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The role of national parliaments in successful decentralisation processes

Report¹

Committee on Social Affairs, Health and Sustainable Development

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Summary

We all want quality education, transport and health services. To achieve this, some decisions are best taken by the central government and others by the authorities who are in direct contact with citizens. Decentralisation is a tool for ensuring that our everyday needs are met, for developing trust in authorities and for building peaceful societies. However, deciding on who does what and how budgets are assigned is never easy. In recent years, many decentralisation processes have failed, stalled or been reversed.

It is the way we use decentralisation that can bring either success or failure. This is why the processes through which decisions about decentralisation are made need to be fair and transparent. Parliaments are elected to represent the will of the people and must be central actors in such processes. While every country needs to develop its own unique model, some approaches – such as involving parliaments from the early stages, enshrining essential elements of decentralisation in legislation, and promoting a consensus-building culture – are vital.

This report examines challenges and successes, and makes recommendations on how parliaments can help in building a shared vision of quality public service, as well as in putting it effectively into practice.

1. Reference to committee: [Doc. 14212](#), Reference 4269 of 23 January 2017.



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A. Draft resolution²

1. The Parliamentary Assembly reaffirms the essential role of decentralisation in making public service more responsive to local needs, promoting an accountable exercise of power and building trust in public authorities. Decentralisation has the capacity to improve the well-being of everyone, consolidate democratic systems and promote inclusive growth. All 47 Council of Europe member States have ratified the European Charter of Local Self-Government (ETS No. 122), thereby recognising that local democracy is a shared European value.
2. The Assembly welcomes the decision of the Croatian Chairmanship of the Committee of Ministers (18 May-21 November 2018) to include decentralisation among its priorities, as this provides a valuable opportunity to take stock of good practice and lessons learned, and to give a new impetus to decentralisation in the Council of Europe member States.
3. Against this backdrop, the Assembly is concerned about the current trend of decentralisation processes stalling or being reversed in some countries.
4. The Assembly notes that some decentralisation processes have not succeeded in achieving their stated objectives, due either to inadequate consultation of citizens, local authorities and their associations, to insufficient or too limited devolution of competences, or to a discrepancy between the devolved responsibilities and available financial resources. A high level of political polarisation in some countries has also created substantial obstacles for such reforms.
5. The Assembly is convinced that local and regional democracy must be further strengthened as an essential precondition to the well-being and democratic security of our societies, and highlights the importance of developing policies that build on past experiences, are forward-looking and allow for ongoing adaptation.
6. The success of decentralisation depends, to a great extent, on the quality of the political processes by which new agreements to transfer competences, funding and staff are negotiated, endorsed and implemented in practice. Parliaments are elected to represent the will of the people and must be central actors in such processes, as guarantors of general interest.
7. In the light of the above, the Assembly calls on the Council of Europe member States to reinforce their support of decentralisation through their laws, policies and practices, and in particular recommends that they:
 - 7.1. with respect to national, federal and regional parliaments:
 - 7.1.1. involve parliaments in the development and implementation of decentralisation reforms from the very beginning and at all stages of the process, including in monitoring and evaluation;
 - 7.1.2. take measures to ensure that, once voted, decentralisation processes are implemented as planned (subject to changes dictated by evolving experience), in the interest of the populations concerned, and are not unreasonably rolled back because of changing parliamentary majorities. This can include the setting up or the consolidation, where they exist, of permanent parliamentary committees, monitoring bodies, joint government/parliament committees or multi-partner platforms entrusted with overseeing decentralisation processes;
 - 7.1.3. ensure that the rules of procedure of relevant committees include specific provisions on the organisation of consultations with local authorities, including full access for local authority representatives to all relevant documents and a possibility to present written opinions on draft legislation;
 - 7.1.4. support the organisation of comprehensive and effective consultations on decentralisation issues, bringing together associations of local and regional authorities, non-governmental organisations and citizens, in particular on draft laws to be discussed in parliament;
 - 7.1.5. enshrine in legislation the key mechanisms of decentralisation, including those dealing with consultation, the definition of competences of different levels of government, capacity building for public servants and matching the financial and fiscal capacities of local and regional authorities with their responsibilities, in line with the provisions of the European Charter of Local Self-Government, in particular the principle of local self-government;

2. Draft resolution adopted unanimously by the committee on 17 September 2018.

7.2. with respect to the statutory framework:

7.2.1. provide adequate legal guarantees to ensure that local authorities may implement their powers effectively and without obstacles;

7.2.2. establish or strengthen the regulatory framework for ensuring financial stability of local and regional authorities and a fair distribution of public financial resources between the different tiers of government;

7.2.3. establish or strengthen equalisation mechanisms to ensure a degree of solidarity between better-off and less well-off authorities throughout the country, while avoiding penalising the most successful and efficient local authorities for their efforts;

7.2.4. ensure the existence of well-designed decision-making procedures for the reform of boundaries and/or structures of local and regional authorities;

7.2.5. guarantee equality of access to public services across sub-national entities;

7.3. with respect to capacity building, public awareness and co-operation:

