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Reflection on Albanian Legislation Related to Decentralization in Local Self-Government in the Light of EU Legislation

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Abstract: The Constitution of the Republic of Albania defines the principle of decentralization of power as one of the basic principles based on which the local government is established and operates. In its three dimensions, political, administrative and financial, it is exercised through the implementation of the constitutional principle of local autonomy. The treatment in the Albanian legislation of these dimensions, in any case, has aimed to bring it closer to the requirements of international documents and standards. The Electoral Code of the Republic of Albania regulates the implementation of political decentralization, such as the transfer of political authority to the local level, through elections for local self-government bodies. The legal framework for the organization of local government, for local self-government and financial decentralization regulates the way of organization in the territory of the local government, the ways for the transfer of responsibility for matters of administration of some central public functions of the local unit and the financial power. The international observers of the OSCE/ODIHR and the Venice Commission, CoE, evaluate the Electoral Code as a legislative product that reflects the principles and standards for democratic elections. The drafting of legislation for the organization and operation of local government has been developed as a complex process, with international support and expertise, but, in any case, with great political burdens. In this legislation, the main requests expressed in the international documents and in the EU, legislation have been addressed, in relation to the political, social and economic context of Albania. The efforts of the Albanian society for legislative reforms aimed at improving the legal framework for the most effective functioning of the principle of decentralization and local autonomy, are faced with two main challenges: (i) the great political burden that accompanies any such initiatives and reforms and (ii) the lack of will to implement the legislation. Efforts to centralize decision-making on important issues of regional and local development and to replace decentralization with the process of deconcentration, contradict the principles and requirements set forth in international documents for the decentralization of local government.

Keywords: Decentralization; Local self government; Legislation; Albania

1. Introduction

At the beginning of the 90s, the Albanian society and the state began the process of democratic transformations, from a country governed by the dictatorship of the proletariat to a country with a democratic system of government based on private property, free initiative and the rule of law. In this process, this society lacked the experience to draft the necessary legislation and to build and develop the institutions and capacities needed for the functioning of democracy and governance at the central and local level.

Article 13 of the Constitution of the Republic of Albania states that local government is established based on the principle of decentralization of power and is exercised according to the principle of local autonomy. Pursuant to this constitutional provision, a complex transformative process has been

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developed in Albania, through which the legislative and institutional capacities were and are intended to be built in order to enable the functioning of local self-government. In accordance with international principles and standards, the reforms that deal with local government issues aim to minimize the role of the state, the central government, through decentralization, liberalization, increasing local autonomy and quality in services for local communities.

During the 30-year period after the beginning of the political and economic transformation processes, local government reforms have gone through a three-wave process:

The first wave belongs to the period 1992-2000. This wave begins with the approval of the Organic Law no. 7572/1992. Decentralization was defined as one of the objectives and basic principles of local government in Albania¹. This definition was also included in the Constitution of the Republic approved in November 1998. According to Law No. 8652, dated 31.7.2000², the municipality and commune were defined as the basic units of local government. For their self-government, the electoral legislation provided for the election of the Chairman (Mayor or Chairman of the Comune) of the local unit and the election of the municipal council. Some of the services and functions of direct benefit to the community were transferred to these bodies, associating them with the space for more administrative and financial autonomy. For the effects of local governance, the country was divided into 314 municipalities, 44 municipalities and 36 districts. The District Council was defined as a body with a more coordinating role. For the functioning of the local government during this period, work was done to draft the necessary legislation for the powers, authority and autonomy of the local government bodies. In addition to the adoption of the Constitution, a very important development related to this period is also the ratification of the European Charter of Local Autonomy³.

