

## TOWARDS DE-CENTRALIZATION?

### AN ANALYSIS OF THE ENABLING ENVIRONMENT OF DECENTRALIZATION IN ALBANIA

**A**LBANIA IS CONSIDERABLY short of traditions of decentralized governance. The governance experience over the first decade of the liberal democratic system until year 2000 constitutes the **first wave of decentralization**. Adopted in 1998, the Constitution of the Republic of Albania states that "Local government in the Republic of Albania is founded upon the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy."<sup>1</sup> Articles 108 through to 115 of Chapter IV of the Constitution determine the level of local governance authorities, their creation and functioning as well as their constitutional rights and functions. Under this decentralization spirit, the Parliament of Albania ratified the European Charter of Local Self-Government in November 1999 to guarantee the incorporation of European standards in its national legislation. Adopted on 31 July 2000, the Law No. 8652, On Organization and Functioning of Local Governance, is a piece of organic legislation that guides the functioning of local governance of first and second tiers. Likewise, during this period, other important laws were adopted, including Law No. 8743, dated 22.02.2001, "On Immovable Properties", Law No. 8744, dated 22.02.2001, "On Transfer of State Immovable Properties to Local Government Units", and Law No. 9636, dated 30.10.2006, "On Local Tax System".

The **second wave of decentralization** has just started and is closely linked with the territorial re-configuration of the country as per the administrative-territorial reform. While the Government's electoral program envisaged a synchronized journey of the administrative-territorial reform and decentralization reform, a sequential approach was followed where the territorial reform preceded decentralization.

This document analyzes the overall trends of the environment in which the political, administrative,

and financial decentralization is gradually developing in Albania. Arguments are provided in consideration of the second decentralization wave, specifically the development of the Crosscutting Strategy for Decentralization and Local Governance 2014-2020 and the review of several major laws that affect local governance. The last section of this document provides few recommendations on improving this environment according to the principle of subsidiarity and local autonomy.

### POLITICAL DECENTRALIZATION

**A**CCORDING TO SCHNEIDER,<sup>2</sup> the political decentralization refers to the degree to which central governments allow non-central government entities to undertake the political functions of governance. In a nutshell, the political dimension of decentralization includes representation with particular focus in local elections, citizens' participation in the decision-making processes, quality of legal framework, and clarity of division of functions and competencies as well as the relationship between local and central governments.

Representation is achieved through the election system, which must comply with the five principles underlying Europe's electoral heritage, which are universal, equal, free, secret and direct suffrage. The following section elaborates on some findings on gender representation, representation in the regional council as well as few findings from the monitoring of the last local elections. Firstly, the Electoral Code of the Republic of Albania states that in local elections at least thirty per cent of the multi-name list and one of the first three names on the multi-name list shall belong to each gender. The 2011 Local Elections data obtained from the Central Electoral Commission<sup>3</sup> reveals that

1 Article 13 of the Constitution of Albania, [http://www.parliament.al/web/pub/kushtetuta\\_perditesuar\\_15171\\_1.pdf](http://www.parliament.al/web/pub/kushtetuta_perditesuar_15171_1.pdf) (Albanian version)

2 Schneider, A, Conceptualisation and Measurement of Decentralisation, *Studies in Comparative International Development*, Fall 2003, Vol. 38, No. 3, pp. 32-56.

3 [http://www.cec.org.al/images/stories/zgjedhje-vendore/2011/html\\_lshumemorore/110919\\_-\\_DTI\\_-\\_lista\\_keshill\\_2011.htm](http://www.cec.org.al/images/stories/zgjedhje-vendore/2011/html_lshumemorore/110919_-_DTI_-_lista_keshill_2011.htm)

out of 6,146 winning councilors to the councils of communes and municipalities (including the mini-municipalities of Tirana) only 12.3% were women; there were no winning women in 88 local government units; and only in 17 LGUs women succeeded at a rate of more than 30% of representation. The list of candidates running for mayor (including the mini-municipalities of Tirana) contained 872 candidates, of which only 14, or 1.6%, were women. Winners from this list counted to 384 individuals of whom 6, or 1.6%, were women. Thus, gender representation in elected local governance bodies is far from equal gender representation in political and public decision-making, as provided for in the Law on Gender Equality in Albania and in the country's commitment as a member state of the Council of Europe in the framework of Objective 4 of the Strategy on Gender Equality 2014-2017.

