

UCLG COUNTRY PROFILES

Kingdom of Spain

(Reino de España)



Capital: Madrid

Inhabitants: 45.200.737 (2007)

Area: 504.030 km²

1. Introduction



The Spanish constitution, passed in 1978, established a strongly decentralized country model. The constitution established the possibility of creating regional entities between the state and the areas denominated as Autonomous Communities. These new political and administrative structures are responsible for several duties and functions that were exercised by the central and local state institutions. All the Autonomous Communities have, in their respective Statutes of Autonomy, a list of local duties. Spain is home to 17 Autonomous Communities, which are divided into 50 provinces and more than 8100 municipalities.

The Spanish population is 45.200.737 inhabitants (1st of January 2007 – National Institute of Statistics–INE), and the country has a population density of 89.6 inhabitants/km². The inhabitants are mainly concentrated in two zones: the coast and the near valleys, which are the most densely populated. If we leave out Madrid the principal population nuclei are: Barcelona, Valenica-Alicante-Murcia, Sevilla-Cadiz-Malaga-Granada, Bilbao-Guipuzcoa-Santander, Asturias, La Coruna-Vigo, Majorca etc. However, all the interior regions suffer population problems except Zaragoza and Valladolid.

The municipality (governed by the town hall) and the province (governed by the provincial council) have, through their development, favored the birth and consolidation of the modern state. In Spain one can assure oneself of the fact that there are at least as many laws governing local politics as national politics. This tradition dates back to 1812, and there have been twelve explicit laws on the subject created since (1812, 1823, 1833, 1840, 1845, 1856, 1870, 1877, 1924, 1935, 1945, 1985). The similarity between these laws explains why the concepts of centralization and decentralization of the State were not inherent to conservative or progressive ideologies. It also explains why the little importance that was given to the



technical aspects of the laws that favored the proliferation of local governments.

2. Territorial Structure

The Spanish Constitution dedicates the second part of the 8th chapter ("Territorial Organization of the State") to the local administration. However, it does not define what 'local' means, nor does it outline an explicit model of local government. It does however recognize the provinces and the islands as local entities with constitutional obligations to those that guarantee their autonomy. Other local entities such as provinces, metropolitan areas, minor local entities, etc., are of a facultative nature and may come into existence through the terms created in the legislation that establishes local government. The constitution does not define 'local autonomy' nor does it offer a financial guarantee to the local entities as it does with the Autonomous Communities. Furthermore, the system of distribution of the duties defined in the Constitution is shared between the state and the Autonomous Communities, which further complicates the issue. Articles 148 and 149 of the Spanish Constitution, establish the distribution of duties between the State and the Autonomous Communities, and both contain references to local government. The legal ambiguity of the constitutional articles has been resolved by the Constitutional Court¹, which has established that it is the state that enacts the laws regulating the local governments. Furthermore, this must be done without detriment to the already established laws in order to avoid that the legal duties of the Autonomous Communities overlap with the duties of the local governments. Currently, practically all of the Autonomous Communities, in their respective statutes of autonomy, include duties related to local

governance. This condition has received the title of "bi-frontal system of local Spanish government", as both the state and the Autonomous Communities are legally responsible for duties relating to this field.

In the development of the constitutional principles, the law 7/1985, (of the 2nd of April) 'Regulation of Local Government' (LRBRL) serves as a frame of reference for the legislation of the Autonomous Communities. This law has gone through several reforms, of which the most important took place in 1999 in the process known as the 'Local Pact' and in 2003 with the law 57/2003 (of the 16th of December) of the 'Modernization of the Local Government' which modified the LRBRL and introduced a new title (Title X) for the regulation of the structure of local governments and the municipalities of high population. Title XI, of the same law, further clarifies the infractions and sanctions that can be applied to the local governments in these cases. Currently the Ministry of Public Administration, through the Order of the 27th of July of 2004, has established a working commission in order to produce a 'White Book for the reform of the local government', which later constituted the basis for the construction of the draft of the Basic Law of Local Governance and Administration. The proximity of the general elections in Spain (9th of March 2008) and the past reforms to the Statutes of Autonomy has currently suspended the reform of the local governments in Spain².

