•	R		•		•		•		•		13
Urban road transport			•	•		•		•	•	•	•	
Urban rail transport			•	•			•		M	M		
Ports	•	R		•		•		•		•		
Airports	•	R		•		•		•		•		
Other traffic & transport	•	R		•		R		R	R	R	R	C, 14
<b>Economic services</b>												
Gas			•	•	•		•	•	•	•	•	B
District heating			•	•	•		•	•	•	•	•	B
Water supply	•	R	•	•		M		M	M	M	M	B, 15
Agriculture, forests, fishing	•	R		•	•	•		•		•		
Electricity	•	R	•	R	•	•		R	R	R		16
Economic promotion	•	R, P	•	R	P	R	M, P	R	•	R	M, P	
Trade & industry	•	R	•		•	•		•		•		17
Tourism	•	R	•		•	•		•		•		C, 18
Other economic services	•	R	•		•	M	M	•	•	•	M	19
<b>Other functions</b>												
Saving banks	•	R, P	•		•	•			•	•		20

(\*) where several intermediate levels exist the competent local government is indicated: Autonomous Community (R), province (P)

(\*\*) in case there are any remarks see last page in this country's table

**NOTES**

- A In the framework of specific regional legislation
  - B Reserved
  - C In the framework of specific national or regional legislation
- 
- 1 Central government has exclusive powers with regard to law and order, but the Autonomous Communities may create their own police forces, within a framework laid down by state legislation.
  - 2 Compulsory if population exceeds 20 000 inhabitants.
  - 3 The state co-finances district judges and detention centres with in the judicial district if the population exceeds 7 000 inhabitants.
  - 4 The Constitution stipulates that the central government shall have powers to regulate the basic principles of education and exclusive powers for regulating the conditions of attainment, recognition and awarding of academic qualifications. The Autonomous Communities may develop the basic educational principles and exercise those powers, although only seven Autonomous Communities have done so. The latter have created and administered educational services in compliance with the basic principles laid down by the central government.
  - 5 The Autonomous Communities may develop the basic principles governing health-care and exercise the relevant powers. All the Autonomous Communities have the authority to develop these basic principles, although only six of them have benefited from the transfer of all the health services. The latter have created and administer their health services in compliance with the basic principles laid down by the central government.
  - 6 The Autonomous Communities may assume powers for implementing legislation on social security, as has been the case in seven among them.
  - 7 Financial assistance is provided by the state.
  - 8 Waste treatment is mandatory in municipalities with over 5 000 inhabitants.
  - 9 Compulsory in municipalities with over 5 000 inhabitants.
  - 10 In municipalities with over 5 000, a library is compulsory and museums are discretionary.
  - 11 Responsibility lies with the administrative unit in whose territory the entire length of road is located.
  - 12 Compulsory in municipalities with over 50 000 inhabitants.
  - 13 The state may provide financial assistance.
  - 14 The Autonomous Communities exercise this power in all cases: on their own behalf, in cases of intra-municipal transport; and by authority of the central government in cases of inter-municipal transport.
  - 15 Responsibility lies with the authority through whose territory the river flows; the municipality shall be solely concerned with its own public water supply.
  - 16 This concerns public lighting
  - 17 The central government is responsible for external trade only and walking sales.
  - 18 The central government is responsible for external promotion only.
  - 19 In municipalities with over 5 000, markets are compulsory and reserved.
  - 20 The central government has exclusive powers with regard to the definition of basic regulations and also with regard to banking arrangements. Other administrative bodies are merely parties to the governing bodies.

## **7. CO-OPERATION AND OTHER TYPES OF LINKAGE BETWEEN LOCAL/REGIONAL AUTHORITIES**

### **7.1. Institutionalised co-operation for the performance of tasks of common interest**

#### **a) Legal framework:**

- Spanish Constitution: Article 141.3
- LRBRL: Articles 3.2,d, 44 and 87
- TR: Articles 35 to 37, 110 and 161
- RP: Articles 31 to 39
- ROF: Article 140
- RD 1732/1994
- LHL: Articles 131, 132 and 135
- Legislation of the Autonomous Communities (Aragon, La Rioja, Balearic Islands, etc.).

