

Conclusions

1. One constant fact that is clearly shown by the comparative analysis of European Union countries carried out in this Green Paper, is the diversity in the forms of intermediate local governments, as a result, to some degree obviously, of the different existing constitutional contexts, the form of the state, the different traditions and historical evolution processes in each case, as well as the local government reforms implemented in these countries in recent decades.

2. However, despite these noticeable differences and the local government reform processes in a lot of these countries, a general trend towards strengthening the role of intermediate local governments can be observed. Of particular interest to this report is the case in the Southern European countries, whose distinguishing feature is 'political localism', resulting in a clear tension between the need to strengthen local governments and the fragmentation that exists, which substantially weakens their management capacity. The need to strengthen the second step of local government in these cases is obvious if one wants to strengthen local governments institutionally.

3. The panorama revealed in intermediate local governments in the different European Union countries analysed does, however, offer a number of strong ideas that should be born in mind for a clearer idea of the extent of the problem in Spain. These are:

a) Almost all the country's analysed have levels of intermediate local government, with the exceptions of Austria, Finland, Luxembourg and Portugal. In

the first case, the state has a federal structure and a limited territorial area, which makes the creation of another level of government between the municipality and 'the Land' superfluous. In the others, the small population, on the one hand, and the existence of administrative regions, on the other, make this level of intermediate local government unnecessary.

b) In all the countries analysed, except Spain, the electoral systems (with variants that do not need analysing here) are based on principles of direct election.

c) The general rule, also with the unique exception of Spain, is that such intermediate local governments have material powers, which in some cases are complemented by purely functional powers. The latter are greater in countries where municipal atomisation and fragmentation predominates. In any event, such material powers that are assigned vary from one context to another depending on the institutional role intended for intermediate local government within the architecture of public administration in the state in question.

d) The funding systems, once again with the exception of Spain and one or two other countries (such as Germany), are relatively dependent on funding through transfers, although in some models funding through specific local government taxes is the dominant element (Nordic countries).

4. The formation process of provinces as local entities in Spain is a complex and lengthy one. Throughout the process there is an evident tension between the initial configuration of the province as the executive branch of the state administration in the territory, and its subsequent configuration as a 'dual model' through the figure of the civil governor (a two-headed figure that represented the central government while also being president of the provincial council), finally ending up as a local body granted with autonomy.

5. Indeed, this historical process has been littered with innumerable reforms of the local system, in a sort of never-ending circle. Institutional stability of the province has not been, in logical correlation with the country's political-constitutional instability, the dominant theme in this historical process.

6. It is worth briefly discussing some of the complementary ideas to the above, with regard to the historical formation process of the provinces described in this report:

- a) The province as a local entity found serious difficulties in establishing an effective position in the development of the liberal Spanish state in the 19th and 20th centuries. Except for the occasional period of progressive liberal governments (the *sexenio revolucionario*, the period from 1868-1874), the province did not acquire express recognition as a local body until, paradoxically, the Provincial Statute of 1925, during the dictatorship of Primo de Rivera. Even so, interference from the state administration still continues.
- b) It should be stressed that the electoral systems for provincial councils have not only been based on indirect suffrage; there have also been limited experiences of direct suffrage and other mixed electoral systems. However, the (old) judicial division has been omnipresent as the electoral constituency since 1835, although occasionally reorganised through the figure of the districts.

- c) Over time, and due to this dual condition, the province has taken on substantive or material powers of a certain importance. It has not always been limited to exercising functional powers; however, the gradual process by which it has been stripped of such powers, has eventually led to such a situation.

- d) The political regime under Franco was possibly one of the periods that most precipitated the decline of the provincial institution as a local entity, above all through the loss of the (still limited) provincial autonomy that had been acquired.

- e) At the time of the Spanish Constitution of 1978, the province had become an institution highly susceptible to the new airs of territorial demands that started to take shape in the years of the political transition. The provincial electoral legislation, approved during the constitutional process, opted for indirect democratic legitimisation of provincial government. However, the Spanish territorial situation was already incubating a change of considerable size.

7. The province (with the obvious exception of the autonomous communities, constituted from the second transitory provision of the Constitution) had a key role in the process of creating the autonomous community system, in accordance with the so-called *principio dispositivo*³. And the presence of the provincial institution in the Constitution is certainly highly evident. However, its double (and, up to a point, confusing) characterisation of the province as a local entity, on the one hand, and a territorial division fulfilling the activities of the state, on the other, does not help in the process of strengthening the idea of provincial autonomy.

