

## EXPANDED ABSTRACT

### **Collaboration between municipalities and Social Economy following the amendment of the local regime: a competential perspective**

The aim of this article is to identify spaces of convergence between, on the one hand, municipal competencies and, on the other hand, goals and typical activities of the entities included in the social economy that can be characterized as being of general interest at the local level. This could justify the adoption of promotion policies by the municipalities aimed at those activities. With that purpose, first of all we analyse the incidence of Act 27/2013, of 27 December, of rationalisation and sustainability of the Local Administration, on the framework of local powers. This Act, based in the principles of budgetary stability and financial sustainability, can result, at least potentially, in relevant limitations in the scope of material and managing competencies of the municipalities, although the scope of this local reform has been already clarified by the Constitutional Court at least in the Judgement No. 41/2016, of 3 March.

So, the article starts with the analysis of the material competencies of the municipalities under Act 27/2013 as interpreted by the already mentioned Constitutional Court judgement, that has declared unconstitutional some legal provisions concerning the municipal competencies in the areas of wealth and social services. The purpose of these provisions was to bar Autonomous Communities (regional governments) from allocating powers in these matters to Local Authorities as "own powers". According to the Constitutional Court that purpose is in breach of the regional powers as regards Local Authorities regulation. However, the Constitutional Court affirms the constitutionality of all those provisions which impose financial conditions and stricter controls on the allocation of own or delegated powers to municipalities or the assumption by them of competencies other than those which are their own or which have been delegated. Although the aforementioned Judgement has decided the most important questions, it should be noted however that the Constitutional Court must still decide on other pending appeals about the compatibility of Act 27/2013 and the constitutional principles of regional and local autonomy.

At this point, the article focuses on the competencies in the areas of education and social services that Local Entities can assume according to the Constitutional Court Judgement referred. It has to be borne in mind that these areas are where we find closer ties between public local powers and private social enterprises, since most of them work in those areas. We must also take into account, how-

ver, the necessary legal development on the topic by Autonomous Communities and the pending reform of the legislation on local and regional funding.

From a wider point of view, the next step is to connect the framework of municipal powers previously described and the mandate, addressed to the public authorities, to promote the social economy which is made by article 8 of Act 5/2011, of 29 March, of Social Economy. Despite the potential recentralization of competencies that the Act 27/2013 implies, this comparative analysis allows us to identify several fields where it is possible both to increase the promotion of the social economy by municipalities and to pursue a closer collaboration between these two social and economic agents to achieve many objectives of public interest. According to this comparative analysis, we can identify several areas of convergence, such as environmental preservation, protection of the historic heritage, promotion of cultural and sport activities, economic and employment promotion through the cooperation between the so-called Local Development Agencies and social enterprises, or touristic promotion. We highlight, particularly, the possibility of collaboration between municipalities and social enterprises in the field of first level non-mandatory education (children aged between 0-3 years) and in the provision of social services as social emergence attention, home assistance for old and handicapped persons or assistance to people at risk of social exclusion. This can be made through some formulas of cooperation with private entities included in social economy as the “especial employment centres” or the “social insertion companies”, that usually adopt legal forms which are typical of the social economy (cooperatives, non-profit organizations...).

Finally, the article summarily identifies the powers of local management that can be used to promote the social economy and to implement the collaboration we are discussing. Once more we point out the limitations imposed by the Act of rationalisation and sustainability of the Local Administration and therefore by the principles of budgetary stability and financial sustainability. Despite this, we consider that municipalities have diverse tools to act for themselves or in association, such as using their power to tax and financial power, the so-called “social clauses” in public contracts, mixed economy companies as the public service cooperatives or even partnerships with non-profit organizations.

The article concludes with some critical reflections and conclusions that point out the potential of the public-private collaboration between municipalities and social economy entities but, at the same time, the uncertainties that still derive from the current legal framework.

From the methodological point of view, this article examines the topic from a legal perspective, analysing both legal and case law sources, to catalogue and summarily describe the material and management powers that municipalities can use to promote the social economy in their territory or to involve social entities in the management of public services. This work takes into account some studies that have highlighted the close connection between the social economy and the local territory as well as its deep and beneficial impact on it. However, its objective is not to analyse the socio-economic reality of

this relationship but to offer, from a legal point of view, at least in a preliminary manner, a comprehensive and theoretical framework to maximize the impact of cooperation between Local Authorities and social entities.

Even recognising the diversity of local reality and of the social economy itself, our necessarily limited focus tries to offer an original hindsight on the legal tools that municipalities can employ to involve social entities in the achievement of its social, political and economic goals. Further, our analysis can be taken as a starting point to examine the actual application of these tools using other methodological focuses.

On the other hand, most of the issues raised must certainly be completed by deep analysis provided from the perspective of several legal disciplines (commercial law, administrative law, financial and tax law,...) and, obviously, the availability of studies on the different issues which are addressed here varies. However the article tries to offer a practical overview and provide a starting point for other academic works focused in the relationship between the public administration and the social economy.

**KEY WORDS:** Social economy, social business, municipalities, municipal competencies, budgetary stability.