**Secondly**, Articles 49 and 50 of the Law No. 8652, dated 31.07.2000, "On Organization and Functioning of Local Governance", regulate local government units' representation in regional councils based on the criterion of population size. INSTAT data (of 2011 Census) indicates that a population of 77,075 inhabitants of the municipality of Shkodra is represented by 6 councilors in the Shkodra Regional Council, whereas 77,832 inhabitants populating 27 LGUs are represented by 43 councilors. The same situation applies to the Regional Council of Durres, where 8 councilors represent 113,249 inhabitants of the Municipality of Durres in the regional council, while 112,929 inhabitants of 14 local government units are represented by 34 councilors. This phenomenon is widespread all over regional councils. This procedure of distribution of mandates creates **inequality in representation** and violates one of the five core principles of European electoral heritage, which, according to the Venice Commission, includes the equal power of ballot.<sup>4</sup> Amendment of the procedure of election of regional council is indispensable.

**Thirdly**, in its final report on monitoring of local elections of 8 May 2011, the OSCE/ODHIR Electoral Monitoring Mission identified several elements that threaten representation in decision-making, such as (i) no specific provisions in the Electoral Code on the applicability of thresholds for the allocation of local council seats and (ii) The Law on Local Government does not regulate the number

of councilors to be elected in cities over 200,000 inhabitants. The new administrative-territorial reform will lead to the consolidation of several LGUs with a population of over 200 thousand inhabitants. It is necessary to establish the minimum threshold for representation in the local councils and determine the number of council members to be elected in municipalities with a population of over 200,000 inhabitants.

While the applicable legislation on local governance provides for , the latter is limited to information and consultation without ensuring mechanisms for active and continuous participation of citizens in decision-making. Article 35/1 of the Law on Organization and Functioning of Local Governance specifies cases when public hearings are mandatory. Yet, it does not contain clear provisions to regulate citizen participation in decision-making in the post-election period with regard to: (i) participatory planning; (ii) participatory budgeting; (iii) selection and establishment of priorities; (iv) addressing civic initiatives; (v) development of local policies; and, (vi) participation in monitoring and evaluation. Furthermore, the need to regulate and coordinate citizen participation in local decision making becomes even more essential in the conditions of territorial reorganization, which calls for a clear definition of the role of the village head and council.

**The process of consultation and cross-institutional relationship between authorities** of central and local governments needs to be regulated by legal provisions. This is essential when considering the fact that many sublegal acts affecting local governance are adopted short of a process of consultations with the associations of local elects and in violation of the spirit of decentralization and local autonomy. The vision to establish a consultative mechanism of central and local governance is a positive innovation. Yet, according to Recommendation No. 349 for Albania (2013) made by the Congress of Local and Regional Authorities of the Council of Europe, it is necessary to "introduce a specific provision in the Law No. 8652 aiming to formalize the process of consultation of local authorities by the central authorities, to ensure consultation 'in due time and in an appropriate way, on matters which concern them directly'".

## ADMINISTRATIVE DECENTRALIZATION

REFERRING TO SCHNEIDER AGAIN, administrative decentralization refers to how much auto-

<sup>4</sup> The Code of Good Practice in electoral matters developed by a group of experts of the Venice Commission and adopted by (i) Council for Democratic Elections on 16 October 2002; (ii) Venice Commission on 18-19 October 2002; (iii) Parliamentary Assembly of the Council of Europe in its first session of year 2003; and, (iv) the Congress of Local and Regional Authorities of the Council of Europe in its session in Spring 2003

my non-central government entities possess relative to central control. According to Falleti (2005)<sup>5</sup>, administrative decentralization comprises the set of policies that transfer the administration and delivery of social services such as education, health, social welfare, or housing to subnational governments.

**The quality of the legal framework** defining the status of local authorities and the clarity in determining the functions vary by function. In terms of **own (exclusive) functions**, the legal framework is almost complete, but the indicators of national standards or the costs per unit have not been defined yet for all services, thus affecting the projection of resources and spending as well as their monitoring.

There are no specific provisions on **shared functions** to clearly define institutional responsibilities. This deficiency has led to ambiguities, lack of efficiency, and overlapping authorities within a system, such as social housing, education, and has brought about problems in the cooperation between local authorities and deconcentrated institutions. The legislative ambiguities have become a hindrance to the enforcement of several competencies, such as those in the area of environment, healthcare, cultural heritage, etc.<sup>6</sup> In addition, **the role and functions of the regional council** are unclear and overlap with those of the prefect and some other regional institutions triggering weaknesses, confusion, and institutional conflicts.