³ [Translator's note. This is the principle in the Spanish constitution by which each community is able exercise the right to self-organisation.]

8. Provincial autonomy is recognised in the constitution, and is no less than that foreseen for the municipalities. However, the means of institutional guarantee has clearly proved insufficient to fully safeguard provincial autonomy from a gradual stripping of powers, as it is only serves to prevent the suppression of the institution and, possibly, avoid a complete stripping of its attributes.

9. The fundamental problem with this (limited) expression of provincial autonomy lies mainly in the power that the *principio dispositivo* has acquired in this area. The statutes of autonomy have regulated the province in different ways and to differing degrees of intensity, limiting the extent of provincial autonomy. This, however, was by choice, given that the internalisation of the province could have led (and in some cases did lead) to a strengthening of the intermediate local government level, rather than a stripping of the provincial government level. Thus it is the combination of the Constitution and the statutes that has, in the end, defined the effective extent of provincial autonomy in each case. This internalisation of the province in the autonomous structure has clearly weakened it, unmitigated by the 'second-generation' statutes of autonomy, despite the greater treatment of local government and the better treatment of the province in some cases.

10. This fragmented or 'variable geometry' landscape of provincial autonomy is not in itself negative, except that it results in a weakening of the provincial institution. And, if this were the case, this effect could only be lessened through a constitutional reform that better defines its content (a somewhat unlikely hypothesis) or a modification of basic local government legislation that, in accordance with the most recent doctrine of the Constitutional Court of Spain, establishes a series of material areas as principles or minimum standards of the distribution of powers that should be assigned to provinces, notwithstanding that such powers may be exceeded by the statutes themselves or, more precisely, the laws that develop them.

11. In this context, it may be concluded that constitutionally guaranteed provincial autonomy has experienced a gradual yet permanent process of erosion as a consequence of its case-by-case legal interpretation and the enormous diversity of statutory regulations that, with the aim of making the *principio dispositivo* effective through a recognised and constitutionally guaranteed institution, have designed the role and function of the provincial institution in both the 'first-generation' and 'second-generation' statutes. Redirecting this process towards more rational parameters requires either a modification of basic legislation in the terms discussed or a change in constitutional and ordinary jurisprudence that partially modifies the blurred lines protecting provincial autonomy. In brief, the provinces are political institutions of the constitutional state. And, for one reason or another, this dimension needs to be reinforced.

12. The current municipal fragmentation in Spain necessarily requires an intermediate level of government that guarantees municipal autonomy, to ensure that it is truly effective. The province is the most appropriate intermediate government step due to tradition, management capacity and experience in exercising these functions, as well as its proven institutional strength compared to other emerging institutional formulas that have so far failed to crystallise.

13. But it is not only local fragmentation that objectively justifies the province as intermediate local government, given that, based on terms of efficiency, certain powers, whether functional or material, are most appropriately distributed to a territorial level of government, such as the province.

14. The provincial level of government is justified both as a core part of intermunicipality and as a local government with a framework of its own attributes, in accordance with the subsidiarity principle (and above all with the aim of preventing powers 'jumping' from the local to the autonomous level). Indeed there are

local powers that, for reasons of scale, need to be exercised by a local government other than municipal, such as the province.

15. The provincial council, in its current constitutional configuration, is the representative body of the province and exercises its 'government and administration'. Therefore, the provincial council is an organ of government that exercises political and not just administrative functions, which has to prioritise its decisions as well as its resources. The role of the provincial councils as 'provincial government' needs to be strengthened. Also, in the fields of functional attributes, there is an effective route to establishing political priorities through, for instance, a system of agreement with the municipalities and of evaluation of such policies.

16. Current provincial powers are open and imprecise, which directly affects the organisational design of the provincial administrations, thus producing a high degree of plurality and giving rise to very different models. If it is true that the required institutional organisation is a common factor, then it is also the case that the general and institutional provincial administration offers a wide range of options depending on the public policies that each provincial body develops. It would be reasonable for the different provincial councils to have a common basic organisational framework, without impeding the principle of self-organisation in each case.

