

A REFORM OF THE EUROPEAN UNION IN A MUNICIPALIST WAY

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There are many of us already who state that one of the great tasks pending in the political and constitutional reality of the European countries, is to tackle once and for all, with vigour and energy, the second major decentralisation, that of the local level. In recent decades, the European states have embarked on a more or less successful process of regionalisation, depending on the case, which has managed to interpose a supralocal unit between the municipal and state spheres through which to better structure the national territories and optimally channel the economic and normative efforts. However, the local level has in many cases remained unchanged since the beginning of its liberal path, at the dawn of constitutionalism, and the pending reforms have been an unavoidable necessity for far too long in which, for some strange reason, the efforts of politicians, opinion-makers or academics do not seem to focus. The case of Spain is paradigmatic in this respect, with a nineteenth-century highly dysfunctional local plant, which presents a motley superposition of structures and intermediate entities devoid of any order and rationality, and that survives immersed in the problems inherent in the infra-municipalism of most of its entities: a small scale, few or non-existent personal and material means and no capacity for political influence. Corollary of this situation is the material, real, denial of the constitutional and formally proclaimed local autonomy, and which today stands as a battle flag rather than a tangible achievement. This also causes a number of problems of a purely democratic nature, since the principle of representation is broken by the failure of the elected leaders to manage the powers which, in theory, belong to their political entities, which become dependent on responsibilities blurred between the autonomous or the provincial sphere or sometimes the state.

Local problems also concern the European Union and its institutional design, in which this municipal reality has little place. The “Europe of the Regions” still lacks the “Europe of the Municipalities”, the Union that considers as an essential part of democratic governance the level closest to the citizens and, therefore, the most inclined for the very expression of democracy to materialise in its most pristine potential. In accordance with the *European Charter of Local Self-Government*, it constitutes today, within the framework of the European Union, an inescapable principle of democracy itself, preserving citizen participation at the nearest level of government and guaranteeing the principle of subsidiarity. And yet we hardly find any regulation or any timid reference to the local sphere in the Treaties of the Union.

Firstly, the TEU, in Article 4.2. is aware that local reality is inherent in the constitutional and national structures of the States, those which must be preserved in the face of possible interference by the Union. In this way, the institutional autonomy of state territorial authorities, including local ones, is guaranteed as a brake on the expansive action of the European project, whose lofty objectives can always accommodate a continuous and exponential growth of its scope, whose limitation and constraint serve both this respect for State institutional autonomy and the principle of subsidiarity.

Even so, it is clear that the very broad legal coverage of the European Union, its impact on virtually all political, social, economic and institutional areas of the States by virtue of a (neo-functionalist) integration process that does not seem to (nor should it) have an end, must implicitly or expressly involve an impact on the competences, the subjects and, in sum, the municipal reality of the local authorities. I therefore believe that it is necessary to incorporate into Union law, whether the original law or the derived one, very concrete proposals for reform in order to also integrate the

municipalities of Europe into decision-making and the creation of their own regulations. Here I summarise them succinctly and as *de lege ferenda* propositions:

1. In order to guarantee the institutional autonomy of local authorities and respect for the internal distribution of territorial power by States, it would be appropriate to strengthen the early warning mechanism for monitoring the principle of subsidiarity in order to involve local authorities. A gateway could be created for them to raise with their regional or national parliaments the possibility of activating the mechanism and thus defend compliance with the principle of subsidiarity also at local level and in accordance with the constitutional competences established. The views of local authorities could be taken into account by regional parliaments when considering draft Union legislation under the early warning mechanism. The possibility of setting up a municipal subsidiary control network, which would be part of the monitoring of the principle by the regional parliaments and the Committee of the Regions, could be explored.

2. In order to increase the degree of integration of local authorities in the formulation of European policies, it would be appropriate for the Treaty on the Functioning of the Union, or the secondary development law, to include greater presence of the local administration in the Committee of the Regions. The regulation of the current composition is left to the interests of each State, which, if politically decentralised, tend to prevail (excessively) in their national delegation to representatives of the regional or autonomous level, to the detriment of the local one.

3. It would be appropriate to increase the need for a mandatory opinion from the Committee of the Regions, where the local authorities of the European Union are represented, for the exercise of more shared competences of the Union, especially in

the field of agriculture and the environment. Extending this mandatory opinion would also mean extending the possibility of bringing actions for annulment in defence of the principle of subsidiarity, since these are restricted to matters where the Committee's opinion is required (art. 8 of the Protocol). It is also entirely appropriate that the Commission, Parliament and the Council should give reasons why they do not follow the criteria of the Committee's mandatory opinion when this happens, which would lead to greater inter institutional dialogue and loyalty.

4. Consideration could be given to upgrading the Committee of the Regions from a purely consultative body to a genuine Union institution, strengthening its legal and regulatory architecture and giving it greater powers, particularly in the field of monitoring compliance with the Union's original law and the principle of subsidiarity. In this sense, the Committee could be granted privileged and broad access to the action for annulment, in accordance with the powers enjoyed by all the European institutions. In order to improve the representativeness of the local sphere, the Committee could henceforth be called "of the Regions and Municipalities".

5. To enhance the "structured dialogues" between the European Commission and the associations of local authorities of the Member States, with the possibility that these could be reinforced through their trans-nationalisation and grouping themselves by interests (small municipalities, unpopulated areas, large cities, etc.). In this respect, a European harmonisation of the legal status of associations in defence of municipal interests, such as the Spanish Federation of Municipalities and Provinces (FEMP), could be considered, given the diversity of regimes currently existing in the old continent.

6. To introduce the local level, through its representative bodies and

associations, into the Open Method of Coordination (OMC) of the European Union, so that the voice of municipalities and entities of this scale can be heard in the dialogues and exchanges that the States maintain in such a mechanism.

7. In order to enhance territorial cohesion and deepen the principle of solidarity, the provisions of the Treaty on the Functioning of the European Union which provide for the possibility of applying differentiated taxation measures in sparsely populated rural areas should be extended and made more concrete. The adoption of a comprehensive, European strategy on the demographic challenge in rural areas would thus be an attempt to preserve the municipal reality in sparsely populated areas, guaranteeing local autonomy to their authorities and the benefits thereof to their citizens.



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