#### **b) Nature of consortia or joint authorities:**

- Municipal associations: voluntary association of municipalities for the purpose of implementing projects and services within the field of responsibility of the municipalities concerned. These non-territorial local authorities (LRBRL, Article 3.2,d), are of an institutional nature, and possess the legal personality and capacity required for pursuing those specific objectives (whether single or multi-purpose) which have been assigned to them, but in no way include all municipal objectives.

They are governed by their statutes, approved by the municipalities concerned, in accordance with the basic procedure adopted by the Autonomous Communities, which are required to define the territorial scope of the authority, its purpose and competence, its executive organs and economic resources, its planned lifespan and all other matters relating to its operation.

- Groupings for the funding of a joint secretary and comptroller: these groupings may be established on a voluntary basis (at the request of the municipalities concerned) or on a compulsory basis (when laid down by the Autonomous Communities); they are governed by the regulations of the Autonomous Community and with the approval of the latter granted for that specific purpose. They are local institutional authorities governed by their statutes.
- Consortia: voluntary association of various types of local authorities with other public administrations of a different nature, or with private non-profit-making bodies which pursue objectives of public interest that are complementary to those of the public administrative departments.

- Associations of local authorities, with a national or autonomous community scope, aimed at the protection and promotion of their common interests: *Federación española de Municipios y Provincias* (Spanish Federation of Municipalities and Provinces), *Federación Municipios de Cataluña* (Federation of Municipalities of Catalonia), *Federación Aragonesa de Municipios* (Aragonese Federation of Municipalities), *Federación Gallega de Municipios* (Galician Federation of Municipalities), etc.

**c) Purposes for which consortia or joint authorities are most often established**

As at 31 December 1995, statistical data available on the municipal associations were as follows:

- Number of municipal associations providing services: 792
- Associated municipalities: 5 390
- Population concerned: 25 722 601
- Services provided within the framework of the municipal associations by order of numerical importance:

***Mandatory minimal services:***

- Collection and processing of solid waste
- Provision of domestic water supplies
- Social services
- Fire prevention and fighting
- Public lighting (maintenance)
- Abattoirs
- Environment
- Urban sanitation
- Street-cleaning
- Urban public transport
- Civil defence
- Sports facilities
- Cemeteries
- Public road maintenance
- Markets
- Urban access roads
- Food hygiene inspection
- Public parks

***Other services:***

- Education and culture
- Tourism
- Technical services
- Town-planning
- Public health
- Treatment of liquid waste
- Development of farming and forestry

- General management of services
- Tax collection
- Administrative data processing services
- Civil engineering plant
- Aid to industry

**d) Organisational forms**

The executive organs and the administrative departments of the association of municipalities are defined in the statutes without the imposition of any rule other than that of compulsory representation within the organs of all the associated municipalities, according to specified conditions and proportions.

Provision is usually made for a general assembly, composed of representatives of all the associated municipalities and a chairman, elected by the aforementioned assembly. As the association of municipalities is a local body, it is bound not only by its statutes but also, on an additional basis, by state and autonomous community regulations regarding local government.

**e) Other features:**

The funds of the municipal associations are provided, depending on the provisions of their statutes, by the following economic resources:

***Income under public law:***

- Taxes
- Special contributions
- Tariffs of public services
- Contributions from the associated municipalities
- Subsidies
- Fines and penalties
- Loan transactions

***Income under private law:***

- Income from their property
- Contributions and donations from individuals

Within the framework of economic co-operation with the state for the purpose of investment in projects and services provided by the local authorities, under the terms of the Royal Decree 655/90 of 25 May, more favourable consideration is given to proposals put forward by the municipal associations than to those put forward by municipalities (Article 9) for inclusion in the provincial plan of projects and services.

## 7.2. Legislative provisions exist concerning associations of local authorities at national or regional level and their relationship with government authorities

Local Government Act 7/1985 of 2 April (LRBRL) stipulates, in its fifth additional provision: "The local authorities may form associations, of national or autonomous community scope with a view to promoting their common interests, which, in the absence of any specific rule, are subject to state legislation regarding associations. The associations of local authorities are governed by their statutes, as approved by the representatives of the associated bodies, which must guarantee the participation of their members in joint activities and the representativeness of their executive organs".

## 7.3. Co-operation between local/regional authorities in different countries

Concerning international co-operation at regional level, no provision exists in this regard as, according to Article 149.1.3 of the Spanish Constitution, the state has exclusive competence with regard to international relations. Nevertheless, all the Autonomous Communities are, *de facto*, part of the Assembly of European Regions (AER).