17. With regard to the representative nature of the institution, the provincial council has indirect democratic legitimacy, due to the representation system established by the electoral organic legislator (based on the model established in 1978). This system differs from the provisions of the European Charter of Local Self-Government and has the effect of deactivating, if only in partially, the political potential of the institution as a fully representative local government, due to the distance created with its own citizens. The current system also has a number of dysfunctions, both in representation and in the design of the electoral constituencies (a model which, in any case, should be

adapted to the present situation). Furthermore there is no scrutiny of governmental management by the electorate, nor, strictly speaking, provincial election campaigns, thus limiting the effectiveness of the democratic principle.

18. Notwithstanding the opinions expressed in this *Green Paper* suggesting the implementation of a direct representation system in the provincial institution, justified through the recognition of the province's material powers, it remains appropriate and reasonable that the political parties reach an agreement on the type of electoral system that is eventually implemented. In any event, it is now essential for the current situation to be reassessed with the aim of strengthening the institutional role of the provincial councils and, above all, to stress their democratic legitimacy. To this end, a process of reflection on the reform of their electoral system should be initiated with a view to choosing one of these three alternatives: a) reforming the current system of indirect representation; b) implementing a system of direct representation; and c) incorporating a mixed system. This process should be linked to reform of the power distribution system. Furthermore, the provincial institutions should promote systems of transparency, strengthen the statute of opposition⁴ and introduce good government codes, with the aim of strengthening the institution's democratic quality.

19. The electoral system, together with many other factors, has determined the model or institutional organisation and the administrative structure of the provincial councils. The current form of provincial government is founded on traditional parameters and has the same government structure as the general system municipalities (thus, it is the same as the small and medium-sized municipalities). Elements that strengthen the role of the plenary council as the organ of control and oversight of the provincial government and the approval of regulations need to be incorporated

⁴ [*Translator's note.* This is a statute on the constitutional right of parties not in government to exercise critical opposition and propose alternatives to government policies.]

into provincial institutional organisation. The configuration of the provincial government also needs to be strengthened, with its own executive powers coordinated around the figure of the president and governing body. This does not in any way imply replicating the municipal form of government of large cities at the provincial level, given that this has much room for improvement and a minimum institutional organisation has to be established appropriate to the real needs of the province (and its powers), permitting the ulterior purpose of the provincial self-government principle.

20. The provincial councils should make a firm commitment to strengthening institutional legitimacy based on improving their efficiency. This requires such institutions to introduce a culture of organisational 'reinvention', 'innovation', 'modernisation' and 'paradigm change' based on the following foundations:

- a) Promoting a results-oriented management culture, which enables the impact of policies to be measured before, during and after their implementation.
- b) A simplification and rationalisation of the administrative structures and especially their institutional administration.
- c) Continuous improvement in their management processes, with a constant simplification of procedures and the elimination of administrative burdens through the development of ICTs.
- d) Commitment to an administration that provides quality services.
- e) Development of the innovation and design of local policies.
- f) Optimisation in the management of financial resources, which, as well as being more transparent and efficient in terms of control, enables the cost of public services to be known.

- g) Commitment to recruiting professional public directors who implement top-down modernisation processes on the respective organisations.
- h) An investment in the institutional strengthening of HR in the councils, both for endogenous reasons (recruiting talent and seeking excellence) and exogenous reasons (support for the municipalities from qualified professionals).
- i) A strengthening of current staff in line with the increasing implementation of technology and specialisation based on needs, as well as building professional career models in the culture of performance and evaluation.
- j) Boosting the knowledge society and network management.

21. The provincial councils need to promote (in cases where they have not already done so) a modernisation process, and introduce a process of continual innovation into their daily operation, with the aim of encouraging the principle of good administration, to become 'the institutional mirror of the municipalities' through best management practices, thus gaining legitimacy through the efficiency that is essential to strengthening its institutional role, which is even more urgent in a period of major fiscal crisis. This is the immediate challenge for the 2011-2015 mandate. At stake is a major part of its future.

22. Through the 1985 Law on the Foundations of Local Government, the provincial councils have been given a number of functional or instrumental powers, mainly consisting of conceiving the provincial body in terms of service to the different municipalities. This basic legislative option contrasts sharply with the situation existing in European Union countries and, furthermore, differs from the traditional configuration of the province in our institutional system of distributing public responsibilities.