The second wave took place during the years 2000-2015. The ratification of the European Charter of Local Autonomy encouraged the development of an intensive legislative and institutional process for local government. The government drafted and approved the National Strategy for Decentralization and Local Autonomy and Law no. 8653/2000 ‘On the Administrative - Territorial Division of Local Government Units in the Republic of Albania’, according to which, in Albania, local government was exercised in 308 communes, 65 municipalities and 12 districts. The year 2014 is the most intensive and defining year for the reforms of local government. The Albanian Government carried out the new Territorial Administrative Reform (TAR), with the main objective of improving services for citizens. The commune as the basic unit of local government was abolished. Local government was organized only in 61 municipalities and 12 districts. In the political and legislative plan, the government and the Parliament approved:

- (i) “Intersectoral Strategy for Decentralization and Local Governance 2015-2020” and the action plan for its implementation;
- (ii) Law no. 139/2015 “On Local Self-Government” which, among other things, transferred, in an exclusive title, a number of new functions to the municipalities;
- (iii) Law no. 68/2017 “On the Finances of Local Self-Government” which was further followed by Law no. 106/2017 “On some changes and additions to the Law no. 9632, dated 30.10.2006, “On the Local

¹Law no. 7572 “On the organization and operation of local government”. June 10, 1992.

²Law No. 8652, dated 31.7.2000 “On the organization and operation of local government”. http://observator.org.al/wp-content/uploads/2015/11/Ligj_8652_31.07.2000_per_organizimin_e_qeverisjes_vendore.pdf.

³Law No. 8548, dated 11.11.1999 “On the ratification of the “European Charter of Local Autonomy”. http://kqk.gov.al/sites/default/files/publikime/ligji_nr.8548_date_11.11.1999-k.europiane_e_autonomise_vendore.pdf.

Tax System". These reforming changes have aimed at strengthening local governance and deepening the process of decentralization and local autonomy.

The quality of the local government bodies that were elected after the last reform for the territorial-administrative division of Albania and the approval of the law "On local self-government", as well as the problems that have been identified in the quality of the functioning of the principle of decentralization and local autonomy, are factors that have encouraged the beginning of the *third wave* for reforms in local government (Kume, 2021).

2. Albanian Legislation for Decentralization and Autonomy in Local Self-Government. Constitution of the Republic of Albania

The Venice Commission of the CoE recommends that some important aspects of local governance should be regulated by the Constitution. According to this Commission, the lack of such a constitutional regulation creates the possibility that the basic constitutional principles of local government will not have an adequate protection in the constitutional court, which affects the generation of legal conflicts between the bodies of local government and those of the central government, and difficulties in solving them¹. The Venice Commission emphasizes that the guarantee of some constitutional principles of local government directly affects the strengthening of local government. According to the opinion of this Commission, the inclusion of the principle of subsidiarity, "as one of the foundations of public administration affects the strengthening of local autonomy and its protection"². Meanwhile, the European Charter for Local Autonomy has determined that as far as possible, the guarantee of local autonomy should be provided by the constitution. Albania has implemented these recommendations.

The Constitution of the Republic of Albania, Part VI, article 108-115, is devoted mainly to issues related to local government. The Constitution of Albania defines the principle of decentralization and autonomy in local self-government as basic constitutional principles³. The Constitution defines that self-government in local units is exercised through their representative bodies and local referendums. In accordance with the European Charter of Local Self-Government, in Article 109 (1) of the Constitution, it is determined that municipal councils as representative bodies of the basic units of local government are elected once every four years in direct general elections by secret scrutiny.

The Constitution determines that the exercise of the right to a referendum must be done in accordance with the requirements provided by law.

Article 108 specifies that the local government units are municipalities and districts. Other local government units are regulated by law. According to the Constitution, the territorial administrative divisions of local government units are determined by law on the basis of needs and common economic interests and historical tradition. Meanwhile, it is important to emphasize that the Constitution defines the need for consultation and prior obtaining of the opinion of the population in any case where changes may be requested in the boundaries of local government units as a condition *sine qua non*⁴.

¹ Opinion on draft constitutional amendments to the Constitution of Georgia. the Venice Commission, (12-13 Mars 2010), CDL-AD(2010)028. f. 8. <https://www.venice.coe.int/webforms/>.