7.3.1. run awareness-raising and information campaigns to promote broader participation in public debate on decentralisation, including the use of e-participation tools;

7.4. with respect to Council of Europe instruments and institutions:

7.4.1. ensure the full implementation of the recommendations of the Congress of Local and Regional Authorities of the Council of Europe resulting from their monitoring missions to member States of the Council of Europe and roadmaps prepared within the framework of Congress post-monitoring activities in order to fully comply with the commitments under the European Charter of Local Self-Government;

7.4.2. withdraw the existing reservations to the provisions of the European Charter of Local Self-Government; sign and ratify the Additional Protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207); and ensure the direct applicability of the Charter in domestic legal systems;

7.4.3. sign and ratify – as appropriate – the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106, “Madrid Convention”) and its three Protocols;

7.4.4. make full use of Committee of Ministers’ “Guidelines for civil participation in political decision making” (CM(2017)83-final);

7.4.5. make full use of the capacity-building tools for good governance developed by the Centre of Expertise for Local Government Reform, such as the tools on the 12 Principles of Good Governance, and of the assistance and guidance available through the European Committee on Democracy and Governance (CDDG).

8. For its part, the Assembly resolves to further strengthen its co-operation with the Congress of Local and Regional Authorities, in particular through the work of the Assembly’s General Rapporteur on Local and Regional Authorities, and continued dialogue between the monitoring bodies of the Assembly and the Congress. The Assembly also resolves to continue to be involved in the work of the European Committee on Democracy and Governance with a view to sustaining and facilitating dialogue with governments and promoting decentralisation goals.

B. Explanatory memorandum by Mr Luís Leite Ramos, rapporteur

1. Focus, topicality and guiding questions

1. Public service is the foundation of our societies. It allows for our everyday needs to be met, conflicts to be resolved and the quality of life to be improved. Every country needs to ensure that the public service meets its objectives effectively and that it makes the best possible use of available resources. While local authorities are in direct contact with people and are well placed to respond to their needs efficiently, national authorities have a comprehensive overview of the situation in the country and a responsibility to arrange for resources to be shared fairly and for support to be provided to those in need. Thus, responsibilities need to be assigned in accordance with the principle of subsidiarity, so that problems are resolved at the most immediate level that is consistent with their resolution. This principle lies at the foundation of decentralisation, and parliaments play an important role in the development of relevant arrangements.

2. Successful decentralisation implies that competences are assigned in a clear way, relevant authorities have sufficient resources and public servants have the necessary skills. Furthermore, it requires that a balance is established between continuity within the State administration on one hand, and flexibility of its institutional arrangements, on the other. Such flexibility allows for the necessary adjustment to the changing needs of the population. It is therefore crucial that the decentralisation process is not conceived as a one-off, top-down action, but rather as an ongoing negotiation process, bringing together key public actors.

3. Ideally, decentralisation consolidates democratic systems, strengthens local governance, promotes inclusive growth and local economic development, and makes public services more effective in responding to local needs, for example when it comes to protecting and promoting the rights of minorities and marginalised communities. Decentralisation is regularly considered a way of promoting a more accountable exercise of power, the principle of subsidiarity and the right of local communities to manage their own affairs in an autonomous way, as enshrined in the Council of Europe's European Charter of Local Self-Government (CETS No. 122).

4. However, recent studies have shown that some decentralisation processes have failed to achieve the desired effects and that the success of decentralisation depends to a great extent on how it is designed and put into practice.³ When major decisions about decentralisation are made in a top-down manner, with little consideration of the views of the people concerned, this tends to result in frustration and resentment. When the responsibilities given to local authorities are not accompanied by sufficient financial resources or fiscal autonomy, this tends to lead to a decline in the quality and reliability of public services. When local authorities do not get the training that is needed to fulfil new tasks, this undermines the efficiency of the public administration.

5. To shed some light on the challenges of successful decentralisation processes and to support co-operation in this area, I will explore the following questions in particular: 1) Which are the overall trends of decentralisation observed across Europe over the past years?; 2) What are the determinants of successful decentralisation processes?; 3) What is the particular role of national parliaments in decentralisation processes?; and 4) What lessons can we draw from previous experience in different countries and what are, consequently, the recommendations for upcoming decentralisation processes?

6. In July 2017, Ms Bettina Petersohn (lecturer in Politics at Swansea University), external expert, was mandated to explore these matters; her research results (which focused in particular on territorial reforms) were presented to the committee at its meeting on 6 December 2017 in Paris and provided the basis for this explanatory memorandum, next to the findings and recommendations of the Congress of Local and Regional Authorities of the Council of Europe (Congress), the European Committee on Democracy and Governance (CDDG), the Council of Europe Centre of Expertise for Local Government Reform, and the European Commission for Democracy through Law (Venice Commission), as well as those of the OECD, which I also discussed during a fact-finding visit to the OECD on 20 September 2017. In June 2018, an exchange of views was held on the lessons learned with respect to decentralisation in diverse national contexts, with the participation of Ms Alba Dakoli Wilson, Director of the Foundation for Local Autonomy and Governance (FLAG), Albania; Mr Tomàs Font i Llovet, Emeritus Professor in Administrative Law, University of Barcelona, Spain; and Mr Andreas Kiefer, Secretary General of the Congress of Local and Regional Authorities of the

3. Organisation for Economic Co-operation and Development (OECD) (forthcoming), *Making Decentralisation Work: a Handbook for Policy-Makers*.