Some indicators of the positive enabling setting of decentralization relate to the adoption of the new Law No. 107/2014, "On Territorial Planning and Development", which enters into force on 1 October 2014. This Law marks a step in the right direction, because Article 23 of Section III, "Coordination, Consultation, and Public Review of Planning Documents", states that public consultations and open meetings must be preceded by public notices and notifications. The public notification must be posted up in the premises of the planning authorities and in other places easily accessible by the public, and notification must be published in national or local electronic media and in local government newsletters or in two larger circulation national newspapers. It is obvious that this law clearly provides for the transparency, participation, and coordination.

5 Falleti, T. G. (2005). A Sequential Theory of Decentralization: Latin American Cases in Comparative Perspective. *The American Political Science Review*, 99(3), 327-346.

6 OSCE (2014), Analysis of Implementation of Shared Functions of Local Governments in Albania, Tirana

On the other hand, there is indication of disabling setting of administrative decentralization by means of acts and decisions that affect the principle of decentralization and local autonomy. **Firstly**, the Council of Ministers' Decision No. 932, dated 30.09.2013, "On Unification of Competencies of National Urbanistic Construction Inspectorate (NUCI) in Areas of National Importance and in the Territory" is issued in contradiction with the principles of decentralization and local autonomy enshrined in Article 13 of the Constitution. According to this Decision, NUCI is entitled to review the activity of the local territorial planning authorities. In its Decision No. 25, dated 28.04.2014, the Constitutional Court ruled that this decision is in conflict with the Constitution and has therefore repealed it.

**Secondly**, National Territorial Council's Decision No. 1, dated 22.08.2014, "On Harmonization of Local Planning Instruments Intended for the New Administrative-Territorial Division" conflicts with the principle of decentralization and local autonomy and instills a centralizing attitude. Urban planning is an exclusive (own) function of local governance. Therefore, the NTC decision runs contrary to the Article 10 of the Law No. 8652, dated 31.07.2000, "On Organization and Functioning of Local Governance", affecting the local governance's administrative and regulatory authority on its own functions. In addition, this decision is in contradiction with the Articles 27, 40, and 44 of the Law No. 10119, dated 23.04.2009, "On Territorial Planning". The processes of drafting, adoption, and implementation of local planning instruments as well as the issue of development permits are competencies of local governance. Likewise, this decision is in conflict with Article 4 of the European Charter of Local Self-Government, since local government unit's opinion was not solicited in advance.

**Thirdly**, the actions of regional education departments/education offices on hiring and firing of school principals are in violation of the Article 55 of the Law No. 69/2012, "On Pre-University Education System in the Republic of Albania" and in contradiction with the Instruction No. 57, dated 12.11.2013, issued by the Minister of Education and Sport. According to the OSCE Report<sup>7</sup>, the process of appointment and dismissal of school principals is not running on open competition by the evaluation committee whose membership includes a local governance representative. Failure to involve LGUs in this process affects their authority granted

7 Ibid

by law and renders it impossible for LGUs to hold school principals accountable on deficiencies in the maintenance of educational infrastructure.

## FISCAL DECENTRALIZATION

ACCORDING TO FALLETI,<sup>8</sup> fiscal decentralization refers to the set of policies designed to increase the revenues or fiscal autonomy of sub-national governments. The progress of the fiscal decentralization reform is unclear. The central government is committed to review the entire financial regulatory framework that guides the activity of local governance with the aim of increasing local revenues in their overall budget (vertical equalization) and improving the allocation of financial resources to various local government units (horizontal equalization).

The vision of the fiscal decentralization is still non-explicit. Major legal amendments affecting the fiscal decentralization will take place in a mid-term period (2015-2017). In consideration of core changes to the organization and structure of local governance, however, some issues need to be addressed in advance.

With regard to **vertical equalization**, it is necessary that the central government sets a target on the share of local governance revenues to the overall public revenues in Albania. Currently, this share is among the lowest in the region. Some of the targets to be established in the midterm include: 1. The **share of unconditional transfer** must be expressed as a percentage of overall budget income; 2. Changes to the **own source revenues** of local governments. The Law No. 181/2013, "On Some Amendments and Additions to the Law No. 9632, dated 30.10.2006, 'On Local Tax System'" changed the **local small business tax** to *simplified profit tax on small business*. With the adoption of this law, local councils have no authority on defining and administering this revenue. As a result, the local governments' regulatory authority to impose the rate of this tax and their administrative authority to estimate, collect, and control revenues from this tax have been seriously impaired. Furthermore, this law conflicts with the provisions of Articles 4 and 9 of the European Charter of Local Self-Government, since no consultation with local government units was carried out in the process of writing and adopting this law.

The immovable property tax is expected to be changed to value-based property tax. Yet, there is

no indication on eventual changes to the tax rate or the timeframes of this reform.