From July 1996, the Autonomous Communities have an *Attaché* of Self-Government in the Permanent Representation of Spain to the European Union following an agreement between the state and the Autonomous Communities.

Concerning the local level, the European Charter of Local Self-Government, under Article 10, paragraphs 2 and 3 is relevant here, given that the Charter is part of the Spanish domestic legislation (in accordance with Article 96.1 of the Constitution) since Spain's accession to that Charter, as approved by a decision of the Spanish Council of Ministers on 9 October 1985 and published in the Official State Bulletin, Number 47, of 24 February 1989.

## 8. FINANCE

For this purpose, the Autonomous Communities come under either of two systems: a "*foral*" (special) system, i.e. Navarra and the Basque Country, and a common system. The figures given, unless otherwise indicated, refer solely to those Communities applying the common system.

### 8.1. Taxes

#### a) Own taxes

##### *Autonomous Communities*

Taxes likely to be ceded by the state to the Autonomous Communities:

- net estate duties
- levies on the transfer of estates
- death duties and levies on donations
- tax on retail sales (VAT)
- tax on specific items of consumption at the retail level (except those levied through fiscal monopolies)
- taxes and other fees levied on gambling

At present, there are no plans for ceding the fourth tax (VAT) since it has not yet been decided how this phase could be isolated from the others.

These taxes, made over by the state, are administered by the Autonomous Communities themselves, in accordance with state regulations, but provision is made for the Autonomous Communities to add a supplement if they so wish.

The sums involved amount to approximately 12,48% of the revenue of the Autonomous Communities.

### ***Local bodies***

There are three taxes exclusively reserved for local bodies, one of a mandatory nature and two taxes of a voluntary nature.

– Mandatory taxes:

- Taxes on property
- Taxes on profits from economic activities
- Taxes on motor vehicles

– Voluntary taxes:

- Taxes on buildings, facilities and civil engineering works
- Taxes on increased value of land in urban areas

These taxes are administered by the local bodies themselves.

In all, taxes collected by local bodies amount to 41% of their revenue, while various levies account for 13,67% of that revenue.

## **b) Taxes levied by addition to state taxes**

### ***Autonomous Communities***

The Autonomous Communities may, by law, introduce surcharges in addition to the taxes ceded by the state, although no Community has yet made use of this privilege. In many Autonomous Communities, the only measure taken so far has been to increase the tax on gambling which accounts for scarcely one per thousand of revenue.

Similarly, the Autonomous Communities may collect an additional levy on state taxes such as income tax and property tax (in those communities to which those taxes have not yet been ceded).

They are free to apply rates as they choose. These surcharges are, however, bound by legal restrictions in so far as they must not distort the nature or structure of the basic taxes.

***Local bodies***

Local bodies may not impose a surcharge on state taxes.

**c) Introduction of new taxes*****Autonomous Communities***

In addition to taxes passed on by the state, the Autonomous Communities are authorised by law to levy other taxes in so far as these do not apply to those products on which the state has already levied tax.

They may also levy taxes for the provision of services, provided the yield does not exceed the real cost.

Relatively few taxes have been introduced so far by the Autonomous Communities: e.g. tax on Bingo, tax on unused land, tax on oil-based fuels (Canary Islands) and environmental levies.

These taxes account for 1.26% of fiscal revenue.

***Local bodies***

They are authorised by law to introduce:

- the two voluntary taxes mentioned above:
  - tax on buildings and civil engineering works
  - tax on the increased value of land in urban areas
- taxes on the provision of services
- special contributions for the execution of civil engineering works or the extension of municipal services.

The sums collected on this account amount to 27.67% of revenue.

**d) Shared taxes*****Autonomous Communities***

The sums collected as taxes, levies and special contributions, etc. go in full to the local body or to the Autonomous Community that collects them.

In addition, the Autonomous Communities receive a proportion of all non-ceded state taxes collected. The percentage accounts for 29.21% of their revenue.

### ***Local bodies***

Local bodies are similarly entitled to a share of taxes collected by the state, accounting for approximately 24.5% of their revenue.

Those state taxes include:

- personal income tax
- corporation tax
- value added tax (VAT)

### ***Specific systems***

At local authority level:

#### **CANARY ISLANDS**

The local authorities of the Canary Islands have retained their own financial regulations in compliance with the economic and fiscal regulations of the archipelago. Accordingly, the Autonomous Community passes on to the islands and the latter, in turn, to the municipalities a proportion of taxes on the entry of goods and specific types of consumption.