Council of Europe. Valuable feedback on the provisional draft report was received from PLATFORMA, a pan-European coalition of 30 local and regional governments hosted by the Council of European Municipalities and Regions (CEMR).

2. Overall trends of decentralisation in Europe

2.1. Content and dimensions of decentralisation

7. Decentralisation is closely linked to territorial reforms (changes to the territorial structures of sub-national governments), institutional reforms (i.e. the re-organisation of powers, responsibilities and resources) and public-management reforms redefining administrative procedures.⁴ By means of decentralisation, administrative, legislative (in the case of federal States) and fiscal autonomy is transferred to regional and local levels with the aim of increasing accountability and efficiency of delivery of public services, strengthening democratic government and ensuring that decisions made correspond to the interests of the people, and/or giving recognition and self-government to distinct communities with a clear territorial base.

8. Decentralisation generally involves political processes by which new arrangements are negotiated, enshrined in relevant legislation and implemented in practice. They mainly aim at changing the allocation of powers and resources across different levels of government, and usually include a formal negotiation involving representatives of different administrative levels and often a formal adoption of legislation involving national parliaments.

9. Reform processes pass through multiple stages, including initiation and agenda-setting, deliberating and formulating principles and goals, drafting of details in smaller working groups, negotiating the details amongst elected officials or parties and reaching the agreement following the respective rules that apply in each context. Reform packages are generally very complex and require expert knowledge for the formulation of details while at the same time ensuring that solutions are within the range of political feasibility and acceptable to the public. Progressively, public consultations are also used in this context.

2.2. Trends in decentralisation

10. Increasing the level of autonomy for lower tiers of government has been a worldwide trend over recent decades. Of the 81 countries covered by the Regional Authority Index, 52 experienced a net increase in decentralisation and only nine experienced a net decline.⁵ Since the 1990s financial crisis, many countries have used public administration reforms to promote regionalisation, municipal reorganisation and decentralisation of powers.

11. There exists a great variety of decentralisation models, ranging from federal (Germany and Switzerland) or unitary (Denmark, Sweden and Finland) highly decentralised systems to highly centralised unitary systems (Greece, Ireland, Portugal or Turkey). In central and eastern European countries, the reforms have been substantially influenced by European Union standards, in the prospect of EU accession and often with the use of donor funding. Further adaptations are currently under way. The Nordic countries continue the long established tradition of local self-government, with current focus on more responsive and cost-effective local services. “Free-communes” trials were introduced in Norway, Finland, Sweden and Denmark, which permit experimentation before enacting relevant legislation. In the United Kingdom, Spain, France and Italy, decentralisation has been closely linked to regionalisation, often with an asymmetric approach, with different powers transferred to sub-national entities in the same country.⁶

12. The economic crisis has added impetus to municipal amalgamations (mergers) already in progress, in a quest for modernisation, rationalisation and above all economies of scale.⁷ More widespread inter-municipal co-operation between local authorities in service provision and the sharing of administrative resources and

4. Following the OECD definition of “multilevel governance reforms” comprising these three dimensions. See OECD (2017), *Multi-level Governance Reforms: Overview of OECD Country Experiences*, OECD Multi-level Governance Studies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264272866-en>.

5. Hooghe Liesbet, Gary Marks, Arjan H. Schakel, Sara Niedzwiecki, Sandra Chapman Osterkatz, Sarah Shair-Rosenfield (2016), *Measuring Regional Authority: A Postfunctionalist Theory of Governance*, Volume 1. Oxford: Oxford University Press.

6. OECD (2017), *Multi-level Governance Reforms: Overview of OECD Country Experiences*, op. cit.

7. Council of Europe (2017), Territorial reforms in Europe: Does the size matter? Territorial amalgamation toolkit.

processes has been promoted.⁸ To better respond to a new set of concerns of the population and promote sustainable development, governments today actively seek a broad partnership with civil society and the private sector.⁹

13. Finally, another growing trend is co-operation among local authorities across borders (for example Basel Trinational Eurodistrict, Galicia-North Portugal or Øresund Region), which helps to improve the public service, to overcome difficulties and to promote intercultural dialogue. Such co-operation works best where there is a genuine interest, pragmatic approach and enabling legal environment. European Union and Council of Europe instruments have proved very useful in supporting such co-operation.¹⁰

2.3. Key challenges

14. All 47 Council of Europe member States have ratified the European Charter on Local Self-Governance (ETS No. 122), which shows that local democracy has become a shared European value. However, in some countries the crisis and subsequent austerity policies, as well as uncertainty about the democratic model have halted or even reversed some of the reforms, at least in the short term and in particular with respect to the control of subnational expenditure.