23. The constitutional state model, from the perspective of territorial organisation, has led to an

evident institutional strengthening of the autonomous communities and a process of (relative) internalisation of local governments, most noticeably in the case of the provinces. This process, which could have had various outcomes, has however led, firstly, to a gradual stripping of provincial powers in favour of the autonomous community and paradoxically, to a degree of functional overlap or duplication of its attributes, which in some cases has produced intermediate local government levels and local bodies of the same nature, other than the province, creating an sense of lack of intermunicipal coordination, as well as eroding the powers of the province.

24. The analysis of provincial powers must be based on criteria of their own constitutional and institutional legitimacy and, in particular, their democratic dimension (which has already been examined) and institutional efficiency, results or performance. From this point of view, constitutionally the province has sufficient legitimacy, but, in terms of powers, significant advances can be made to optimise it and strengthen its institutional legitimacy.

25. The strengthening of this constitutional and, above all, institutional legitimacy has to be based on the attribution of a set of new powers at the provincial government level, which have a material or substantive content. This does not mean that the current powers or, in particular, those relating to assisting the municipalities cannot be not maintained.

26. In any event, powers need to be reassigned to strengthen the political importance of the province, based on three criteria: asymmetry, diversity and flexibility.

27. This quantitative and qualitative increase in municipal powers must cover three areas. These are:

a) Assistance and cooperation must be maintained as one of the core powers (given the consideration of the province as a 'grouping of municipalities'), but a differential analysis of the different assistance

tasks needs to be undertaken, similar to that of the Andalusian Law on Local Autonomy.

b) Recognition of a number of service-providing powers must be given to the provinces, whether for reasons of scale or because some are already exercised *de facto* and others are perfectly identifiable based on a series of indicators.

c) Provincial powers in terms of territorial and urban planning must be strengthened, both for economies of scale, but also in certain cases due to the need for 'creating distance' between specific interests and the centres of political decision making.

d) Also, the province should be given powers over intervention in private activities and development in a number of areas.

28. This institutional redesign of local powers immediately raises the problem of who and how to make it effective. Unless the Constitution is reformed in this direction, the only possibility of strengthening the role of the province as a local entity with its own powers is through, firstly, reforming basic state legislation with regard to local government and, secondly, the internalisation of these intervention lines by the different autonomous legislators.

29. With regard to the first point, it is considered necessary for the new basic local government regulations currently being drawn up to reflect the need to strengthen provincial council powers, assigning them not just functional powers but determining that they should also intervene in specific material areas. The areas where the provincial councils can effectively provide their own services and exercise powers are, among others, the environment, economic and social development, territorial planning, culture and immigration.

30. With regard to the second point, this must start from the position that the statutes of autonomy creating a highly plural reality with regard to the position of the

province in the local government systems. The most thorough solution to strengthening the powers of the province (notwithstanding the possibility of such an effect arising through the new basic local government framework) must lie in the signing of a new state pact (or at least a formal policy with a broad consensus) between the different political parties regarding the general lines for redesigning the system of local powers, with the aim of assigning the province those powers which, for reasons of scale or efficiency, should be developed at intermediate local government levels.

31. The relatively marginal position of the province compared to the municipality is not only observable in the area of powers, but is also clearly present in the field of funding. The intermediate local governments in Spain (general-system provincial councils and Balearic and Canary island councils) represent a small part of local public spending: 13.5%.

32. This fact is clearly indicative of the small part played by intermediate local governments in Spain. In the system of local government as a whole, the municipality is the body that manages most of the resources and intermediate local governments, especially general system councils, are relegated to merely providing assistance and complementing the municipalities with marginal management of local public spending.

33. Despite this context, some intermediate local governments have undertaken important work, not only in assisting and cooperating with the municipality but also in exercising a number of material or substantive powers. Here, the contrast between powers attributed by the legislator and those truly exercised can be clearly observed.

34. If one analyses the spending of intermediate local governments, it may be concluded that their work in providing assistance and cooperation translates into the transfer of large amounts of resources between organisations, above all town councils and consortiums. Thus, intermediate local governments become investing

agents and an important source of funding for the municipalities. With regard to the exercising of substantive powers, there are two areas in particular in which intermediate local governments have had larger expenditure: the production of social assets (promotion and dissemination of culture, social welfare, fire prevention and fighting, healthcare services, hospitals and health centres) and economic assets (roads, basic infrastructures, transport and environmental protection).