#### **CEUTA AND MELILLA**

The towns of Ceuta and Melilla are entitled to a special share of state taxes and to a special bonus of 50% on the fiscal portion of municipal taxes levied by the two towns

#### **MADRID AND BARCELONA**

The municipalities of Madrid and Barcelona have a special system.

Among the Autonomous Communities, there are two special systems: those of Navarra and of the Basque Country:

#### **NAVARRA**

The Community of Navarra administers and collects virtually all state taxes (with the exception of tobacco and customs duty monopolies). This involves "concerted" taxes, namely: personal income tax, corporation tax, value added tax, relating to its territory. In return, the Autonomous Community hands over a fixed sum to the state which is adjusted according to the financial specifications of the general state budget.

#### **BASQUE COUNTRY**

In this case, the three Basque provinces administer the taxes referred to in the case of Navarra and are subsequently responsible for making over lump sums both to the Autonomous Community and to the state itself, as a contribution to overall state expenditure corresponding to the functions which are not discharged by either the Autonomous Community or the province concerned.

## 8.2. Grants from higher authorities

### *Autonomous Communities*

The state grants subsidies to the Autonomous Communities:

- for capital expenditure:
  - Inter-territorial Co-operation Fund (FCI),
  - investment agreements,

accounting for 34% of subsidies;

- for allocation to specific services:
  - transfers relating to public health,
  - administered subsidies,
  - programme contracts,

accounting for 66% of subsidies.

Provision has been made in the statutes of certain Autonomous Communities for state subsidies to local bodies to pass through the Autonomous Community which, in turn, transfers them to each municipality or province concerned.

### *Local bodies*

Under the previous item, mention was made of the share of state taxes for local bodies. Such share is in some respects considered to be part of state transfers.

The local bodies may receive subsidies from both the state and the Autonomous Communities.

- The central government provides grants for operating costs - on the understanding that a share of state taxes is excluded - which account for 2.5% of the revenue of local bodies. Transfers for investment projects are equivalent to 1.6% of their revenue.
- The Autonomous Communities provides grants for operating costs which account for 3.2% of the revenue of local bodies.

Specific transfers are made for particular services: security, education, social services, housing, town-planning, environment, culture, sport and economic services, accounting, on average, for approximately 4.75% of revenue.

The only specific subsidy subordinated to financial participation is the state-sponsored local economic co-operation programme under which the central authorities provide 25% of investment expenditure, while the remaining 75% have to be provided by the local body.

The system of subsidies is entirely governed by legislation and cannot be modified by the executive.

### **8.3. Financial equalisation**

There is no system of absolute equalisation but the sharing of state revenue partly meets that requirement, one of the variables to be taken into account (if only to the extent of 10%) being the notion of relative wealth or poverty.

A "levelling-out fund" has been drawn up, which, after implementation, should guarantee a minimum level of basic services.

### **8.4. Other sources of income**

#### ***Autonomous Communities***

Collected taxes and dues account for 1.04% of their revenue.

Sums collected for estate duties amount to barely 0.43%.

At present, claims account for 10% of their revenue.

#### ***Local bodies***

Sums collected by the local bodies in taxes and special contributions account for 16.48% of their revenue.

Sales of capital goods amount to 3.05% of their revenue.

### **8.5. Borrowing**

The local authorities are authorised to raise loans from any financial institution.

Limitations have been grouped together in Law 39/1988 of December which regulates local finance. In general, the financial transactions of local authorities require authorisation from the Ministry of Finance, except where the statutes of the Autonomous Community to which the local authority belongs assigns competence in this regard to the Autonomous Community concerned.

Exceptions not requiring such authorisation:

- If the amount of the planned transaction does not exceed 5% of expenditure engaged by the authority for current transactions. These resources are calculated on the basis of the last financial exercise;
- If the credit facilities are used to fund the operations and services included in provincial projects and local and economic co-operation programmes, which have been duly adopted.

Authorisation is not necessary where the annual aggregate of loan operations contracted or planned does not exceed 25% of the authority's resources. Long-term loans must be for investments and not for current expenditure.