15. According to the OECD, virtually all sub-national entities in the European Union report investment spending gaps, nearly half report a drop in investment since 2010, of which 70% experienced a drop of more than 10%, and over half are experiencing cuts in grants from central government.¹¹ Furthermore, there is worrying evidence of cutbacks in discretionary expenditure in aid of vulnerable groups.¹²

16. The trend towards re-centralisation is a growing concern for the Council of Europe. Already back in 2013, Herwig van Staa, President of the Congress of Local and Regional Authorities of the Council of Europe, pointed out that local and regional democracy “has reached a crossroads. Threats to democratic governance are on the rise, aggravated by the severity of the economic crisis, and undermining the very essence of true democracy that must be inclusive and based on participation and ownership ... Today, governments are using economic arguments to recentralise and to claw back competences. Local budgets are being squeezed. The freedom of local authorities to raise income through taxation and to decide how to spend their resources is being restricted.”¹³ When addressing the Committee of Ministers in December 2017, Andreas Kiefer, Secretary General of the Congress, underlined that going back to recentralisation would not reflect the expectations of the people, who are ready to take responsibility for their communities.

17. Both the Congress and the Parliamentary Assembly have expressed this concern in a number of adopted texts, including the Congress’ Resolution 357(2013) and Recommendation 340(2013) and the Assembly’s [Resolution 1886 \(2012\)](#) “Austerity measures – a danger for democracy and social rights” and [Resolution 1884 \(2012\)](#) on the impact of the economic crisis on local and regional authorities in Europe.

18. In 2017, Thorbjørn Jagland, Secretary General of the Council of Europe, warned member States about the dangers of growing nationalism and populism and recalled that a “balanced distribution of powers throughout all levels of government is one of the main pillars of any democratic State. It represents an essential component of the necessary checks and balances ... Strong local and regional democracy brings democracy closer to the people, thereby enhancing democratic security.”¹⁴

2.4. Recurrent issues

19. One of the main obstacles to successful decentralisation in many countries is the persistent failure of central authorities to effectively include local governments in decisions that directly affect them. More specifically, formal mechanisms of consultation are often lacking; and/or the existing consultation mechanisms are not sufficiently used; and/or the means of consultation are of a controversial nature and the time frame is

8. Council of Europe (2010), *The Impact of the Economic Downturn on Local Government in Europe*.

9. OECD (2001), *Local Partnerships for Better Governance*.

10. European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its Protocols, and the EU Regulation (EC) 10882/2006.

11. OECD (2016), *OECD Regional Outlook 2016: Productive Regions for Inclusive Societies*, OECD Publishing, Paris.

12. Council of Europe (2011), *Local government in critical times: Policies for Crisis, Recovery and a Sustainable Future*.

13. Closing statement by Herwig van Staa at the Joint seminar between CEMR and the Congress on “1953-1988-2013: Decentralisation at a crossroads” (Strasbourg, 26 November 2013).

14. Council of Europe (2017), *Populism – How strong are Europe's checks and balances?*, Report by the Secretary General of the Council of Europe on the State of democracy, human rights and the rule of law.

excessively limited.¹⁵ Quite often, initial input from local authorities is requested, but no or little feedback is provided on whether and how such input has been taken into account. In some cases, parliaments have to endorse relevant legislation only after all the negotiations have taken place.

20. Devolution of public powers to local/regional governments can either take the form of delegated powers, where local/regional governments exercise public competences on behalf of the central administration which sets the implementation frame or policy objectives, or it can take the form of decentralised powers, becoming an original competence of local/regional governments including full decision-making on policy and implementation. Limited definition, allocation and exercise of local competences are another important recurrent issue.¹⁶ This includes a lack of genuine local government functions, imprecise delimitation of competences and unclear accountability mechanisms.

21. The fiscal component of the public competence must be adequately devolved (delegated or decentralised) in parallel with the powers, otherwise such incomplete decentralisation can be considered as a mere withdrawal of the State from the public function, and burden self-governing authorities with inadequately funded competences, restricting further their autonomous status and role in an indirect manner. Fiscal reforms, which are considered to be key components of decentralisation processes, are difficult to design and implement, and therefore often become the “weak link” in reforms.¹⁷ The Congress came across intensified problems related to local government finance in recent years in many countries, as local governments have been among the primary targets for budget cutbacks.

22. Capacity building is another crucial area for successful decentralisation reforms. It is particularly important in highly centralised countries initiating decentralisation. The Committee of Ministers recognises that “the capacity of local government hinges essentially on the skills of elected representatives, the corporate management capacity of the organisation, the workforce capacity and financial and project management skills”, and highlights “the importance of developing this capacity further.”¹⁸

23. Successful decentralisation is to a great extent about finding the right balance within a continuum, between empowerment and accountability, between economies of scale and adaptability, between competition and co-operation, and between equality and entrepreneurship. When power is decentralised it might get misused or lead to corruption. When health facilities are made available for a small municipality they might not be able to provide specialised services or use expensive modern technologies. The disparity between the better-off and worse-off communities (whether resulting from access to natural resources or better management or any other factors) might lead to unequal access to public services and exacerbate existing cleavages and tensions. Sub-national entities might act in their own interests at the expense of the “common good” (“not in my backyard”). The right balance needs to be found with regard to the specific context, in a way that is transparent, fair and foreseeable, and it should be reviewed and adapted as required.