² The Opinion of the Venice Commission CDL-AD(2003)004 related to the amendments of the Constitution of Romania. <https://www.venice.coe.int/webforms/>.

³ Constitution of the Republic of Albania, Article 13. Local government in the Republic of Albania is established based on the principle of decentralization of power and is exercised according to the principle of local autonomy.

⁴ Constitution of the Republic of Albania, Article 108:

The constitution defines the municipality as the basic unit of local government. The municipality performs all self-governing tasks, with the exception of those assigned by law to other local government units.

Article 110 provides that the district (consisting of several basic units of local government) is the unit where policies for regional development are drawn up, in accordance and harmonized with state policies.

The Constitution stipulates that local government units have an independent budget, which is created in the manner provided by law.

Article 113 of the Constitution deals with the principle of fiscal autonomy, underlining that the councils of municipalities and districts have the right to handle and administer local issues, independently, within their jurisdiction. In addition to this right, the Constitution provides for the exercise of the right of ownership, the right to administer all revenues collected from local affairs, the right to exercise economic activity and the right to collect and spend the necessary revenues. According to this constitutional definition, local government bodies must have sufficient fiscal and financial resources, which they can use freely within the framework of their powers.

3. The Legislation that Regulates the Territorial Organization and the Functioning of the Local Government

3.1. Law no. 115/2014 “On the administrative-territorial division of local government units in the Republic of Albania

This law defines the territorial organization of local government units. According to it, the Republic of Albania is divided into 61 municipalities. The expansion of the territory of these municipalities was done with the aim of fulfilling the principles and standards, the implementation of which make possible the operation of local self-government based on the principles of decentralization and local autonomy.

In the drafting of this law, the Albanian legislator relied on all the experience gained in the previous administrative-territorial reforms. Part of this experiment are the results obtained in the framework of cooperation with different donors such as:

- The World Bank, which in the early 2000s carried out an in-depth evaluation of the Decentralization of Government in Albania, on the basis of which it proposed a series of reforms related to administrative and fiscal decentralization as well as territorial reform, where, among others, the recommendation for the distribution stands out asymmetric of the functions and responsibilities of local government units with reference to human and fiscal capacities.

- The Organization for Security and Cooperation in Europe (OSCE), the United Nations Development Program (UNDP) and the Swedish Institute for Public Administration (SIPU) which in 2005-2006 brought to attention the need for territorial administrative reform, connecting it with regional development and the creation of economic regions, as one of the prerequisites in the process of integration into the European Union (EU)

- The Project for Local Planning and Governance funded by the United States Agency for International Development (USAID) in 2012, in which the need for administrative reform is reiterated, closely linking

2. Administrative-territorial divisions of local government units are determined by law on the basis of needs and common economic interests and historical tradition. Their borders cannot be changed without first considering the opinion of the population that lives in them.

it to the improvement of decentralization in governance and the improvement in the provision of local services.

-Program for Regional Development financed by the Austrian and Swiss Development Agencies (ADA & SDC) in which the need for territorial and administrative reform is discussed and argued.

Based on this experience, the administrative-territorial reform was carried out (Law no. 115/2014). Its most important objective was to reflect in the legislation (i) the demographic changes, (ii) the increase in quality in the provision of services to communities, (iii) proportional representation of communities in democratic local government bodies, (iv) encouragement and support for local economic development

3.2. Law 139/2015 “On Local Self-Government”

In drafting the legislation for local government in Albania, a comprehensive approach was followed, which aimed at the constitutional guarantee for the organization and functioning of the local power and government. Such a legislative solution is similar to the one implemented in other European countries such as Italy, Germany, Switzerland, Spain, Poland, Kosovo, North Macedonia, Greece, Georgia, Romania, etc. (Panara & Varney, 2013; Mustafa & Karayığit, 2016; Morina, et. al. 2021).