With regard to loans contracted abroad, a certain proportion must be deposited in cash with the central bank. The governors of the Bank of Spain may also issue circulars on loans contracted abroad. The Interministerial Committee for Foreign Loans may recommend postponement, or even suspension, of transactions relating to funding in a foreign currency, depending on the level of internal liquidity and the success of monetary policy.

### **8.6. Economic control exercised by the higher authorities**

Provision is made for internal economic control between the local authorities themselves,

- before execution of the financial transaction,
- during the transaction and
- subsequently, except in such cases as expenditure on equipment not listed in the inventory, supplies of minor items, etc.

External verification of the accounts and economic management of the local authorities is conducted by the State Audit Office.

Local and regional finance is not included in annual state budget legislation, except for the participation of the municipalities in state courts and transfers from the state to the territorial authorities.

A status of autonomy applies to revenue and expenditure except in cases where competence for introducing special taxes or increasing existing tax rates is limited by the state.

## **9. CONTROLS OVER LOCAL/REGIONAL AUTHORITIES**

### **9.1. Legal control**

#### **a) Regional level**

The state does not exercise any general administrative supervision of the acts of the Autonomous Communities.

Article 3 of the law on the autonomy procedure lays down that the government shall supervise the Autonomous Communities' observance of applicable state rules and may issue a formal notification as appropriate.

Article 2 of the same law stipulates that both the government and the *cortes* may request relevant information from the Autonomous Communities on their activities, which is forwarded by the Government Delegate (Article 154 of the Constitution and Law 16 of November 1983).

If the Autonomous Community acts against the general interest or commits a serious breach of the Constitution, the government, after addressing a formal notification to the President of the Autonomous Community, may take the necessary measures for rectifying the situation.

In order to ensure the execution of those measures, the government may give instructions to the authorities of the Autonomous Communities (Article 155 of the Constitution).

The government is entitled to challenge resolutions and provisions adopted by the organs of Autonomous Communities by taking the matter before the Constitutional Court (Article 161.2 of the Constitution).

Article 153 of the Constitution lays down a series of procedures for controlling the activities of the Autonomous Communities through the Constitutional Court, by the following means:

- denouncing a conflict of competence;
- lodging an appeal for unconstitutionality;
- appealing against resolutions and provisions of the Autonomous Community.

The government is qualified to act in the first and third cases whereas, in the second case, responsibility lies with the Prime Minister alone.

The government may, after having informed the Council of State, control the powers delegated to the Autonomous Community by virtue of Article 150.2 of the Constitution.

Economic accounting control is conducted by the State Audit Office.

The ordinary courts may also assess the legality of administrative and regulatory acts of the Autonomous Communities, in view of the fact that the state administrative bodies may contest the validity of those acts.

## **b) Local level**

Supervision is exercised by the administrative departments of the state (under the responsibility of the Government Delegate or Civil Governor) and of the Autonomous Communities (LRBRL, Article 65.1).

The local authorities are required to forward, within six days, a copy or, where appropriate, an explicit abstract of their acts and decisions to the administrative departments of the state and the Autonomous Communities. (LRBRL, Articles 56 and 64).

When the administrative departments of the state or those of the Autonomous Communities, within the scope of their respective competencies, believe that an act or decision of any local authority contravenes the law, they may, by expressly invoking Article 65 of the LRBRL, summon that authority to annul that act or decision. The formal demand must be well-founded and must specify the rule which is believed to have been breached. It must be formulated within fifteen working days as from reception of communication of the decision (LRBRL, Article 65.1 and 2).

## **9.2. Control of the expediency**

### **a) Regional level**

No provision is made for controlling the expediency of those acts.

If an Autonomous Community were seriously to jeopardize the general interest, the government, after having protested to the President of the Autonomous Community, may adopt appropriate measures, in the form of specific instructions to the authorities of the Autonomous Communities (Article 155 of the Constitution).

### **b) Local level**

No provision is made for controlling the expediency of those acts.

If a local authority commits acts or takes decisions which run counter to the general interests of Spain, the Government Delegate, after having issued a protest to the president of the authority, may, if no response is forthcoming, suspend their execution and take the relevant measures in order to protect those interests. He must lodge a complaint, within six days as from the date of suspension, before the administrative court (LRBRL, Article 67).

## **9.3. Remedies for local/regional authorities against improper exercise of administrative controls or restrictions upon their autonomy**

### **a) Regional level**

The law on autonomy procedures stipulates, in Article 2, that the Autonomous Communities may request any information from the state as required for the satisfactory exercise of their powers.