24. Based on the member States’ experience in the field of decentralisation, the Committee of Ministers adopted a number of recommendations, which provide useful guidance on the above-mentioned challenges. This includes in particular: CM/Rec(2005)1 on the financial resources of local and regional authorities; CM/Rec(2004)1 on financial and budgetary management at local and regional levels; CM/Rec(2004)12 on the processes of reform of boundaries and/or structure of local and regional authorities.

3. Determinants of successful decentralisation processes

3.1. Definition of success of decentralisation

25. A decentralisation reform is generally regarded as having had formal success if a legislative act has been passed successfully. Such formal success, however, does not guarantee that the original, substantive demands for reform have been met. Substantive success of a reform can be measured by the degree to which: 1) the initial agenda has been achieved and is reflected in the legislation; and 2) relevant stakeholders evaluate the reform as a contribution to the original goal. One would generally expect members of governing parties to claim it as a success because they have been in favour of it from the beginning. However, if

15. Congress of Local and Regional Authorities of the Council of Europe, Resolution CG32(2017)19final on “Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016).”

16. Allain-Dupré (2018 forthcoming), Assigning responsibilities across levels of government: Trends, challenges and guiding principles for policy-makers, OECD Working Paper, Fiscal Federalism Series.

17. OECD (2017), *Multi-level Governance Reforms: Overview of OECD Country Experiences*, op. cit.

18. Committee of Ministers, Recommendation CM/Rec(2007)12 on capacity building at local and regional level.

opposition parties or minority leaders, representatives of sub-national units, experts or civil society organisations, also perceive a reform as an effective contribution towards the initial goal one would consider the substantive success of the reform to be higher. If a new proposal for further reforms is brought forward shortly after, the present reform would normally be regarded as having failed in substantive terms despite successfully passing legislative hurdles.¹⁹

3.2. Factors influencing the success or failure of decentralisation reform

26. The OECD has identified pre-conditions for successful decentralisation reforms.²⁰ Studies on measuring success of constitutional reforms in this area are also useful for drawing a number of conclusions.²¹

27. In particular, research demonstrates that the establishment of a separate arena for the reform negotiations (e.g. through a constitutional convention or special reform commissions for larger consultation) seem to have a positive effect on its effectiveness. Such an approach may lead to a more inclusive consultation process with business or civil society organisations, thereby ensuring broader representation of interests and the reference to time frames which are independent of elections or political cycles (to avoid sheer replication of existing political conflicts between parties over the reform), and preventing controversial issues from being excluded or postponed, thus reducing the substantial success.

28. Separating the agreement on principles from negotiations over details and organising the reform in sequences seems to facilitate relevant arrangements. However, political arenas and reform sequences need to be sufficiently connected to achieve coherent and effective reform processes.

29. Effective communication seems to be a key factor in ensuring a connection between negotiation and adoption stages, for example by including all actors or institutions whose consent is required for passing the reform, even though the backlash could result in political bargains diminishing the substantive success.

30. Extending the time perspectives of negotiating actors increases the chances that long-term considerations are included into proposed solutions. Governments initiating reforms would often confine their objectives to electoral cycles, whilst to achieve more lasting reform outcomes different time horizons may be required. This can, for example, be achieved by creating inclusive reform commissions gathering representatives of various backgrounds including representatives of all parties, civil servants, civil society organisations, experts and randomly selected members of the wider public.

31. Clear and coherent assignment of responsibilities among administrative levels and entities allows duplication and loss of accountability to be avoided. It needs to be clear who does what, with respect to finances, regulations, strategic planning, implementation and monitoring. At each level, responsibilities need to be assigned in accordance with the characteristics and needs of the entities concerned. Adequate solutions should be found for specific territorial units (asymmetry of reforms). The responsibilities should match the evolving needs, and they should be adjusted periodically, based on the experience and feedback received. It is important to ensure that both the responsibilities assigned and the processes for their adjustment are enshrined in legislation. The development of co-ordination mechanisms is essential for smooth interaction between various levels.

32. Complementary reforms may be required in order to take into account the lessons learned and to adjust the design and implementation of the decentralisation processes. Pilot projects may be helpful as part of a national learning process, in order to test various approaches on a small scale and to support adjustments through learning by doing.

33. National associations regrouping local and/or regional authorities represent a single voice for local/regional government concerns and act as an intermediary between the central government administration and the local/regional governments of the country. The existence of strong associations is an important success factor in decentralisation processes.