¹ Sentences of the Constitutional Court of the 28th of July 1981, and of the 23rd of December 1982.

² The central lines of reform in the Plan of the Basic Law of Local Governance and Local Government are based on the duties, inter-municipal relations and the form of government. The plan contains an ample acceptance of local autonomy as set forth by the European document of Local Autonomy and seeks to establish three basic objectives: improve the quality of services offered by the town hall (including in small municipalities), to improve the duties and autonomy of the municipalities, and to reinforce the democratic process in the municipalities.



The Statutes of Autonomy (founding norm of the Autonomous Communities) establish the local laws with the limit that is established by the state under the “principles of the law of public administrations (article 149.1.18 of the Spanish Constitution). The regulations of the local governments in the different Statutes of Autonomy have traditionally focused on the municipality as the central idea for territorial organization. However, it has been difficult to establish an association between the role that they play as municipalities and the role that they have as local entities that may be dealt with by the autonomous and state legislators.

Because of this, the recent statutory reforms in Catalonia, Valencia, Andalusia, Aragon, The Balearic Islands and Castile and Leon deserve special attention³. The Statute of Autonomy as a basic institutional norm of the Autonomous Community sufficiently guarantees local autonomy to municipalities and depends on the Statute to apply the necessary duties and institutional focus as entities of self-governance.

Other themes that the new statutes and projects for reform touch upon make reference to the creation, by autonomous

law, of other territorial entities of infra or supra municipal capacities. These entities would be capable of adapting themselves to the different needs of each Autonomous Community. Examples of these needs are: questions related to the principles that ought to govern the inter-administrative relations – loyalty, mutual information, collaboration, cooperation and inter-territorial solidarity. Also relevant is the possibility of delegating administrative functions, which used to belong to the autonomous administration and handing them over to the local entities, as long as the delegation is authorized legally and without prejudice.

In all the Statutes (both in the recent ones and those still in process) one can observe a considerable increment in the juridical representation of the Local Administration. This forms the basis for a municipal model and asserts a statutory guarantee for the local autonomy that focuses on different formulas and combinations of municipal duties (both functional and material). Up until now we can mention two different lines of reform: “the Catalan model” followed in Andalusia, and “the Valencian model” which is in line with the Canarian and Aragonian reforms.

Finally, along with the regulation of the local regime (both of the state and of the autonomies), the legislative sector also reiterates the role played by the local entities.

2.1 The elements of local government

The government and the municipal Administration (except for the municipalities with less than 100 inhabitants, which function through the Open District⁴ practice) communicate with

³ The reform of the Statutes of Autonomy is an initiative that has been taken by the majority of the Autonomous Communities:

Valencia: Law 1/2006 of the 10th of April.
Catalonia: Law 6/2006 of the 19th of June.
Balearic Islands: Law 1/2007 of the 28th of February.
Andalusia: Organic Law 2/2007 of the 19th of March.
Aragon: Organic Law 5/2007 of the 20th of April.
Castile and Leon: Law 14/2007 of the 30th of November.

The proposal for reform of the Statute of Autonomy of the Canary Islands has been accepted by the autonomous Parliament on the 13th of September of 2006 and has been presented to Congress. The proposal by the Autonomy of Castile-La Mancha has been accepted by the autonomous Parliament on the 29th of January of 2007 and presented to Congress.