35. The funding system organised to support this pattern of expenditure varies according to the intermediate local government in question. Although the Balearic and Canary Island councils enjoy a better funding system based on greater financial autonomy (higher income through participation in taxation), the autonomy and financial sufficiency of the general system councils is seriously impeded. A large percentage of the funding for general system councils (a little over 80% of their total income) comes from transfers from the state and, in some cases, the autonomous communities.

36. Without doubt, this system of funding based mainly on transfers turns the general system councils into dependent institutions. One must also add to this problem the fact that there are significant differences in the amounts transferred between one council and another. Some general system councils receive much larger funding than others. Although the population criterion would appear an adequate basis for distributing resources, other variables need to be introduced into the funding model, such as geographic spread or inter-territorial solidarity, which could justify given asymmetries in the distribution of resources.

37. Thus, the funding model for provincial councils leaves room for qualitative improvements, especially if the distribution of powers is redesigned, as urged by this report. In brief, it is a matter of making them much less dependent on funding by transfer, thereby strengthening their autonomous income through their own taxes, but especially by participating in state and autonomous community tax collection, corresponding

logically to the responsibilities they have assumed. Obviously, this reform should be carried out in the framework of the long overdue reform of the local funding system.

38. However, intermediate local government in Spain does not end with the provincial councils, as there is a broad institutional spectrum which, for different reasons and causes, has led to an institutional intermunicipality map in the autonomous communities that is highly varied and lacking in a common pattern. Indeed, the singularities of the islands significantly qualify the specific nature of these intermediate (local) governments. The same is true with the Basque or Navarran provincial councils, based on the first additional provision of the Constitution. However, this also combines with the 'integration' (i.e. suppression) of the provincial councils into the single-province autonomous communities.

39. To this institutional conglomerate of intermediate local governments may be added others that, with a statutory or legal basis, have been created by the autonomous communities: regions and metropolitan areas. And together with these are other intermediate structures (normally with the purpose of managing 'given' public services), such as associations of municipalities or consortiums, whose proliferation in local government is a perfect example of the weakness of the intermunicipality systems, which should revolve around the province as a constitutionally guaranteed local body.

40. In the single-province autonomous communities, the provincial councils underwent a process of integration, which in practice meant suppression. The organic disappearance of the provincial councils meant that the autonomous administration assumed a dual role and, therefore, became responsible for defending both the autonomous interests and, when required, the local interests of the province. However, of these two, the autonomous 'soul' always defeated the local one, as the latter was gradually diluted until it had been all but reduced to a directorate-general of an autonomous government ministry.

41. It may be asked to what extent this lesser (or less intense) dedication by single-province autonomous communities to their supposed local dimension has led to a decline in the principle of local autonomy, both from the provincial point of view (the interests of the province are ignored due to a lack of provincial bodies to defend them) and the municipal point of view (the municipalities do not receive assistance and cooperation from the second level of local government, as it does not exist). The local political community, consisting of municipalities and provinces, is not coordinated in this case: it is quite clear that the autonomous community is not a 'grouping of municipalities'.

42. Without doubt, the recovery of the provincial councils in the single-province autonomous communities is, today, a completely unfeasible goal. Despite this, overcoming these limitations means institutional solutions must be sought through specific bodies where the municipalities can assume a co-decision-making role in subjects that affect them (e.g. drawing up and approving the works and services plan).

43. In the Canary Isles, the councils have been configured as hybrid, or double-natured institutions: they are considered autonomous and local institutions at the same time. Created in 1912, the Canary Island councils are now the intermediate local government *par excellence* in the Canary archipelago. The special regime for these councils established by the Canary Islands' Statute of Autonomy and the basic and autonomous legislation make these institutions that are clearly different from the general-system provincial councils in matters of the powers exercised, the electoral system, their organisation and operation and their funding system.

44. The Canary Island councils have a broad range of substantive or material powers, making them much more than simply a complementary institution that exercises instrumental support functions for the municipalities, as is the case of general-system provincial councils. In practice, the volume of powers transferred to these councils is considerable; thus

they are institutions that exercise a significant degree of power. Secondly, these councils enjoy direct democratic legitimacy. The election system is similar to the direct democratic election system of the municipalities and differs from the indirect electoral systems of the general-system provincial councils.

45. With regard to their organisation and functioning, the basic legislation regarding the island councils of Tenerife and Gran Canaria ensures that the organisation system for large city councils is applicable to them, too. The Parliament of the Canary Isles has decided to apply this system to the councils of La Palma and Lanzarote as well. The island councils of Fuerteventura, La Gomera and El Hierro are organised and operate under the provincial council general system.