19. Behnke, N., Petersohn B., Fischer-Hotzel A. and Heinz D. (2011), Measuring Success of Constitutional Reforms: Evidence from Territorial Reforms in Eight Western Democracies, *Regional & Federal Studies* No. 21(4-5): pp. 447-477. www.tandfonline.com/doi/full/10.1080/13597566.2011.578935

20. Allain-Dupré (2018), op. cit.

21. The empirical evidence is drawn from a research project comparing territorial reform processes in Austria, Belgium, Canada, France, Germany, Italy, Spain, Switzerland and the United Kingdom. For more details, see Arthur Benz (2016), *Constitutional Policy in Multilevel Government. The Art of Keeping the Balance*, in co-operation with Heinz D., Hornig E.-C., Fischer-Hotzel A., Kemmerzell J. and Petersohn B, Oxford University Press.

4. Parliaments as sites for negotiating and monitoring decentralisation reforms

34. Parliaments are important players in the deliberation of reform principles, scrutiny of details as well as in the adoption of relevant legislation. Decentralisation reforms are as a rule ratified by a vote in parliament, thus receiving the approval of a directly elected body and involving a democratic process. Parliaments are therefore essential stakeholders in the legitimacy of decentralisation reform.

35. Parliaments are in a good position to ensure the coherence of policy development in the area of decentralisation within the overall social and economic policies in their country. Furthermore, as decentralisation impacts many areas (such as competences, elections, representative bodies and executive bodies, supervision bodies or finance), it is important that parliaments take care not to overlook any of these interconnected areas and request governments to provide holistic responses, “en bloc” or in a sequel.

36. Parliamentary committees may provide resources and space for formulating drafts and for scrutinising details of a reform. In this respect it is worth recalling that the challenge of multilevel governance reforms is not to adapt to a new, stable and definitive situation but rather to enable public administration at all levels to adapt continually to a permanently evolving environment.²² In this case, parliament should be involved on a regular basis as well, and not only at the stage of the adoption of relevant legislation. When this is the case, parliamentarians might feel that their constituencies’ concerns have not sufficiently been taken into consideration. This is likely to lead to lack of support for the proposed reforms, delays with adoption or subsequent contestation of relevant arrangements.

37. Parliamentary working groups are regularly formed to focus on one specific aspect of the reform (for example for drafting proposals on the redistribution of financial resources, on the recognition of distinct communities or on specific selected policies such as education). Overlapping membership between parliamentary committees and working groups and parliamentary research staff are often found to be valuable assets in providing expertise and knowledge to the drafting of proposals as well as to ensure that the political feasibility of solutions is considered during that stage.

38. The contribution of national parliaments to the success of a decentralisation reform depends on the one hand on the extent to which the committees or working groups are dominated by political divisions and party politics. On the other hand, national parliaments need to balance consensus-building efforts with considerations about what reform is politically feasible under existing political majorities or constraints. Parliaments as sites for negotiating decentralisation reforms offer an opportunity to deliver that balance because they reflect political majorities while having the expertise and resources to reach out to economic and societal interests to foster a broader consensus about the content of the reform.

39. Local and regional government, including their representative national associations, are best placed to assess the impact of proposed reforms. It is therefore important to ensure that they are involved in any parliamentary committees deliberating or supervising decentralisation reform initiatives.

40. Like in other legislative processes, parliamentary committees provide an opportunity for engaging with outside actors, for example through hearings with other stakeholders, including civil society organisations, or by calling for comments from experts or the interested general public on reform drafts. This engagement with civil society and the public is important for gathering information about the potential impact of decentralisation on different sectors or interests but also for building a broader consensus for the intended reform. In particular in the context of ratification processes which include popular referenda, the communication between elected representatives and civil society needs to be organised and strengthened in order to increase the chances of a successful reform.

41. Mobilisation of adequate resources including human resources and training programmes for civil servants directly involved – in accordance with the responsibilities assigned – is essential for successful decentralisation processes. As parliaments approve the State funding, they have the power and a responsibility to ensure that the State provides local and regional authorities with the means that correspond to the missions and responsibilities that are entrusted to them.

42. Furthermore, adequate resources commensurate with the responsibilities assigned are also the subject of the provisions of Article 9 of the European Charter of Local Self-Government, against which a number of signatory States members of the Council of Europe have expressed reservations in their ratification

22. OECD (2017), *Multi-level Governance Reforms – Overview of OECD Country Experiences*, op. cit.

instruments. Parliaments, when deliberating and approving decentralisation legislation have the opportunity to revise the ratification status of the Charter and withdraw existing reservations, towards full applicability and implementation of the Charter.

43. Decentralisation law takes years to implement and produce results. It should be the responsibility of political forces and governments, if they have initiated the relevant legislation, to ensure its successful implementation, possibly through monitoring and adjustments. Parliaments should pay attention to this aspect and vote relevant provisions in the law. Furthermore, monitoring systems help to ensure that the decentralisation arrangements meet the needs of the population and provide data for decision making on necessary adjustments if required. A follow-up committee, a bi-partisan monitoring body, or a joint government/parliament committee can oversee the implementation process and report to parliaments on difficulties, delays, and obstacles that may require further legislation or administrative action.

5. Lessons to be drawn from previous experience

5.1. Federal State: Fiscal equalisation system in Switzerland

44. The fiscal equalisation system in Switzerland aims at reducing disparities among different cantons, related to geographical/topographic and socio-demographic factors. For example, in mountainous areas the infrastructure costs are higher and in centrally situated cantons the proportion of the elderly and poor is above average. To address such disparities, financially weak cantons receive financial resources from the financially strong cantons and from the Confederation.