⁴ The Open District practice is a feature of certain small municipalities in Spain that are characterized by the lack of a municipal organization. Instead of following the standard system the inhabitants gather in



the City Hall though the mayor and the district's politicians. When attending to this entity, the Government and the Municipal Administration turn to the Mayor and the local politicians. The Government group is formed of the Mayor, the Mayor's delegates and the local Assembly of the municipal government. The local Assembly is composed of all the local politicians and the Mayor, who acts as the president. Although the local Assembly is not expressively recognized by the constitution (as is this case with the Mayor and the local politicians), it is defined through the LRBRL, as a necessary function of all the Town Halls where such meetings take place. The Governmental Assembly is composed of the Mayor and a number of local politicians (not in excess of a third of the legal maximum), and the Mayor freely selects the members of this group.

The Town Hall is constructed as follows:

Necessary in all of the State:

The Local Assembly and the Mayor's Delegates. The Special Commission of Accounts (which is a necessary organ although it is not considered a permanent one because its mission is to examine the annual accounts pending the Local Assembly's approval).

In all of the Municipalities with a population of more than 5000 inhabitants:

The Local Assembly, and the Municipal Commission of Information.

Beneficial but not necessary in Municipalities with a population inferior to 5000 inhabitants:

The Local Assembly and the Municipal Commission of Information.

Beneficial but not necessary in all municipalities:

the Assembly of Neighbors and make the decisions that would otherwise correspond to the Town Hall.

Technical units for the areas of concern to the Town Hall, territorially spread out groups, personal representatives of the Mayor in all parts of the municipality, Advisors of all sectors, and territorially decentralized entities in charge of the management of local public services (local mercantile societies).

Necessary in large cities and in municipalities of high populations:

The Local Assembly, a Secretary of the Local Assembly, a Mayor, Delegates of the Mayor, a Local Government, an Office of Legal Advice, a Social Advisor to the City, and a Special Commission of Suggestions and Complaints and a Comptroller.

The provincial Governmental Delegations are institutions of the state government with offices in the provinces of the autonomous governments. These offices are recognized by article 141.1 of the Spanish Constitution. The staff of these offices is hierarchically organized in the following way: President, Vice Presidents, the staff of the Governmental Delegation and the Local Assembly. The members of the Governmental Delegations are chosen through a process that follows a complex indirect electoral system (which differs constitutionally from the direct electoral system of the State).

2.2. The local civil servants

There are two classes of civil servants in the Local Administration: the civil servants of the State and the civil servants of the local entity. The civil servants of the State are selected by the State Government and report to this entity, however they work with the local entities in the regions in which they are posted.

2.3. A special system for the cities of Madrid and Barcelona



In December of 2005, Madrid and Barcelona voluntarily renewed their special municipal system (following the sixth clause of the legal requirements of the law of the Regulation of the Principles of Local Government). The 'Law of the Capital and the Special System of Madrid' was put into motion on the 20th of December of 2005 and passed on the 25th of July of 2006. Before that there existed a law of autonomy (law 22/98 of the 30th of December; issued by the city of Barcelona) that established a regulatory difference not only between the rest of the municipalities of the state, but also between the various regions of Catalonia.

2.4. The regulatory authority of the local entities in Spain (statutes, regulations and edicts)

The territorial public entities are entitled to a general normative power over their own territory. However, local entities lack legislative authority and are subject to the ruling of the municipal and provincial establishments, but may intervene in the activities of the inhabitants through statutes and regulations. The Mayors can form edicts, however these edicts cannot pass reforms that go against the already established laws.

3. Local Democracy

The local party system in Spain reproduces the system that exists on a national level, and bipartisanship plays an important role in local elections. In this light political parties of various forms (both of national and local origin) are present on the stage of local elections.

The mean participation rate in municipal elections in Spain is 66%, 8 points inferior to the rate of participation in general elections, and 4 points less than the rate of participation in European elections.

The Constitution demands that the Town Councilors be elected by the inhabitants of the municipality through universal suffrage, equality, liberty, directly and secretly with the use of closed lists (as established by article 140). This is to say, that it is the exact same system as is used for the national parliamentary elections (the D'Hondt system). The local elections are held every four years in all the municipalities of Spain on the fourth Sunday of May of the year that corresponds to this activity.