46. Finally, the characteristic in which the Canary Island councils most differ from the general-system provincial councils is that the former enjoy extensive autonomy and adequate funding. These councils are the intermediate local governments that have received the highest income per inhabitant (€ 884 per capita), although they are also affected by the current global economic crisis.

47. The Balearic Island councils have a dual nature: firstly, they are autonomous institutions and, secondly, they are the islands' bodies of government and, therefore, local institutions. After the 2007 reform of the statutes, the hybrid nature of these island councils was confirmed, stressing their autonomous aspects. It is still to be seen how this might affect their local nature. In any event, the 2007 statute reform produced the institutional strengthening of the councils in all aspects. The Balearic Island councils are organised as autonomous institutions, which defend their own interests and undertake their own substantive political activity, over and above the merely complementary and instrument function of the general-system provincial councils.

48. This institutional strengthening is undoubtedly clearer in the distribution of powers. The island councils

have 'their own powers' in a broad range of substantive or material areas. These are powers specifically for the councils, protected by the statutes. This recognition of a broad range of specific and substantive powers is accompanied by an electoral system that gives the island councils direct democratic legitimacy. Furthermore, statute and autonomous legislators have decided to replace the form of organisation and operation of the provincial councils of the general system, initially applicable to these councils, and to implement a parliamentary form of government.

49. All these changes in the distribution of powers, in the electoral system and in organisation and operation, have established the Balearic Island councils as autonomous institutions, institutionally strengthened and with their own profiles, with all the subsequent advantages.

50. The three historical Basque territories, Álava, Guipúzcoa and Vizcaya, are governed by institutions with an institutional structure or form of government that differs greatly from the general-system provincial councils. This unique profile has developed under the first additional provision of the Constitution.

51. The singularities of the Basque provincial councils compared to those of the general system include their institutional nature and their organisation and form of elections, their powers and the funding system. With regard to their nature, the Basque provincial councils are hybrid institutions: they are public territorial bodies that are branches of the autonomous community government and local bodies at the same time, similar to the situation in the single-province autonomous communities. With respect to their organisation and electoral system, the Basque provincial councils have exercised their powers of self-organisation and have been structured as a parliamentary system, enjoying direct democratic legitimacy.

52. The powers of the Basque provincial councils cover a wide range of substantive or material powers, thus differing from the complementary or instrumental

functions exercised by the general-system provincial councils. Undoubtedly, some of the material powers are explained by historic rights.

53. Finally, one of the most important differences is that the Basque provincial councils enjoy a funding system that guarantees extensive autonomy and adequate funding. The Basque provincial councils are responsible for raising taxes and distributing them throughout the government agencies with powers in the Basque Country. The Basque provincial councils have become the key administration, as a tax-collecting and -distributing body, of the Basque Country.

54. The region in Spain has had a weak and, in some cases, inexistent implementation in the local institutional framework. It is not specifically mentioned in the text of the Constitution. Nor does the Law on the Foundations of Local Government provide much more detailed regulation of the regional body. Thus, the region is a creation of the autonomous communities, often somewhat removed from the local sphere (that of the municipalities and above all the provinces) and a form of alternative (although unstated) to the provincial level of government.

55. There are different autonomous options with respect to the division of the territory into regions. The regional division may be generalised to the whole autonomous community or may be made on a case-by-case basis through the approval of specific legislation. The degree of internalisation of the regional body is not homogenous to all the autonomous communities. The statutes of autonomy differ in the treatment given to the region.

56. The construction of intermunicipality, therefore, in the pluri-provincial autonomous communities that have opted for the region, involves a complex coexistence between province and region, above all because no one has known (or wanted) to establish a distribution of powers to the region different to that of the provinces. The result is a model of duplicated intermunicipality and concurrent powers,

that is economically inefficient and lacking in rationality, which also threatens the constitutionally recognised and guaranteed provincial autonomy.

57. The region's area of action may be inserted into the province's field of powers or a differentiated intermediate local body. The likelihood of the region establishing itself as an intermediate local government with its own unique features differing from the province could make sense in cases where unique or specific regions are created, although such circumstances would have to be coordinated within a system of relations with the provincial council. As an intermediate local government, it could be an appropriate formula of intermunicipality in the case of single-province communities.