45. Switzerland has a long-standing tradition of fiscal equalisation, with the first equalisation system dating back to 1959. The system is regularly reviewed and updated. In 1992, the federal government and the cantons undertook a joint, comprehensive reform of the system. A wide range of criticisms of the proposed system included the following: some financially strong cantons felt that they were being too heavily burdened and would lose their international competitiveness, some weak cantons would have preferred to see an even greater distribution of revenues among the cantons, and the left-wing parties and the trade unions objected to the continued tax competition among the cantons.

46. In spite of the above-mentioned concerns, the present fiscal equalisation system was approved by a majority of almost 65% in a 2004 referendum.²³ The Federal Council submits a report on the implementation and effectiveness of the National fiscal equalisation system every four years,²⁴ thus providing an opportunity for further debate and adaptation.

47. While the existing fiscal equalisation system might not be perfect, the ability of Switzerland to evolve, based on its consensual political culture and close co-operation between federal and cantonal civil servants, is undeniably an important success factor in its decentralisation reforms.

5.2. Quasi-federal State: advantages and pitfalls of the Spanish asymmetrical approach

48. In about two decades, Spain was transformed from one of the most centralised countries to one of the most decentralized.²⁵ According to the Regional Authority Index (University of Oxford) Spain is the 2nd most decentralised country in the world (after Germany). Spain provides a large degree of autonomy to its 17 Autonomous Communities. The asymmetrical approach allows the diverse needs of the regions to be taken into account. Local government is a constitutional element in Spain, which is protected by legal and procedural devices.²⁶ According to the OECD, Spain has the highest levels of spending autonomy and tax autonomy. There is a high degree of popular support for decentralisation.

49. Nevertheless, the Spanish decentralisation model is not without its weaknesses. One issue that seems to be of concern is the reluctance of key partners to engage in horizontal and multilateral processes of decision making, due to the step-by-step evolution of the decentralisation in Spain as a response to the

23. Frey R. I., Wettstein G. (2008), Reform of the Swiss Fiscal Equalization System, in CESifo DICE Report 1/2008, www.cesifo-group.de/DocDL/dicereport108-forum4.pdf.

24. Swiss Federal Department of Finance (2018), National fiscal equalization, www.efd.admin.ch/efd/en/home/themen/finanzpolitik/national-fiscal-equalization.html.

25. Jourard I. and Giorno C. (2005), *Getting the Most Out of Public Sector Decentralisation in Spain*, OECD Economics Department Working Papers, No. 436, OECD Publishing, Paris.

26. Congress of Local and Regional Authorities of Europe, CG(24)6FINALE (2013), Local and regional democracy in Spain.

diverse needs of regions and municipalities. Bilateral and ad hoc centre-periphery relationships are favoured. The Senate in its present composition is neither a chamber of territorial representation nor a mechanism of integration or co-operation.²⁷ Other instruments for co-operation compensate for this, but only to a limited extent. The Conference of Presidents of Autonomous Communities has only met six times since 2004 and dealt only with political agreements and recommendations, all of which had no legal impact. The reforms were developed with the help of think tanks, study groups and hearings.

50. The case of Catalonia provides a few illustrations of the weaknesses of the Spanish decentralisation model. For example, in 2006 the Spanish Parliament adopted a new statute which reinforced the autonomy of Catalonia and the preamble of this statute defined Catalonia as a “nation” within the Spanish State. However, in 2010 the Constitutional Court cancelled 14 articles of the Autonomy Statute, annulled the concept of the “Catalan nation” and rejected the use of Catalan as a “preferred language” in the administration and the media. This was badly received by many Catalans and resulted in massive demonstrations. Similarly, in 2012 the refusal of the central government to grant Catalonia the same fiscal privileges as those that the Basque Country already enjoyed had fuelled a further upsurge of independence movement in the region.

51. Spain has made a remarkable transition towards a highly decentralised governance system in a relatively short period of time. The success factors that contributed to the peaceful transition include the ongoing demands for self-government from some regions and the preparedness of the central government to accommodate such demands, the influence of the European Union, the existence of a stable democracy and the vivid memory of the Spanish civil war of 1936-1939.²⁸ Today, however, we are reminded that these achievements cannot be taken for granted. The need for a constitutional change and a reform of the Senate are being increasingly evoked as a means to bring more clarity and transparency to this process and to ensure a fairer representation of the interests of the autonomous communities at national level.

5.3. Unitary State: Overcoming political polarisation as an obstacle to decentralisation in Albania

52. Albania is a unitary State which traditionally was highly centralised until its transition to democracy in 1991. Since then, the decentralisation reforms in Albania took place in two successive waves in 1999 and 2014.

53. The first decentralisation wave targeted the Constitution and local autonomy principles and the second one targeted performance and fragmentation. The initial reforms were put on hold for nearly a decade, in the face of disagreement from the opposition and following the political change after subsequent parliamentary elections.