With respect to the election of Mayor, the Spanish Constitution leaves open the possibility that the election can be made by the citizens or the Town Councilors. The Electoral Law opts for the indirect election of Mayor, and under this system the Mayor is the Town Councilor that receives a majority of the votes of the Town Councilors. In the case that none of the Town Councilors receives a majority of the votes the Town Councilor that carries the most number of popular votes will be selected.

Because of this mix the model is considered "representative" although it carries certain connotations of "presidentialism". In the case of an absolute majority, the Town Councilors are able to make the designation automatically without any intervention on the part of the body of political representation. In the case that no particular party obtains enough popular support the Mayor is selected through a legal mandate.

The participation of citizens in the local official procedures has been recognized by article 23 of the Spanish constitution and has been incorporated into the legislation of local governments through the system of participatory democracy. A second modality of the direct participation of the citizens in the municipal governments is



Table 1: Public Services that the Municipalities are obliged to offer (article 26 of the LRBRL)

All Municipalities	Municipalities with more than 5,000 inhabitants	Municipalities with more than 20,000 inhabitants	Municipalities with more than 50,000 inhabitants
- Illumination of public places	- Public parks	- Police force	- Collective urban transport
- The cemetery	- Public library	- Social services	- Environmental protection
- Trash collection	- Public markets	- Fire prevention and extinguishment	
- Cleaning	- Garbage treatment	- Installation of public sporting facilities	
- Provision of drinking water			
- Sewer system			
- Public transport			
- Pavement of public roads			
- Regulation of food and drink			

provided through the possibility to solicit a popular initiative for a local referendum. Finally, the law makes clear the obligation that the local entities have in prompting *interactive participation* through the use of information technology and through communicating with the citizens. Also Law 57/2003 (of the Modernization of the Local Government) demands the creation of a *Social Council of the City*, a new structure, which is meant to facilitate the involvement of the citizens. This new structure ought to be composed of citizen delegates and representatives from the economic, social, and professional organizations that are important to the locale.

4. The Local Duties

The Constitution does not directly establish the duties of the local entities, but instead gives that obligation to the legislators of the State and of the various autonomies. The legislators, in turn, determine these duties and thereby maintain the partitions established in the Constitution and the Statutes of Autonomy. The founding legislative statute (Law 7/1985 of the LRBRL) establishes the enumeration of

materials considered necessary by the municipalities and provinces that seek the autonomy guaranteed by the Constitution.

The LRBRL establishes a general clause for the rendering of services and promotion of activities that favor the Municipality (article 25.1). Also the LRBRL outlines a catalogue of matters over which the Municipality may exercise power. These matters are within the terms established by the legislation of the State and the Autonomous Communities as dictated by article 25.2. The duties which article 25 of the LRBRL refers are the "proper" duties of the Municipalities, which is to say, the non-delegated duties. What this legislation assures is the control, on the part of the Municipalities, of a field of materials that can be developed in a way seen fit by the autonomies. However, the only unique duties of the Municipalities, as dictated by the LRBRL are the duties listed in article 26 (which outlines what are considered as the 'minimal necessary services'). Finally, article 27 refers to the duties delegated to the Municipalities, which is to say, the duties that used to belong to other public entities. The system of municipal duties is concluded in article 28 of the LRBRL, which leaves open the possibility of the municipal intervention



in other matters that directly affect the citizens of said municipalities.

In general the duties of the municipalities are:

Exclusive duties: those that correspond in an exclusive manner to each level of government and that legally conform to the Constitution.

Shared duties: those that are mutual to two, or more, levels of government (and which share successive phases of the implied process). The law dictates what responsibility corresponds to what party at each level.

Delegable duties: those that are transferable from one level of government to another (with mutual agreement and in compliance with the process established by the law). The party that delegates the duty must abstain from exercising its influence in the decision making process of said task until its completion by the second party. However, the first party remains as the official authority of the delegated duty, while the second party exerts its control over said task during the agreed period.