58. To date, the function of the regions in the local institutional system has shown no signs of being an appropriate solution. Therefore, if a clarification of, and distinction between, the powers of the provinces and the regions cannot be provided, it does not seem reasonable to replace the provincial councils with the regions, as this would favour fragmentation (and a degree of competition) of the idea of 'local political community', of which so many regions are a part.

59. The metropolitan area is a local body, whose existence is determined by the autonomous legislator, who also establishes its final configuration as a territorial or institutional body and its legal system, always respecting basic state regulations. The autonomous internalisation of this type of body is also very intense.

60. The current legal design permits the autonomous legislator to establish the metropolitan area under the form of a territorial or general public administration or an institutional or specialised public administration. Only when the metropolitan area is established as a territorial or general public administration may it be categorised as an intermediate local government in the strictest sense. In the latter case, it may only be termed an intermediate local body.

61. Today, the limited implementation of the metropolitan area in Spain as a solution designed by the basic legislator to tackle problems arising from the metropolitan phenomenon appears evident, contrasting with the rise of this local government formula in Europe and the rest of the world. The errors in its design may be obvious. The central problem with the concept of the metropolitan areas is, undoubtedly, that they are bodies created by the autonomous community and introduced with varying degrees of success into the existing local reality. An improvement in the basic regulatory framework of the metropolitan areas, favouring greater protagonism for the municipalities affected and the provincial councils in the creation and management of this type of body could provide the metropolitan areas with a more comfortable presence in the 'local political system'. Thus, the provincial councils should provide institutional leadership in the process of establishing the metropolitan areas.

62. Having seen the limited implementation of the metropolitan area, it can be seen that what works in practice are alternative techniques to confront the metropolitan phenomenon, such as associations of municipalities and consortiums, which due to their voluntary nature and flexibility have been remarkably successful as a solution for metropolitan issues, without initially being designed by the legislator for this purpose. The province, region or island could also take on metropolitan functions as a separate internal organisation given specific functions, in the part of the territory where the metropolitan area is located. The creation of metropolitan areas in the framework of the province could also be the ideal institutional solution to realise the idea of an integrated and coherent 'local political community', into which the metropolitan reality could be comfortably inserted.

63. Intermunicipality has undergone an intense process of plural coordination (or variable geometry) through the proliferation or multiplication of associations of municipalities and consortiums. And, on the one hand, this process highlights an evident problem, which

is none other than the limited management capacities of many municipalities, while, on the other, it is a sign that the province (or some provinces) have been replaced in exercising the powers they are now required to develop.

64. The province, in its capacity as a core body of intermunicipality should, in any event, participate actively in the establishment of consortiums and also promote the creation of associations of municipalities where required, offering such bodies any technical assistance they require. It cannot be sidelined or ignored in these processes, as has happened in a number of recent cases of the institutionalisation of associations of municipalities or consortiums. Thus, it would be worthwhile to clarify what the functions of these institutions are and to prevent provincial powers overlapping or being duplicated, except, in the case of consortiums, when the provincial body is a key part of the consortium's governing body.

65. It is intolerable that such entities concurrently assume powers already assigned to the province (general assistance for, and cooperation with, the municipalities). Therefore, the right of association of the municipalities must respect the autonomy of the province, as constitutionally recognised and guaranteed, whose essential core lies in the existence of a 'differentiated functional area' where the provinces enjoy their own decision-making powers, identified by the Constitutional Court, with the function of assisting and cooperating with the municipalities in their territory.

66. Overcoming these and other possible tensions between the provinces and formulas of municipal association involves providing an appropriate match between both realities. Such a match must surely involve promoting such formulas of association, but also clearly establishing their limits. And, equally, it involves a clear delimitation of the position and functions of the province in our local system, including establishing the role of the province in relation to the associated municipalities.

67. In brief, the province (and, specifically its representative or governing body, the provincial council) must be organised as the central pillar of intermunicipality within a coherent, rational and efficient local political system. The current fragmentation, overlap and duplication of different levels of intermediate local government (as well as local bodies of the same character) offer a panorama

of considerable inefficiency. Planning intermunicipality does not mean denying or reducing the complete effectiveness of the organising principle of each local body or preventing forms of voluntary municipal grouping; it only means restructuring the local government space on the basis of rationality, with a constant view to providing better services to the public at a lower cost.