The Intersectoral Strategy for Decentralization and Local Government approved by the Council of Ministers in 2015 and revised in 2018, defines national priorities and objectives that are intended to be achieved in the process of decentralization and autonomy in local government in Albania. In the framework of the national action plan and in accordance with these strategic priorities, the Assembly of Albania approved the law 139/2015 “On Local Self-Government”, which regulates the organization and operation of local government. The law defines the functions, powers, rights and duties of local government bodies. This law reflected the effects generated by Law 115/2014 “On the administrative and territorial division of local government units in Albania” according to which the territorial-administrative map of Albania contains 12 counties and 61 municipalities. This law abolished the local unit of the communes¹. According to this new division, the municipality, as the basic unit of local government, consists of urban and rural areas. For the internal organization of the municipality, the law provides for its division into administrative units, which, as a rule, in rural areas lies within the borders of the former communes.

The law elaborates the rights of local self-government units which enable the functioning of local autonomy as a whole of rules and responsibilities for the exercise of local power under the responsibility of these units and in the interest of the community.

Law 139/2015 addresses, for the first time in the Albanian legislation for local government, the principle of subsidiarity. Article 3 of the law stipulates that in order to realize effective self-government and as close as possible to the interests of citizens, the local government must take into account in every decision-making: (i) The existence, value, features and differences between the different identities of the communities that live together in the local unit; (ii) Respecting the basic rights and freedoms of citizens, sanctioned in the Constitution or in other laws; (iii) Provision of services and other local public facilities for the benefit and in accordance with the needs of the communities; (iv) Effective exercise of

¹ This definition of the law is not harmonized with the Constitution. Article 108 of the Constitution defines:

1. Local government units are municipalities or municipalities and districts. Other local government units are regulated by law.
3. The municipality and municipality are basic units of local government. They perform all self-governing tasks, with the exception of those assigned by law to other local government units.

functions and competencies in the performance of duties by local self-government bodies; (v) Encouraging the all-inclusive participation of citizens in local government.

Law 139/2015 basically did not bring radical changes as far as the internal organization of municipalities is concerned. The role of the Mayor and the municipal council and the relationship between them were not changed.

The Law “On Local Self-Government” is one of the main legal instruments that guarantees citizens the right to be informed and participate in the decision-making process. The provisions of this law are in accordance with the principles of the European Charter for Local Self-Government¹.

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One of the ways that the law defines for the participation of citizens in local government is citizen initiative².

Citizen participation in local self-government decision-making also finds support in the provisions of the law on community structures. Community structures are neighborhood community councils and the village council, which are established on the basis of citizen initiative organized on a voluntary basis.

3.3. Law 68/2017, “On Local Self-Government Finances”

This law is intended to ensure the financing of local self-government units in accordance with the principles of local autonomy, sanctioned in the Constitution of Albania, the European Charter for Local Self-Government and the law on local self-government. The law is a support to guarantee the transparency and predictability of transfers from the central government to local self-government units, the sufficiency of financial resources available to local self-government units, the fiscal autonomy of these units through the right to set and collect local taxes and fees as and contribute to sustainable economic, social and territorial development, through the definition of an effective mechanism for fiscal equalization. Although the law in an important part of it is aligned with EU legislation, it has not been possible to give an exhaustive legislative response to some important issues such as ensuring the fiscal capacity of local government units for the implementation of the designed strategies, planning financial resources for capital investments and unconditional transfer (Haxhimihali, et al. 2021).

The above three laws define as one of the main objectives of the decentralization reforms in Albania, *the need for the Local Government units to be able to provide the functions transferred to the citizens.*

This package of reforms, which defined the main framework of the decentralization of governance in Albania, was built on the assumption that the local government units, which would no longer have the opportunity to provide the transferred functions and responsibilities themselves, would use the alternative offered from the Constitution of the Republic of Albania and the Law on the Organization and Functioning of Local Government, to join each other, or to engage in interlocal cooperation.

¹Law 139/2015 “On Local Self-Government” Chapter VI “Transparency, Consultation and Citizen Participation”.