In conclusion we may make the following assumptions of the nature of the LRBRL:

1. It is the law – of the state, or of the autonomy – that establishes the duties and defines them as “proper” or “delegated.”
2. The LRBRL establishes the ability of the Municipalities and Provinces to satisfy their respective interests, for which the Local Entities have to receive some sort of non-delegated duties.
3. The Municipalities and Provinces have the right to intervene in the matters that affect them directly even if there is no explicitly designated duty that demands such action.

4. The legal prudence of the Spanish law is offered as a guarantee in the case of any possible modification to the duties of the LRBRL.

5. Both entities can interact with, and delegate the implementation of duties that the law establishes.

5. Protection of Local Autonomy

The constitutional guarantee of local autonomy gives said entities the ability to contest imposing laws of the State, or of the Autonomous Communities. However, until quite recently the Spanish State had not formalized article 11 of the European Statute of Local Autonomy (CEAL), which states the need for local entities to have a legal route through which they can defend their local autonomy. The law 7/1999 of the 21st of April put an end to this by modifying the law of the Constitutional Court (2/1979) and thereby opened the way for local entities to present their cases to the Constitutional Court in the defense of their autonomy (in the case that their autonomy is encroached upon by laws of the State or of the Autonomous Communities).

Up until now the only case that has been processed was the Sentence of 240/2006 of the 20th of July, which resolved a dispute on the part of the city of Ceuta. In general, the autonomous communities have hardly used this means of juridical defense, and the average number of cases has been two per year. Also, the majority of the cases that are presented are in relation to autonomous laws dealing with themes of urbanization. Furthermore, almost half of the cases have not been admitted due to a lack of compliance with the rigorous requirements established by the legal process.



6. The Local Treasury Department

The Constitution guarantees the Autonomous Communities “financial autonomy for the development and execution of their duties” (article 156 of the Spanish Constitution), and establishes the Autonomous Treasury Department (article 157 of the Spanish Constitution). In respect to the local Treasury Department, the Constitution defines this entity as being of a mixed nature, and further establishes that the local governments will receive financial resources from both the Treasury Department of the State as well as their own local Departments of Treasury.

While in federal states the municipalities, on average, receive around 20% of the available resources, in the case of Spain it is 12%.

Currently, the rules for local financing are regulated by the Legislative Decree 2/2004 of the 5th of March (a redrafted text of the regulating law of the Local Treasury Department). This includes the recent reforms put into action by Law 51/2002 of the 27th of December and the Law 62/2003 of the 30th of December.

The most important matters when dealing with the reform of local finances are the following:

The guarantee of sufficient funding for the local entities (the Town Hall, the Commissions, the Assemblies and the Councils), and the omission of the Trade Income Tax (the second most important local tax in terms of money collected, after the tax on property). This is assured to over 92% of the contributors.

This, in turn, allows for the Town Halls to regulate their own policies and gives them

the ability to increase or decrease their taxes as they see fit.

This system of financing takes into account the variables and changes that come into play at the level of local municipal financing and is designed to be the basis for a sound and stable system.

In conclusion, the provinces and capital municipalities, or Autonomous Communities, or those locales that have more than 75,000 inhabitant, are given a part of the national income tax, a part of the sales tax, and a part of the taxes collected on the sale of alcohol, petrol and tobacco (between 1% and 2% depending if it is a municipality of a province).

The municipalities denominated as “municipalities of touristic interest” are defined as municipalities that do not fulfill the requirements needed in order to avoid certain taxes, but that have a population of more than 20,000 inhabitant (and a greater number of houses registered as secondary homes than those registered as primary residences). These municipalities are funded by the State through the general model of funding and also through the granting of financial benefits from the proceeds of special taxes on petrol and tobacco.

Mayte Salvador Crespo

Center of Political and Constitutional Studies

Prof. Gerardo Ruiz-Rico Ruiz

University of Jaén