54. Building on the lessons learned from past experience, during the second wave the parliament played a stronger role in the reform, with a special parliamentary committee for Territorial and Administrative Reform being established. The committee envisaged co-chairmanship and proposed equal representation by the majority and the opposition. Extensive parliamentary hearings with stakeholder groups and with civil society organisations were held. Wider consultations with various target groups reached 16 000 citizens. Nevertheless, the reformers failed to reach political consensus over the reform. The opposition boycotted the work of the parliamentary committee and the final vote in parliament²⁹.

55. Since 2015, important legislation has been adopted in the framework of the “Cross-cutting Decentralisation and Local Government Strategy 2015-2020”, including the Law 139/2015 “On Local Self-Government”, the Law 68/2017 “On local finances”, as well as the Decision of the Council of Ministers consultation between central government and local self-government. The Local Self-Government and Central Government Consultative Council was launched in January 2017, and has held four meetings. It serves as a tool for consultation, dialogue and preparation of relevant legislation.

56. In spite of the above-mentioned developments, the opposition parties claim that Albania remains a highly centralised country and advocate new reforms. They feel the latest reform failed to ensure an inclusive consultation and that insufficient progress was achieved, in particular in the area of health services, including primary health care.

27. Moreno, L. (2002), *Decentralization in Spain*, in *Regional Studies*, Vol. 36.4, Carfax Publishing.

28. Pi-Suñyer C.V. (2010), *The Transition to a Decentralised Political System in Spain*, Forum of Federations.

29. Council of Europe (2017), *Territorial reforms in Europe: Does the size matter? Territorial amalgamation toolkit*.

57. It might well be that at times Albania went very far very fast, and further adaptation might be needed to make sure that the governance mechanisms meet the local needs and demands. Effective reforms require trust among key partners, and such trust takes time to develop. Bearing in mind that democratic governance reforms in Albania have only started three decades ago, the progress made so far is quite substantial, and the Albanian case is definitely worth studying and analysing.

6. Conclusions and recommendations for upcoming decentralisation processes

58. Decentralisation brings decision making closer to citizens, it helps to ensure the quality of public services and strengthens accountability. Furthermore, decentralisation empowers the public servants who are in direct contact with the citizens. Their increased ability to meet the needs of the population enhances citizens' trust in public authorities.

59. Over the last decades, there has been a clear trend towards an increase in decentralisation and the transfer of administrative, legislative or fiscal powers towards lower levels of government.

60. In recent years, however, this trend has slowed down or has even been reversed in several countries. This is a growing concern for the Council of Europe, as a balanced distribution of responsibilities is essential for the effectiveness of democratic institutions and an important factor in ensuring democratic security. There is therefore a clear need for the Council of Europe member States to give a higher political priority to decentralisation.

61. One possible factor for this re-centralisation might be the fact that in some countries the decentralisation reforms have not achieved their intended aims and objectives. We need to look very carefully at the lessons learned from these processes, to ensure that we do not "throw the baby out with the bathwater," and that we do not give up on democracy because things went wrong when we were trying to put it into practice.

62. I am convinced that the success of decentralisation depends to a great extent on the way in which it is done. If we want to overcome the economic crisis, the way to do it is not to give up on decentralisation, but to do it better.

63. While there is no "one-fits-all" recipe for successful decentralisation, and every country needs to develop its own unique model that works in its specific context, there are certainly some "ingredients" that seem to be indispensable.

64. Well-established mechanisms for consultation and co-operation promote a sense of shared ownership and commitment. Enshrining decentralisation in legislation and in the statutory frameworks, including the Constitution, helps ensure the sustainability of relevant arrangements. The promotion of a culture of dialogue and co-operation provides an enabling environment for decentralisation.

65. Parliaments play an important role in each of these areas, by adopting relevant legislation, promoting public debate and ensuring scrutiny of government policies, actions and spending. This role needs to be further strengthened and made more sustainable.

66. A lot can be learned from the wide range of experience in the Council of Europe member States. Systematic involvement of parliaments from the very beginning and throughout the reforms, close co-operation between parliaments and local and regional authorities, in particular through their national associations, setting up specialised parliamentary committees bringing together representatives from different parties, extending the reform time schedule beyond the electoral cycle, reaching out to the broader public to ensure that the full spectrum of concerns is taken into consideration in relevant policies – these are just some ideas that could be of help.

67. It is important that the Council of Europe member States share experiences and learn both from success stories and from failures that result from these decentralisations processes. With its Committee of Ministers, Parliamentary Assembly, Congress of Local and Regional Authorities, the European Commission for Democracy through Law (the Venice Commission) and the Conference of International Non-governmental Organisations, the Council of Europe brings together all the key partners involved in decentralisation processes and provides a valuable forum for such sharing and learning among member States.

68. As we celebrate the 30th anniversary of the European Charter of Local Self-Government, it is a good time to take stock of our achievements and current challenges, and to give a new momentum to decentralisation, as a way of bringing democracy closer to the people, improving the well-being of all and strengthening democratic security in the Council of Europe member States.