² Law 139/2015 “On Local Self-Government” Article 20 The right of citizens' initiative

1. Each community, through its authorized representatives, or no less than one percent of the municipality's residents, has the right to submit citizen initiatives to the municipal council for decision-making on issues that are within the jurisdiction of the local self-government unit.

However, with the exception of one case, voluntary mergers of local units did not occur in 6 years of their operation.

3.4. Law No. 102/2020 “On Regional Development and Cohesion”

This law aims to (i) define the special instruments and the institutional and financial framework for regional development and cohesion in the Republic of Albania; (ii) to determine the strategic and institutional framework for drafting long-term regional development policies in implementation of national policies, ensuring the promotion of balanced regional economic, social and cultural development; (iii) ensure that the policy-making authorities coordinate their planning activities to promote harmonized and integrated planning of the regions; and (iv) ensure the harmonization of sectoral strategies in a common regional development policy, supporting it with the relevant budget. The law defines the Albanian Development Fund as the public institution that provides technical support and performs the role of the secretariat of the National Committee for Regional Development and Cohesion.

The Law on Regional Development and Cohesion creates a suitable legal framework for cooperation between the central government and the local government. Meanwhile, it should be noted that the implementation of this law gives priority to the action of the principle of deconcentration. The law regulates the redistribution of decision-making authority and financial and management responsibilities between different levels of central government. It transfers power from central offices to peripheral offices of the same central administrative structure or transfers responsibility to local administrative units that are part of the central government structure. This is also the weakest form of decentralization.

4. Electoral Code of the Republic of Albania

The Electoral Code is the legislation through which political decentralization is realized or otherwise called democratic decentralization, in the sense that this Code supports democratization, by giving citizens or their representatives more influence in the formulation and implementation of local policies

The Electoral Code of the Republic of Albania approved by Law No. 10 019, dated 29.12.2008, amended by laws no. 74/2012, dated 19.07.2012, no. 31/2015, dated 02.04.2015, no. 101/2020, dated 23.7.2020, no. 118/2020, dated 5.10.2020, determines the conditions, requirements and procedures that must be followed for the election of local government bodies - the mayor and the municipal council.

The law recognizes the right to present candidates for mayor or for members of the municipal council to political parties or coalitions of political parties, which, in any case, present a common candidate for mayor or a joint multi-name list for members of the municipal council. The right to run for mayor or member of the municipal council is also available to any citizen with the right to vote, who lives in the respective local unit, and who is registered as an independent candidate. In order to register an independent candidate, the law provides for the obligation to support his candidacy by no less than 1% of the voters registered in the voter list in the respective municipality. Only those independent candidates who are mayors, members of the council of the relevant local government unit or MPs are exempt from this obligation. In this case, the candidate presents a written certificate, signed by the institution of the Assembly or the local government unit, which proves that he/she has held the mandate for at least the last 6 months.

Electoral Code in Chapter II “System of elections for local government bodies” Article 165 defines that:

- Mayors of municipalities as well as councils of municipalities are elected by direct vote by voters residing in the territory of the municipality
- The members of the municipal councils are elected on the basis of multi-name lists presented by political parties, coalitions, or candidacies proposed by voters.
- Electoral coalitions present only one common candidate for mayor and a list of candidates for the municipal council.

The mayor of the local unit is elected according to the majority system, with one round¹, while the members of the Municipal Council are elected according to the proportional system, with closed lists².

For other local government bodies, monocratic or collegial, which are expected to be established and function at the local level, the Electoral Code does not provide any statement. The establishment of these bodies is provided by Law no. 139/2015 “On local self-government”. In any case, these bodies are not elected directly by the community of voters of the respective municipality.

