

Local government in Albania and Kosovo: comparative overview

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Abstract

The purpose of this article is to file the administrative-territorial reforms, conducted by Albania Republic, in a comparative point of view with some other countries, especially with Kosovo Republic as a result of their past. Looking at the historical evolution of reforms in these countries with different local governance systems, and analysis of the latest developments will give us a deeper knowledge about the topic. This comparison would address reforms of the political bodies of local government (such as those relating to political accountability and decision-making in local government),

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with regard to administrative structures, because only by looking at both sides of the currency of the local government can we get a complete picture of the changes and improvements to be made. The decentralization process and reforms, as well as the territorial and administrative reform (TAR) and its effects in the country, were subject to extensive debates among experts and the media, especially during last years .Comparison aims at providing knowledge about the terminology and concepts used in the comparison of countries and characteristics of each country in connection with the territorial administrative reforms carried out, followed by a reformation of the local government. This treatment is based on the legal framework of local government, taking a look at its changes over the years, analyzing and decentralization strategy. The article offers concrete conclusions based on the performance of this multilateral process and its implementation in local units of state.

Keywords: *decentralization, local government, territorial administrative reform, challenges*

I. A brief history of Albanian administrative-territorial reform

Albania is currently facing the progress of the economic situation, governance policies for its progress in the European Union (EU) integration process which is considered to be the most strategic national priority. To be part of the European Union, Albania must meet certain criteria such as the rule of law, the state of law, market economy, etc. However, Albania has gone through a period of extraordinary transformations in all areas. Integration process relies on the reforms undertaken by the Albanian state, which require its inclusion all actors in society. Local government, though not one of the key actors in managing this process, is again influenced by integration processes both in organization and in operation. As one of the links of power, it must be adapted to the changes and dynamics required by integration processes by bringing closer to the citizens the benefits of this process. However local government has a long history of its development immediately after the declaration of independence of Albania in 1912.

II. Decentralization in Albania

Decentralization is the right of local government but also the process where the responsibility regarding the exercise of a certain competence passes from the central to the local government. The higher the level of decentralization the better is the governance and effectiveness in exercising competencies. This

process is closely related to the principle of subsidiarity, according to which public responsibilities in relation to meeting the needs of citizens should be exercised by those bodies that are closest to the citizens. Decentralization as a process can be political, financial and administrative. As a rule, these three types go as a whole, because for an ideal decentralization it must exist in these three components, as power itself consists of these three components. In order to limit as much as possible the exercise of a public power that can be arrogant and unlimited in competencies, it has become possible for the local government and its bodies to be granted different rights in the development of their functions. to fulfill obligations to citizens. One of the ways of fulfilling the functions is the fiscal decentralization of these bodies, through which they can fulfill the obligations towards the citizens without being dependent on the central government. The right to impose local taxes and fees, to collect them and then use them according to the needs of the local government is certainly one of the most fundamental rights of local governments that gives them independence from the central government.

There are several types of decentralization, first of all we have *political decentralization* when the responsibilities related to the exercise of political competencies pass from the political authority at the center to the local level. This can be achieved through representation by local political offices of central political bodies. These local offices organize the work and activities of various political activities as well as local political elections. There is also *administrative decentralization* in those cases when the responsibilities for exercising certain public functions are transferred from central, to local bodies. This is achieved by laws or other special bylaws through which the transfer of competencies takes place. But this administrative decentralization also requires financial decentralization, as every law or sub-legal act also provides for the financial effects related to its implementation (Dobjani,E.2016) Thus financial decentralization requires the transfer of funds and the relocation of financial power from the center to the local level. Only through the provision of these funds, the provision of financial power, local bodies can meet the needs of citizens and respect the principle of decentralization provided.

Decentralization reform has progressed consistently during 1998 and 2000, based on Constitution (1998) European Charter for Local Self-Government and the National Strategy Decentralization, adopted in 1999. The most important step was approval and implementation of Law no.8652, dated 31.07.2000 “*On organization and Functioning of Local Government*” which sanctioned the rights and competencies with European Constitution and Charter for Local Self Government and that followed by other laws governing the activity of local government and consolidation of Autonomy.

Decentralization and related reforms are at the center of attention in transition countries and emerging economies. The debate about deepening decentralization through increased autonomy and greater responsibilities for local governments is largely based on applied economic theories, especially those related to public finance.

Objectives of good governance and economic gain seem to have also driven this process over the years. This approach has resulted in different forms of local government organization and different levels of fiscal, administrative, and political power transferred vertically from the central government to local governments.