The Organic Law on the Constitutional Court (Article 28) and the Constitution (Article 162) grant an Autonomous Community the right to give notice of appeal for unconstitutionality against the laws of the state which restrict its autonomy.

The Organic Law on the Constitution Court authorises senior officials of the Autonomous Communities to refer to this court any conflict of powers with regard to the state when they believe that the latter, through certain resolutions or provisions, restricts the autonomy of the Community concerned.

### **b) Local level**

The local authorities are free to accept or to reject the protest issued by the administrative departments of the state or of the Autonomous Community, for the purpose of modifying decisions taken by those bodies (administrative and general control).

The local territorial authorities are authorised, in all cases, to lodge an appeal before the administrative courts, against acts of the administrative departments of the state and of the Autonomous Communities which interfere with their autonomy, as guaranteed by the Constitution and the LRBRL (LRBRL, Article 63.2).

Similarly, the local territorial authorities are authorised, according to the terms of Article 119 of the LRBRL (i.e. to refer a matter to the constitutionally authorised bodies, through the National Committee on Local Administration) to lodge an appeal before the Constitutional Court against the laws of the state or of the Autonomous Communities which they believe to be prejudicial to their autonomy as guaranteed by the Constitution (LRBRL, Article 63.3).

#### **9.4. Financial control**

##### **a) Regional level**

The economic accounting control of the Autonomous Communities is conducted by the State Audit Office (Article 153 of the Constitution). Once the general accounts have been approved by the Parliament of the Autonomous Community and the relative administrative controls have been completed, the accounts are examined by the State Audit Office. The latter may, nonetheless, delegate the exercise of some of its duties to the Regional Audit Office, where such an body has been created by the Autonomous Community (Organic Law on the State Audit Office, of 5 April 1988).

##### **b) Local level**

The local authorities are bound by the public accounts system. The administrative departments of the state lay down the accounting procedures of the local authorities (LRBRL, Article 114).

Responsibility for the external auditing of accounts and of the economic management of local authorities lies with the State Audit Office, within the limits and according to the conditions laid down by the relevant organic law and without prejudice to cases of delegation of competence provided for under that same law (LRBRL, Article 115).

In certain statutes of Autonomous Communities (e.g. Catalonia), responsibility for the financial supervision of the local authorities lies with those Communities.

The annual accounts are submitted by 1 June to the Special Audit Committee of the local authority concerned (mandatory), which is composed of members of the various political groups which make up the authority, and are also made available to the public before being submitted for approval by the authority meeting in plenary session in order that any claims, objections or observations may be expressed, and without prejudice to any complaint being lodged against them with the State Audit Office for irregularities in economic management and in the approved accounts (LRBRL, Article 116).

#### **9.5. Other forms of control over local authorities**

Whenever the administrative departments of the state or those of the Autonomous Communities, within the limits of their respective competencies, have cause to believe that an act or decision of any local authority constitutes a breach of the law, they may lodge an appeal against that act or decision before the administrative courts, either directly, once they have been informed of the act or decision, or on the expiry of the period indicated in any notification that may have been served on the local authority (LRBRL, Article 65.3).

When the administrative departments of the state or those of the Autonomous Communities consider that the acts and decisions of the local authorities infringe upon their competence, constitute an obstacle to their exercise or extend beyond the competence of those local authorities, they may lodge an appeal against them, directly, without need for any preliminary complaint, before the administrative courts, within a period of 15 working days as from reception of communication of the decision. In their appeal, they may request the court to suspend the contested act or decision. During proceedings, the suspension may be waived at the request of the local authority, once the plaintiff administration has made its case, if that suspension is likely to cause prejudice to local interests not justified by the general interest or by the Community interests referred to in the appeal (LRBRL, Article 66).

An appeal against the acts or decisions of local authorities may be lodged by members of local bodies who have voted against those acts or decisions (LRBRL, Article 63.1,b).

If a local authority does not abide by obligations imposed directly by law, thereby hampering the exercise of the powers of the administrative services of the state or of the Autonomous Community and when the required economic cover is guaranteed in legal or budgetary terms, one or the other, according to their respective powers, shall notify the authority of the obligations that it is required to observe, while granting it the necessary time to comply. If the situation has not been remedied after expiry of that period of time, which must exceed one month, appropriate measures must be adopted for ensuring observance of obligations at the expense of and in place of the local authority (LRBRL, Article 60).

