

Local and Regional Governance in the Portuguese Constitution

1st draft version

1 .From 1926 to 1974 Portugal had the longest authoritarian regime in Western Europe. Sub-national policies were focused on colonial issues in Africa and at local level the mayors were appointed by the Government.

In 1974 the military took the power with a program of democratization , decolonization in the overseas territories and economic development with a adequate distribution of the wealth. The new authorities, with special strength to the Armed Forces Movement, promised to return power to a civilian democratic government and elections in one year. Besides political instability with a dispute between a pro-European orientation and leftist trends defending revolutionary legitimacy, the elections for a Constitutional Assembly were held in the first anniversary of the April Revolution with a poll participation over 90%.

The Constitutional Assembly had a majority of members supporting a representative democracy and a way towards EEC membership with 116 deputies from the Socialist Party (strongly supported by European social-democratic parties), 81 from PPD(conservative),30 from the pro-soviet Communist Party , 16 from CDS (Christian-democrat)and 7 from smaller parties.

In its first months the drafting process was surrounded by huge controversy and popular demands backed by radical wings in the Revolution Council for a mix of parliamentary democracy with direct popular power. Another difficult issue was the role of the army in the transition to a full democratic system.

The Constitution drafting ran from June 75 to April 76 and the 25th April 1976 legislative and the 27th June 1976 Presidential elections followed already the new fundamental law.

2. The constitutional drafting procedures started with the presentation of draft constitutions by the political parties and a discussion on methodology and structure of the constitution. The Portuguese 1976 Constitution is a long text with 312 articles in its original version which contains a large section on traditional political rights , called “Rights, freedoms and Guarantees “ including on it workers rights like right to strike or trade unions and workers committees rights, but also more than 30 articles on economic, social and cultural rights and several provisions about the economic organization .

The basic structure of the Constitution is still in force but it was amended seven times from 1982 to 2005 being the most relevant changes the consolidation of a civil democratic power, a liberalization in the economic organization and provisions on European Union membership legal requisites.

In the drafting proceedings was decided to create specialized committees to prepare draft versions of the constitution sections that should be discussed on second review and voted in Plenary session. Among the committees one was dedicated to the Autonomous Regions and other to local government called “Local Power”. Both sections are included in the Part of the Constitution about the Organization of Political Power covering in the present version Title VII – Autonomous Regions (articles 225 -234) and Title VIII – Local Power (articles 235-265). There are

also several references to sub-national entities in other constitution articles from art.5 (Unitary State),provisions on the Assembly of Republic legislative powers, Presidential powers and guarantees and revision of the constitution proceedings.

3.Portugal is a country with stable borders in Europe since XIII century , without linguistic , ethnic or religious relevant minorities . Opposite to the Spanish nationalities problem or the British devolution process the sub-national organization in the Portuguese politics is mostly a debate on administrative organization , model of territorial governance, proximity decision-making and respect for local traditions and aspirations.

If we try to find a closer political and administrative tradition we must look to the French discussion on the special status of the DOM-TOM (Overseas Dominions and Territories) or Corsica status to the autonomous regions issue and the questions on regionalization and decentralization of the French hexagon for the local government matters. Other affinity with the administrative debate in France has roots in the Napoleonic and Jacobin legal and philosophical traditions which links modernization and equity with a enlightened strong central government. That centralized tradition was predominant in the Portuguese Constitutional Monarchy (1820-1910) and in the I Republic (1910-1926). The authoritarian rule (1926-1974) consolidated the central control ,the weakening of local entities and a prejudice on devolution of powers connected with inefficiency, parochialism and local pundits influence.

The 1976 Constitution opened a new era of regional autonomy in the Atlantic archipelagos of Azores and Madeira and democratic local government in municipalities and parishes(infra-municipal entities)in continental Portuguese territory. The regional and local elected bodies gave a chance to political participation of thousands of persons with near half million candidates for seats in the two regional assemblies, the 308 municipal assemblies and executive bodies and more than 4000 parishes assemblies.

Regional autonomy and local power got larger competences under the ideas of progressive autonomy and decentralization under principles of subsidiarity enshrined in the Constitution since 1997. They had also a significant role in development and infrastructures programs which took place after the adhesion to the European Community in 1986 with strong support from structural funds.

Nowadays in the context of the European financial crisis , specially as Portugal is under the commands of a Memorandum of financial assistance agreed with European Union, ECB and IMF, the autonomy of regional and local governments is under strict scrutiny on the difficult harmonization of political autonomy and respect for fiscal discipline.