In these circumstances, decentralization is 'traded' as an essential instrument for economic gain (Rodríguez-Pose, A. & Krøijer, A., 2009), since it brings with it the provision of goods and public services by local governments, in line with consumer-community-voter preferences. The fiscal decentralization in Albania is one of the most important reforms to democratize the country. This reform is aimed at a clearer division of functions and responsibilities of both levels of government, and in some way requires a degree of autonomy to local level. Autonomy brings responsibility, which means that the local government unit decides to carry the costs for citizens, and must take responsibility over the quality and quantity of the services offered. All these principles are the basic elements that should guide reform of fiscal decentralization in Albania, which is in the early stages of development.

To have performance for the implementation of reforms, the government program should focus on applicable implementation of institutional relations to and incentive mechanisms that can create a healthy framework of accountability for public service delivery at local level, affecting the ability of stability macroeconomic and storing it. A gradual increase in autonomy of local fiscal revenue, the authority to perform (freedom of establishment) applying parallel to the fiscal transparency and vertical control mechanisms, delivers improved efficiency and accountability. (Law 68/2017, "On the finances of local self-government").

Fiscal decentralization reform should be guided by the principle that "finance should follow responsibility." Membership in various international bodies has given a special priority to local government. In the center of this paper is the analysis of fiscal decentralization of local government, specifically addressing the priorities, competences and responsibilities assigned to this government during this complex process. Local government is regarded as government closer to citizens, and for this the increasing of its competence, financial resources and an active community participation in decision making will increase the responsibilities of power.

III. Some aspects of the reform and local governance in Albania

The Constitution of the Republic of Albania in its article 13 determines (Law 8417, dated 21.10.1998): *Local government in the Republic of Albania is established on the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy.* (Article no.3, Law no. 139/2015 “*On local self-government*”).

The fact that such a principle has a constitutional definition indicates the importance it has been given, at least from a formal legal point of view. According to this, local self-government through autonomy and decentralization has been sanctioned with the highest status, the constitutional one. According to the constitutional definition of the principle of decentralization, a step in its implementation was the approval of the National Strategy for Decentralization and Local Autonomy (DCM no. 615, dated 02.11.2000). The first decentralization reforms were registered following the approval of the European Charter of Local Self-Government, the principles of which were included in the Constitution of the Republic of Albania (1998), the approval of the National Strategy for Decentralization (1999), Law no. 8652/2000 ‘On the Organization and Functioning of Local Government’ and Law no. 8653/2000 ‘On the Administrative-Territorial Division of Local Government Units in the Republic of Albania’

In 2014, the Albanian Government undertook territorial administrative reform (TAR), with the main objective of improving service delivery to citizens. Rated as one of the main government reforms, the organization of local government in 61 municipalities created the premises for local government reform and deepening decentralization in the country. In this regard, the following acts were drafted and approved:

- ‘Cross-cutting Strategy for Decentralization and Local Government 2015-2020’ and the action plan for its implementation;
- Law no. 139/2015 ‘*On Local Self-Government*’ which, among other things, transferred to the municipalities an exclusive title and new functions;
- Law no. 68/2017 ‘which was further followed by law no. 106/2017 ‘On some Amendments and Addenda to Law no. 9632, dated 30.10.2006, ‘*On the Local Tax System*’.

The major demographic changes that characterized the history of the two post-communist decades, the fragmentation of local government in the delivery of local public services and the democratic representation of voters, poor efficiency in the delivery of public services, inability to promote and support local economic

development and inequalities among local units, were the basic arguments that led to territorial consolidation in 61 new municipalities in 2014³.

III.1. Basic features of local government organization

Based on the organization and functioning of local authorities, there are several characteristics that distinguish local government which are:

- Decentralization;
- Local autonomy;
- Subsidiarity;
- Competence.

Principle of Decentralization - Any government whether central or local operates on the basis of several principles, so that governance is more successful and flexible, so that citizens are satisfied with the services provided by central and local government bodies. Two of the most principles important of local government are autonomy and decentralization.

Autonomy means that local government bodies exercise their activity independently from central government. Constitution of the Republic of Albania, has sanctioned that local government is established on the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy. Decentralization and local autonomy have made it possible to increase the operational capacity of the bodies of local government in the exercise of public functions of a local character. Changes in the local government system for equipping with relevant attributes began as early as 1992 with the radical transformation of previous structures of local government bodies. Such an objective was set on a legal basis with The Constitution of the Republic of Albania and with the approval by the Assembly of the “Charter European Union of Local Autonomy”. (Law no. 8548, (1999) “On the Ratification of the European Charter of Local Autonomy”).