The Council of Ministers, at its own initiative and once the governing council of the Autonomous Community concerned has been informed or at the request of the latter and, in all cases, with the agreement of the Senate, may issue a royal decree dissolving the organs of local authorities guilty of management that is seriously prejudicial to the general interest as a result of non-observance of their constitutional obligations. Once the aforementioned dissolution has been ordered, the normal legislation concerning the holding of partial elections and the provisional routine administration of local authority automatically applies (LRBRL, Article 61).

## **10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL/ REGIONAL AUTHORITIES**

### **a) Regional level**

Under Article 149.1.18 of the Constitution, the state enjoys exclusive power to decide on the basic legal system of public administrations. These rules guarantee citizens equitable treatment vis-à-vis those administrations, without prejudice to specific organisational features of each Autonomous Community. The same article lays down that the state shall decide on the basic rules governing the system of liability of all public administrations.

Furthermore, Article 149.1.5 of the Constitution provides that the administration of justice lies within the exclusive powers of the state.

Hence, the remedies available to individuals with regard to Autonomous Communities are the same as those available to them vis-à-vis the state. The relevant state regulations, which are essentially contained in the laws on administrative courts and administrative procedure, are based on the fundamental principle whereby individuals are authorised to appeal against every administrative act or regulation which contravenes the law, with the sole proviso that the individual(s) concerned have a legitimate interest in the annulment of the said act or regulation.

## **b) Local level**

When contesting local authority acts and decisions which conclude an administrative process, interested parties may appeal to the administrative department for a reversal of its decision (which may concern the budget, taxation, the application and effectiveness of taxes or the approval and modification of fiscal rules). If this fails, proceedings may be instituted before the competent jurisdiction. The administrative process is concluded by decisions by the following organs and authorities:

- those taken by organs in plenary session, mayors or presidents and administrative committees, except in rare cases where a sectoral law requires subsequent approval by the central government or Autonomous Community or where there is reason to appeal to either of the latter because delegated powers are exercised (Article 27, LRBRL);
- those of subsidiary authorities and bodies exercising powers delegated by the mayor, president or any other organ whose decisions conclude an administrative process;
- those of any other authority or organ as specified by a statutory provision. The lodging of an appeal does not, by itself, suspend the enforcement of the contested act or decision (LRBRL, Articles 52 and 113).

## **11. LOCAL/REGIONAL ADMINISTRATIVE PERSONNEL**

### **Regional level**

#### **11.1. Main categories of personnel**

- Career civil servants forming a permanent staff drawn both from the establishment transferred by the central government to the Autonomous Communities and from staff recruited by the Autonomous Communities themselves.
- Ancillary staff, i.e. workers engaged by the Autonomous Communities in accordance with the labour regulations under temporary contracts or contracts of indefinite duration.

- Other staff; this category comprises permanent staff to be engaged as required and temporary appointees, persons employed for routine administration, and miscellaneous staff.

These categories are defined by the relevant laws of self-government, which comply with basic regulations of the state, which the latter has the power to define under Article 149.1.18 of the Constitution.

The Autonomous Communities may create their own corps of permanent staff in so far as they observe the distinctions between categories laid down in basic state regulations as generally defined by Law 30/194 of 2 August.

### **11.2. Authority responsible for administrative status**

Autonomous Community legislation specifies that staff, in organisational terms, fall under the responsibility of a particular department, the name of which varies according to different Autonomous Communities and, in functional terms, work under the authority of the department to which they are assigned.

The governing council is responsible for policy on human resources and has the executive and regulatory powers in this domain.

### **11.3. Authority responsible for financial status**

Each year the various councillors propose expenditure on staff and subsequently the councillor who has authority over the staff concerned, draws up a preliminary draft budget for his department in which chapter 1 deals with staff expenditure. This preliminary draft, together with those of the other departments, is endorsed by the governing council and submitted to the legislative assembly as a bill on the general budget of the Autonomous Community. Responsibility then lies with the legislative body to discuss the bill and, where appropriate, approve it.

### **11.4. Relationship with the status of national civil service**

Article 149.1 of the Constitution stipulates that the state has exclusive powers for defining the basis of the legal framework for the public civil service and the status of civil servants.