Thirdly, **application of tax sharing**, such as personal income tax (PIT) or value-added tax (VAT) helps vertical equalization. The collection of these taxes is, however, concentrated in the major cities and discussions should explore better ways of tax sharing for these taxes.

The only shared tax applicable for several years in the Albanian fiscal system is the tax on mineral rent.<sup>9</sup> The transfer of proceeds from this tax to the budget of beneficiary local government units has not, however, occurred to date. The Ministry of Finance stated publicly in a meeting with stakeholders in September 2014 that it would initiate some legal amendments that would reduce the tax share belonging to LGUs, but that it would also ensure that this share is transferred to the beneficiary local governments' budgets.

**Lastly**, during 2013 the Council of Ministers issued 64 decrees on the transfer of state-owned assets to the ownership of local government units as a source of revenues, but it is observed that the process of transfer of assets is discontinued

The **unconditional transfer** serves as the main source of income for the horizontal equalization to local government units in Albania. The equalization formula should be reviewed pursuant to the structure and distribution of new LGUs.

## RECOMMENDATIONS

### POLITICAL DECENTRALIZATION

- It is necessary that in local elections at least thirty per cent of the multi-name list and one of the first three names on the multi-name list shall belong to each gender to ensure balanced representation in local elections;
- Review the criteria of population for representation in the regional council in the Law on Organization and Functioning of Local Governance in order to ensure a fairer representation proportional to the size of constituencies;
- Establish the minimum threshold for representation in the local councils and determine the number of council members to be elected in municipalities with a population of over 200,000 inhabitants.
- Review the Law on Local Governance and guarantee citizen participation in decision-making in the post-election period with regard to: (i) par-

8 Falleti, T. G. (2005). A Sequential Theory of Decentralization: Latin American Cases in Comparative Perspective. *The American Political Science Review*, 99(3), 327-346.

9 Law No. 10304, dated 15.07.2010, "On Mineral Sector in the Republic of Albania".



ticipatory planning; (ii) participatory budgeting; (iii) selection and establishment of priorities; (iv) addressing civic initiatives; (v) development of local policies; and, (vi) participation in monitoring and evaluation.

- Reshape the mission, role, and functions of the head and council of villages in the conditions of the country's territorial consolidation;
- Formalize the process of consultation between the central and local governments in conformity with the Recommendation No. 349 for Albania (2013) made by the Congress of Local and Regional Authorities of the Council of Europe

#### ADMINISTRATIVE DECENTRALIZATION

- Establish national standards for services that are the responsibility of exclusive functions of local government units;
- Redefine the shared functions clearly and review the functions of the second tier of governance to avoid institutional overlapping and duplication with the institution of prefect and deconcentrated authorities;
- Abide to hierarchy of legislation and harmonize legislation with the principles of decentraliza-

tion and local autonomy when developing and adopting the sublegal framework on exclusive or shared functions of the local government units;

#### FINANCIAL DECENTRALIZATION

- Set a target on the share of local governance revenues to the overall public revenues in Albania;
- The share of unconditional transfer must be expressed as a percentage of revenues of the overall budget;
- The changes in the own source revenues for local government units must be consulted with LGUs and their associations in advance;
- Apply tax sharing, such as personal income tax (PIT) or value-added tax (VAT) to help vertical equalization;
- The local share of mineral rent must be transferred to the accounts of the beneficiary local government units in pursuance of the Law No. 10304, dated 15.07.2010, "On Mineral Sector in the Republic of Albania".
- Review equalization formula on unconditional transfer to facilitate horizontal equalization.

## INSTITUTE FOR DEMOCRACY AND MEDIATION

The **Institute for Democracy and Mediation** (IDM) is an independent non-governmental organization founded in November 1999 in Tirana, Albania. It works to strengthen the Albanian civil society, to monitor, analyze, and facilitate the Euro-Atlantic integration processes of the country and to help consolidate the good governance and inclusive policymaking. IDM carries on its objectives through expertise, innovative policy research, analysis, and assessment-based policy options.

IDM's choice of activities to achieve its strategic objectives is an effort to go beyond simple one-time delivery projects. They form part of a continuing struggle to strengthen shared values and efficient interactions across the broad spectrum of political and non-political actors in Albania. IDM is dedicated to developing a profound understanding of contemporary challenges so as to shape sustainable reforming strategies and public policies in key socio-economic and political development pillars and to advance regional cost-effective approaches in support of crosscutting cooperation initiatives of key actors based on comprehensive research, policy assessment and multifaceted analysis.

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