The principle of Subsidiarity - Relations between the bodies of government units local with central government bodies are based on the principle of subsidiarity and of cooperation for solving common problems. The foundation of the principle of subsidiarity is the principle of performing functions and exercising competencies at a level of governance as close to the community as possible, given the importance and the nature of the task, as well as the requirements of efficiency and economy.⁴

³ See arguments supporting the territorial and administrative reform, presented in: “*Reforma Administrative Territoriale, Analizë e Situatës së Qeverisjes Vendore në Shqipëri*”, (2014) Ministri i Shtetit për Çështjet Vendore.

⁴ Seen / https://idmalbania.org/wp-content/uploads/2015/01/manuali_i_observatorit_qytetar_2014.pdf, on 22.03.2021.



Therefore, it should be referred to self-government and local autonomy as the opposite of central government.

Legal Principle of Local Government Units - This is one of the most important principles important for the creation, establishment of Local Self-Government Units that should have the status of public legal entities based on an organic law for their establishment. Article 4 of the Law on Local Self-Government attributes to these local bodies the position of public legal entities as an important element for the development of the purpose and objective for which it was legally established.

IV. Some aspects of the reform and local governance in Kosovo

The competencies of local government are regulated by the Constitution of Kosovo and the Law on Local Self-Government. The purpose of this law is to enable the existence of a sustainable system of local self-government and to improve the efficiency of public services. In Kosovo, the competencies of the municipality are divided into proper, delegated and extended competencies. The organization of local government in Kosovo is based on the European principles of local self-government institutions. The municipal bodies representing the local government are the municipal assembly and the mayor. (Article 17 of the Law on Local Self-Government, of Kosovo)

The mayor is elected by direct vote of the citizens. The municipal administration is organized in directorates, which are headed by directors, who are appointed and dismissed by the mayor. The number of directorates varies from municipality to municipality, with a maximum of 14 directorates and a minimum of 4. Furthermore, municipalities have the right to enter into cooperation with other municipalities for the purpose of development and common interests. The activity of municipal bodies in terms of hierarchy is subject to control by the Ministry of Local Government Administration and other sectoral ministries. Proper (basic) competencies mean full and exclusive competencies that belong only to municipalities. To further protect the rights of non-majority communities in local governance, the Constitution stipulates that laws related to the boundaries of municipalities, their establishment or dissolution, the definition of the extent of municipal powers and their participation in inter-municipal and cross-border relations. Areas that are the competence of municipalities are related to services and daily needs of citizens or essential services, in order to ensure the proper quality of these services but also to regulate them according to the specifics and needs of citizens of certain geographical locations.

Some of the areas that are included within the proper competencies of municipalities are:

One of the main competencies of municipalities is *Local economic development*. Municipalities should ensure that they collect information and data on the state of the local economy, then analyze them in order to determine strategies and then implement them. Among the measures that can be taken for local economic development are: facilities for businesses; simplification of procedures for opening new businesses, tax exemption, strengthening the financial and economic management capacities of local municipal officials, support for businesses and farmers, stimulating the employment of citizens in municipal businesses in exchange for a degree exemption. tax incentives, local leadership to regularly visit firms to understand community efforts, fundraising from the municipal budget for investments in new businesses that cannot get loans from financial institutions, training of start-ups for management, marketing and planning skills, drafting strategies for reactivation and economic reintegration of the diaspora, attracting investors, foreign donors, etc.

IV. 1. Urban and rural planning

Municipalities determine the overall direction for their municipalities through long-term planning. Examples include assembly plans, financial plans, municipal strategic statements, and other strategic plans. The vision that it is achieved, is one of the most important roles of local government. The way the municipality uses its land also determines the process of its future development and statutory planning decisions are complex and often contradictory. Decisions concerning municipal property are responsibility of the municipal assembly, consequently members of the municipal assembly are required to be informed of the processes by which they are required to decide. Being clear about the roles they have is one of the key requirements for a good governance process. Strategic planning includes municipal development planning, regulatory urban planning and but also their amendment.