Consequently, the model established for the state and embodied principally in Law 30/1984 of 2 August on urgent measures for reforming the civil service is the model for Autonomous Community regulations in this domain. Article 1 of the aforementioned law states those principles which serve as a basis for public servants' conditions of service and which must be implemented by the Autonomous Communities within the relevant limits.

### **11.5. Authority responsible for appointment**

Competence with regard to staff selection is normally shared between the following bodies within the Autonomous Community:

- Approval of public offers of employment, where the number of vacancies to be filled for the various categories of personnel is specified, is the responsibility of the governing council.

- Responsibility for sending written notification to attend entrance examinations rests with the councillor of each department concerned, although the customary arrangements for such examinations are the responsibility of a special department. Similarly, this responsibility is frequently delegated to lower echelons.

## **Local level**

### **11.1. Main categories of personnel**

The staff employed by the local authorities is divided up into the following categories:

- Career staff
- Staff recruited under contract
- Ancillary staff who have special appointments or who act as advisers (LRBRL, Article 89).

### **11.2. Authority responsible for administrative status**

- The mayor, in the case of municipalities (LRBRL, Article 22.1.a).
- The president, in the case of provincial and island councils (LRBRL, Article 34.1.a).

### **11.3. Authority responsible for financial status**

- The mayor, in the case of municipalities (LRBRL, Article 22.1.f).
- The president, in the case of provincial and island councils (LRBRL, Article 34.1.f) in accordance with their status as paymasters.

### **11.4. Relationship with the status of national civil service**

The fundamental rules of the state relating to the civil service, established by virtue of Article 149.1.18 of the Spanish Constitution, grant the state exclusive powers with regard to "the basic principles of the legal status of the civil service and the administrative status of civil servants...".

At the present time, these basic rules are founded on:

- Law 30/1984 of 2 August, on reform of the civil service (amended by Laws 23/88, of 28 July and 3/89, of 3 March, 22/93 of 29 December and 42/94 of 30 December).
- Law 53/84, of 26 December, on incompatibilities.
- Organic Law 11/85, of 2 August, on freedom of association.
- Law 9/87, of 12 May, on representative bodies, the definition of working conditions and participation of staff employed in the civil service (amended by Laws 7/90 of 19 July and 18/94 of 30 June).

### 11.5. Authority responsible for appointment

A distinction should be made between:

- Career staff belonging to the national corps of paymasters (secretaries, treasurers and comptrollers) who are recruited by the state, through the National Civil Service Institute, although examinations may be decentralised (LRBRL, Article 98).
- Other local staff are under the responsibility of each local body, while being bound by the basic rules and programmes laid down in accordance with statutory rules by the state administrative departments. (LRBRL, Article 100 and RD 896/91).

### 11.6. Numbers

#### a) Regional staff

COMMUNITIES	CIVIL SERVANTS	ANCILLARY STAFF	OTHER STAFF	HEALTH INSTITUTIONS.	TOTAL
ANDALUSIA	82 767	19 258	9 544	72 940	184 509
ARAGON	3 521	2 801	881	-	7 203
NAVARRA	8 980	243	52	6 114	15 389
MADRID	5 851	20 412	753	-	27 016
PAIS VALENCIANO	33 823	7 301	8 926	33 047	83 097
CANARY ISLANDS	21 070	7 037	3 410	10 359	41 876
CANTABRIA	1 119	1 137	419	-	2 675
C.-LA MANCHA	4 801	3 775	1 235	-	9 811
C. Y LEON	8 841	5 623	2 776	-	17 240
CATALONIA	56 324	9 721	6 329	32 169	104 543
EXTREMADURA	2 962	3 125	944	-	7 031
GALICIA	32 914	6 289	4 205	18 098	61 506
BALEARIC ISLANDS	1 889	1 101	225	-	3 215
LA RIOJA	1 474	461	188	-	2 123
ASTURIAS	2 255	1 466	62	-	3 783
BASQUE COUNTRY	17 968	2 483	4 332	18 838	43 621
MURCIA	4 265	961	610	-	5 836
TOTAL	290 824	93 194	44 891	191 565	620 474

Source: Statistical Bulletin of the Central Establishment Register, 1 April 1996.

#### b) Local staff

Categories	Number
Civil servants belonging to a national corps	6 582
Local authority staff	419 433
TOTAL	426 015