The election of the mayor through majority voting creates supporting conditions for the effective functioning of representative democracy at the local level. Despite this, emphasizing and noting the fact that the definition in the Electoral Code of the election of the Mayor, in a one-round election process, significantly reduces the effect of this election on the quality of representation. The placement in the Electoral Code of the condition “The first to win” has consequences for the quality of this representation. This condition considers normal the election of a candidate who does not have real, distinct and essential support in the community. The election of the members of the municipal council by voting for the closed list of candidates presented by the electoral subject significantly reduces the quality of the representation of citizens in the municipal council. The voter can choose only the subject, party or coalition of political parties. With his vote, he has no opportunity to express himself for the candidate or candidates he wishes to delegate the power to decide on his behalf.

The important changes made in the organization and territorial-administrative division of the country, with the approval of Law No. 115/2014 “On the territorial-administrative division of the Republic of Albania”, according to which out of 65 municipalities and 309 communes, the country was divided into 61 municipalities, brought negative consequences to the quality of representation of citizens in the elected local government bodies. The real possibilities of representation in these bodies turned out to be not the same for all communities that make up the municipality’s population. In particular, differences in the opportunities to be represented, with members in the municipal councils, have been identified between communities in rural areas compared to communities of citizens living in urban areas. Before the territorial-administrative reform, communities in rural areas were represented in the local government through their elected chairman and members of commune councils. The reform abolished the commune as a local unit and replaced it with an administrative unit, as part of the organizational structure of the municipality. For this structure, in the Electoral Code there is no provision regarding the election of its governing bodies. This issue has been regulated by the legislative body through the

¹ Article 166 The election of local government organs.

1. The candidate who obtains the largest number of valid votes of the voters of a local unit is elected mayor of the respective municipality or commune.

2. When two or more candidates obtain an equal number of votes, lots are drawn between them. The drawing is organized by the CEC in a public session with the participation of the candidates. The rules of the drawing are determined by the CEC.

3. The seats of the local councils are allocated by the CEC on the basis of the proportional system, in accordance with the same procedures provided in articles 162 and 163 of this Code. Neni 166 “Zgjedhja e organeve të qeverisjes vendore” rastin kur dy ose më shumë kandidatë marrin numër të barabartë votash, atëherë ndërmjet tyre hidhet short. Shorti organizohet nga KQZ-ja në një seancë publike, me pjesëmarrjen edhe të kandidatëve. KQZ-ja përcakton rregullat e organizimit të shortit.

relevant provisions in Law No. 139/2015 “On local self-government”. In this way, the structure that is closer to the community, the structure that has better and real opportunities to recognize the problems and demands of this community, especially in rural areas, is only an executive structure, which is built on the basis of the will and the Mayor’s decision-making. The electoral code, not treating as its object and duty the legal regulation necessary for the quality functioning of representative democracy even for such communities, has created spaces for action, with a strong political color, of the Mayor. The consequence of this is the creation of fragile relations of dependence between the elected Mayor and the local statesmen appointed by him, who are at the same time the main responsible for the administration of works in the interest and service of the community.

Among the legislative solutions that can serve to create supporting conditions for a more effective functioning of political decentralization in the local government, is to reconsider the electoral system according to which municipal councils are elected. Provisions may be included in the Electoral Code which will make possible the representation, based on the principle of proportionality, in the municipal council of the communities that live together in the local unit. This can be achieved by creating the opportunity for the voter, in addition to voting for the electoral subject competing with a list of candidates for the municipal council, to vote, with a preferential vote, also for the candidate of this list.

Conclusions

Legislative reforms for the organization and operation of local government in the Republic of Albania have aimed at solutions that are as close as possible to the standards, principles and requirements of international documents.

The principle of decentralization and local autonomy are sanctioned in the Constitution and constitute the two main pillars on which the legislative reforms in local government in Albania have been developed.

The implementation of the principle of deconcentration, as the lowest form of implementation of the principle of decentralization, conditions the need for further legal and institutional adjustments for the effective functioning of the principle of local autonomy, especially financial autonomy.

The effects generated by the administrative-territorial map on the quality of the proportional representation of communities in the elected bodies for local self-government can be reduced through the legal provision for preferential voting of candidates for the municipal council.

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