The Assembly approves these plans after the factual situation is recorded by the relevant directorates, usually the directorates for strategic planning and sustainable development, in cooperation with the property directorates, urban planning directorates or cadaster directorates, depending on the municipality. After completing the plans, they are approved by the municipal assembly. The approval of municipal acts related to urban and rural planning is regulated by Article 11 and 12 of the Law on Local Self-Government, Article 10 of the Law on Spatial Planning, the Law on Treatment of Illegal Constructions, the Law on Allocation and Exchange of Property municipal real estate, relevant municipal statuses, and relevant municipal regulations. Members of the municipal assembly should understand that the development planning of municipalities is important



for the future of the community where they live, so before making decisions they should first inform the citizens they represent about the project plans, then listen to the remarks and eventual advice, and finally review all the information they possess to make specific decision. This is very important because it often happens that something is proclaimed during the election campaign, while it is not mentioned at all in the plans of the municipality, and this also happens due to the lack of proper information of the members of the assembly.

IV.2. Provision and maintenance of public and municipal services

The local government is responsible for managing and delivering a range of quality services to their communities, such as water supply, wastewater treatment, local transport, public health, maintenance of recreational areas, local road maintenance and public libraries. The citizens themselves evaluate the quality of these services, so it is imperative that members of the assembly establish regular lines of communication with their community, in order to convey their remarks to the municipal executive. Assembly members can play a very positive role in the activation of citizens by processing their remarks or suggestions regarding municipal services. The population of municipalities in Kosovo consists mostly of young people, so members of the assembly should use the social platforms provided by the Internet in order to be as close as possible to the citizens and take into account their needs, so that services can be accessed as much as possible.

Unfortunately, although the Law on Local Self-Government provides that the exercise of competencies in this area is the exclusive competence of municipalities, in practice this is not possible as a large part of services are provided by public enterprises whose status is relatively defined independent of the municipality. However, members of the assembly should put pressure on these enterprises to provide the best possible services, as well as be informed about the ownership of public enterprises responsible for providing municipal services and the procedures to whom these enterprises are accountable. Information on ownership and procedures on how the municipal assembly can hold these enterprises accountable can be found in the Law on Public Enterprises and its amendments.

V. The relationship between local and central government (a comparative survey for both countries)

In the theoretical legal concept, the state exercises its absolute power over the citizens by forcing them, through coercion to respect legal norms in power. The state consists of all those state bodies which perform on behalf of and on behalf of the state certain state functions. The state body is the link relevant organizational

state, e.g. parliament, government, government, directorate etc. Each of these bodies has a certain role and position based on the competence that is provided by law or a sub-legal act. All these bodies exercise power state. State power has the ability to make decisions, to issue orders, to ensure their implementation also with the use and monopoly of physical restraint, in case this is necessary, punish those who violate the established order and to resolve in court also the various social conflicts. Based on form of state building, the Albanian state is a unitary state, in a regime democratic politics with the form of government of a parliamentary republic. Not always unitary states are centralized states, as a good part of the unitary states are decentralized (Omari, L.2015). Albania, as a unitary state, has governance organized on two levels, in central level and local level. Between the two levels of government there is one interdependence relationship. In general, it is the central government bodies, who takes strategic decisions, which are then implemented by local government bodies. The organization of these powers is clearly defined in the Constitution of the Republic of Albania and the relevant legal and regulatory framework in Albania. Relations between the bodies of local government units and their relations with the bodies of central government are based on the principle of subsidiarity and cooperation for solving common problems. Pursuant to the main legal framework, several other bylaws have been adopted, which for the most part focus on the application of the principle of local autonomy, although their implementation often has left to be desired. On the other hand, Albania's membership in the Council of Europe and the approval of the European Charter of Local Autonomy is a legal obligation to respect the principle of local autonomy. (Article 114, Constitution of the Republic of Albania). The Charter provides that: The principle of local autonomy should be recognized in domestic legislation and, if possible, by the Constitution. On the other hand, Article 13 of the Charter stipulates that the principles of local autonomy contained in this Charter apply to all categories of local communities that exist in the territory of the signatory state. The executive power, or the government with all its administrative apparatus takes care of many areas, taking initiatives, creating institutions, controlling, etc.

VI. The situation of Kosovo

The central government has a certain relationship with the local government. The ratio between central and local government, in the sense of the Law on Local Government is built mainly on the basis of local government's oversight and control by the central government. Supervision of local government, respectively relevant municipalities is carried out by the relevant Ministry of



Local Government. Supervision of municipalities by the central government is administrative oversight. The administrative oversight of municipalities has several objectives which are defined by the Law on Local Self-Government. These objectives are to strengthen the ability of local self-government bodies in fulfilling their responsibilities through counseling, support and assistance; ensure the legality of the activities of local self-government bodies; ensure that the rights and interests of citizens to be respected. Administrative oversight by the central government, always is done in accordance with the Constitution of the Republic of Kosovo and the Law on Self-Government Local and in no way can it exceed the principle of constitutionality and legality. (Article 74. Law no. 03 / L-040 on Local Self-Government, Republic of Kosovo).