4. Portugal is defined in article 6 of the Constitution as an unitary state, “the state shall be unitary and shall be organized and function in such way as to respect the autonomous islands system of self-government and the principles of subsidiarity ,the autonomy of local authorities and the democratic decentralization of the Public Administration.”

According to section 2 of the referred article “the Azores and Madeira archipelagos shall be autonomous regions with their own political-administrative status and self-government

institutions". The reference to subsidiarity comes from the 4th revision in 1997 and the concept of self-government institutions in the autonomous regions from the 1st revision in 1982.

The fundamental concepts are as such :

- Portugal is a unitary state ,not a federal or a fully regionalized country, with two autonomous regions in the Atlantic islands justified for geographical, economic, social and cultural reasons and by the "historical autonomic aspirations from islands populations"(article 225/1);

- Autonomous Regions have their own self-government with legislative and executive powers according to the Constitution rules and the Political-Administrative Status adopted by the Assembly of Republic after draft version submitted by the Regional Legislative Assemblies ;

- Local Governments are democratically elected according to law adopted by the Assembly of Republic and exercise powers and competences consecrated in the law adopted by the Parliament respecting the principle of administrative decentralization.

5. Azores and Madeira suffered historically from isolation and developed aspirations for autonomy from the central government . After 1974 revolution in the context of political turmoil, decolonization of Portuguese African colonies and the suspicion about left-wing trend in Lisbon some pro-independence movements arose in the islands and the constitutional debate was held in this complex environment.

The political and administrative autonomy is based in a elected legislative assembly, a regional government and a financial status which gives to the regions all the tax revenues collected there and the right to development compensation transfers from the national government.

The legislative powers of the Regional Assembly were originally subordinated to matters of regional specific interest , not regulated in the general laws of the Republic , and for the adaptation or execution of these ones. After the 2004 constitutional revision the regional legislative powers were enlarged to all the matters set up in the Political-Administrative Statutes as are not under exclusive responsibility of national sovereign bodies. The Regional Statutes are adopted in the national parliament through a two-thirds qualified majority but the regional assembly has the exclusive of the revision initiative.

An important limitation to regional autonomy comes from the Regional Finances Law adopted as exclusive competence by the Assembly of Republic.

Initially there was a Minister of Republic in each region but its supervision powers were diminished since 2004 and is now called "Representative of the Republic" without seat in the Council of Ministers.

6.The local power shall be territorial bodies with elected executive and deliberative bodies and "shall seek to pursue the interest of the local people". On the Portuguese mainland the constitution establishes three levels of local authorities – administrative regions, municipalities

and parishes. All of them have only administrative autonomy according to the law and their financial status is defined in the Local Finance Law adopted by the Assembly of Republic.

The administrative regions were never created as intermediate bodies between the central government and the municipalities. Since the 1997 constitutional revision the institution “de facto” of the administrative regions depends on the casting of an affirmative vote in a national referendum. A national consultation was held in 1998 with a majority of negative votes and the creation of administrative regions is now very uncertain.

Municipalities are the more traditional and strong local bodies existing with various models since medieval times. The municipalities have an assembly and an executive body both directly elected through a proportional system being the mayor the first member of the most voted list for the executive body. The 1997 constitutional revision admitted an evolution to a single election system with an executive body emerging from the assembly but the political parties did not until now reached the two-thirds majority agreement in Parliament to change the electoral system. Municipalities have their own taxes created by the Parliament and the right to share national taxes according to the Local Finances Law.

Parishes are local entities inside the municipalities territories with competences defined in the law and executive powers decentralized by the municipalities. The number of parishes is justified by historical, cultural and geographical reasons going from less than five in some municipalities to 89 in a municipality in the rural north of Portugal. The Government is now trying to apply a controversial law reducing the number of parishes in at least a third. Parishes receive financial transfers from the national budget as ruled in the law and also from municipalities as decided in their own budgets.

7. Since 1976 the Portuguese constitution had seven amendments and some unsuccessful revision proceedings. Autonomous Regions and Local Power titles suffered several changes but are among the more consensual areas in the global text.

There is a broad consensus among the national parties on the regional autonomy status and usually the critics come from deputies elected in the islands claiming for a wider constitutional autonomy. The controversy on regional powers and the balance with central government has been usually focused in the revisions of the regional Political-Administrative Statutes and of the Regional Finances Law.

Local Power is something generally referred in a positive view in the political speech even if central entities are generally reluctant to decentralize powers to the municipalities and there is a public debate on economic efficiency. The most controversial constitutional issues were the blockade to the institution of the administrative regions with setting of the national consultation requisite and the changes in the electoral system to the executive body in standstill for 15 years.

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