Administrative oversight of municipalities cannot infringe and restrict the rights of municipalities and other local authorities in the management of matters which are guaranteed by law. Review and administrative supervision of municipalities no may infringe and restrict the rights of municipalities and other local authorities in the management of matters which are guaranteed by law.

As stated above, the supervision of municipalities is done by the relevant ministry for local government. The mayor is competent to make them available all information to the supervisory authorities, within the supervisory process of municipalities in the Republic of Kosovo. There are two types of oversight administrative supervision of municipalities and that: consideration in the field of own, extended competencies limited to review of legality and review in the field of delegated competencies, relating to the examination of the lawfulness and appropriateness of actions. The appropriateness of actions in this case is not clarified in the Law on Local self-government, but implies the appropriateness of actions, in the report with the actions of municipalities, based on the framework legislation. An important part of the administrative review of municipalities by central government, as mentioned above is the review of legality. Law on Self-Government Local in the Republic of Kosovo defines two types of review of legality and those are:

- Regular review of legality.
- Mandatory review of legality

All acts of the municipality are subject to regular review of legality, that approved by the mayor and the municipal assembly. Acts which are subject to review regular legality are acts that were issued in the previous month and the same must be submitted for review by the tenth (10th) of each month. On the other side, the following acts are subject to mandatory review of legality: general acts approved by the municipal assemblies; decisions regarding activities joint partnerships

for cooperation; adopted acts within the framework of the implementation of delegated competencies. All acts that are subject to mandatory review of legality are sent to the supervisory authority, within seven (7) days from their issue date. The supervisory authority conducts the review within 15 days, from the act's issue date. After sending the acts for review by the municipality, the same are recorded and sent to the Legal Department for Municipal Monitoring, within the relevant ministry for Local Self-Government. (Article 6.2. Regulation No. 10/2019)

In the context of the control of municipalities by central bodies, it is important to emphasize that the Assembly of the Republic of Kosovo, the President, the Government, and the People's Advocate have the right to raise in the Constitutional Court the compatibility of the municipal statute with the constitution. This competence enables the main state bodies through the Constitutional Court to assess whether the statute of a respective municipality is in accordance with the provisions of the Constitution of the Republic of Kosovo. Until now, since the establishment of the Constitutional Court of the Republic of Kosovo, there has not been a single case when the central bodies have raised the compatibility of the statute of a municipality in the Republic of Kosovo with the Constitution.

VII. Conclusions and Recommendations

The last three years were characterized by important steps towards the decentralization of governance from the central to the local level within the framework of the National Strategy for Decentralization and Local Governance 2015-2020. The implementation of these reforms had as a common denominator the empowerment of local government and the improvement of the quality and efficiency of local public service provision. The analysis of available data and indicators suggests that the biggest barrier to further progress lies in the low level of local financial autonomy. Reliance on intergovernmental transfers from the central government may have stimulated the somewhat lazy and opportunistic behavior of the municipalities. Given these circumstances, and to meet the intended goals of the reforms, policymakers should reflect on the following recommendations:

- Establish a clear division of competencies and responsibilities for the provision of public services.
- Establish a clear connection between sources of revenues (what constituents pay) and the services and investments realized (what constituents receive).
- Effectively deepen fiscal decentralization to enable accountability, transparency, and accountability to the community by ensuring a certain equilibrium between responsibilities and rights of citizens and decision-making powers.



- Strengthen information, monitoring, and accountability mechanisms; and
- Increase central and local institutional capacity to build and implement a successful decentralization model.

Though it is still too early to draw conclusions, the increase in overall expenditures (and personnel expenditures in particular) does not align with the main objective of the TAR – increasing operational efficiency and shrinking administrative costs. In the allocation of investments, the adoption of a bottom-up approach could create better conditions in which to address the needs of the communities that the municipalities represent. The expenditure level is just one side of the equation, and the only side that can be assessed with the data currently available. We cannot yet assess whether expenditure growth has translated into improvements in the quality of local public service provision. In conclusion, territorial changes need to be subjected to a study of economic and social character, by experts in the field on the basis of well-defined criteria based on perspective developments and avoiding the interventions and interests of political parties.

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