

## **GOVERNMENTAL DECENTRALIZATION IN THE ALBANIAN LEGAL AND FISCAL DIMENSION CASE STUDY (ELBASAN MUNICIPALITY)**

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**ABSTRACT:** *The administrative and executive activity of the state is so vast and multilateral, that it cannot be carried out or borne by just the central public administration bodies. Therefore in addition to state bodies of the central government as part of the public administration bodies a number of local administration bodies are set up and they represent the links of the Albanian Republic administrative device. The local government is a very important topic among citizens and this because we are directly or indirectly affected by it. This not only because we pay the local taxes that fill the offers of the local government, but also through the services that we as users and consumers receive from it. The development of local units promotes the development of natural resources and the will of sharp minds to do something new and better. Albania has already been introduced to the path of the European integration reforms, which are dictating essential structural and social-economical changes, where among other things there is also included the decentralization and local autonomy. As regarding to decentralization, it has emerged as a need to delegate responsibilities from central to local level and its aim is to improve governance. Having these responsibilities and powers in most of the cases has helped increasing the power efficiency, the level of democracy, the distribution of responsibilities and bringing the decision-making closer to people. However the decentralization process has mostly helped to increase the quantity and quality of services offered to citizens and in this way responding in a better way to their needs and interests. To talk about the local government decentralization, means to treat a much discussed problem, which remains evasive in some aspects, and sometimes difficult to understand. For this reason, in this article we will be briefly introducing the meaning of decentralization in the Albanian dimension. We will also concentrate on the achievements in the legal and fiscal aspects as well as the advantages and disadvantages of this process.*

**KEYWORDS:** *Decentralization, Legal process, Fiscal process, Achievements.*

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## ENTRY

Decentralization is one of the main constitutional principles to ensure the best performance in the organization and functioning of local government. Decentralization is the transfer of the authority and responsibility of public functions from central to local government or other local organizations<sup>3</sup>. It can be defined as the transfer of responsibility for planning, management, fundraising and their allocation by national government and their agencies on lower levels of government<sup>4</sup>. It represents the citizens' right to participate in the administration of public affairs because this right is exercised directly and efficiently in the local level. Referring to the organic law of Albanian local government, decentralization involves the transfer of authority for specific functions from central government to local government<sup>5</sup>.

### Forms and types of decentralization

There may exist different forms of decentralization within a country (and there is no doubt that sectors within a country can be characterized by different forms of decentralization).

#### Deconcentration

It occurs when the central government divides responsibilities for determined services with its local administration. This is the most probable form of decentralization since it does not involve any real transfer of authority to local government. Ministry of Finances and other ministries represented in districts such as Budget Department, the Treasury Department and the Education Department practice this thing in Albania.

#### Delegation and transfer

The delegation term refers only to those cases where a government institution trusts another one some or all of the functions and responsibilities assigned to under the law. There is no temporary shift of authority. The original organization holds all the authority and the responsibilities for the function in question. He has the right to withdraw the delegation. The delegation can involve all aspects of a particular function and it usually involves only isolated aspects. An example of its application in Albania is the case of economic aid service executed by the local government units.

The transfer is a more extensive form of decentralization, where the central government transfers the decision-making authority, the financing and management services to local governments which have clearly and legally accepted jurisdiction over whom they exercise authority. Transfer is the form of decentralization that can lead to true local self-government. This form is not fully applied in Albania.

### Legal, institutional context and main principles of the decentralization process

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<sup>3</sup> Article 13 Constitution of the Albanian Republic (law number 8417 date 21.10.1998)

<sup>4</sup> E Drejta Administrative, Ermir Dobjani, page 151

<sup>5</sup> Law number 8562 date 31.07.2000 "For the organization and the functioning of Local Government"

Central government units rely mainly on two most important acts that constitute the core of the legal framework, the Constitution of the Albanian Republic and the Organic Law on the Functioning of Local Government Units. In a summarized way, some of the most important acts that also form the legal framework of local government are:

- The Constitution of the Albanian Republic
- European Card of Local Autonomy
- Law number 8652 date 31.07.2000 “On the Organization and functioning of Local governments”
- Other laws related to certain functions of local government units in the implementation of the organic law number 8652 date 31.07.2000 “On the Organization and Functioning of Local Government Units”.

The main principles on which the process of decentralization is based

One of the main constitutional principles upon which governance is organized is the principle of separation and independence of powers implying here even the organization of government in local and central levels. The relations between the central government bodies and the local ones are generally guided by the principle of subsidiarity and cooperation in order to solve common problems. In this sense the self-organization of local government in some levels and units aims to provide governance in the closest level possible to the citizens and community. For this local government bodies act and perform the functions and exercise powers in order to provide direct public services to the citizens and the community and this by facilitating access to information, administrative procedures, access to services, consulting etc.

In this context, direct funding of public services from its own resources such as taxes and fees and their payment with simpler procedures by the taxpayers take up special importance. In order to ensure the implementation of these general constitutional principles, flexibility in their organization, exercising powers with efficiency in the public services, access and benefit of the citizens from them on the one hand and local government on the other hand, they were given the right to govern and decide independently, to create administrative structures for the exercise of its functions based on the Constitution and law. It was as well given other rights such as the ownership and exercises of economic activity, the right to place and collect local taxes, the right to carry out costs etc. on this basis they make approval of budget and the long and short term priorities of national development in accordance with the policies and programs of the central development. In this general Constitutional context Albania respects and has made it integral part of its internal legislation and general principles of international law by signing and ratifying the European Charter Law on Local Autonomy<sup>6</sup>(Self-Government) and other international documents of the European Council etc. The European Charter of Local Autonomy (Self-government) ranks the financial resources of local communities as follows:

Local Communities have the right in the context of county’s economic policy to have sufficient own resources which they can dispose freely in the exercising of their powers. Financial resources of the local communities should be proportionate to the powers provided by the Constitution or by law. At least a portion of the financial resources of local communities should be provided by the local tax obligations, whose percentage they have the power to define

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<sup>6</sup>The European Charter Law on Local Autonomy (Self-Government) was signed by Albania on 27.05.1998, and ratified on 04.04.2000 and came into force on 01.08.2000

themselves under the limits that law allows. Financial systems upon which local communities possess resources should have a varied and evolving nature, which allows them to follow the evolution of the real practice of exercising their powers. Protection of the most vulnerable local communities in the financial way requires the establishment of financial regulation procedures or appropriate measures which aim to correct the effects of unequal sharing of potential funding sources and responsibilities belonging to them. Such procedures or measures should not reduce the freedom of local communities in their area of responsibility. Local communities should be asked for their opinion at the right time, on ways of acquiring redistributed sources. The granting of subsidies should not violate basic freedom of local communities' policies in their area of competence. In order to finance their investment spending, local communities should enter according to law in the national capital market. Based on these principles the law number 8652 date 31.07.2000" On the Organization and Functioning of Local Government" establishes that local governments have the right to: *create, collect incomes and carry out expenses in order to fulfill their function. Impose taxes and fees for services and their level in compliance with the legislation and the community interests. Formulate and implement their budget.*

The national financial policies guarantee the functioning of local government units and are based on the principle of diversification of income sources. Local government units are financed by revenues from taxes, fees and other local revenues, funds transferred from the local government and funds transferred directly from shared national taxes. Local government units are guaranteed by law sufficient authority to create revenues independently. Starting from 1<sup>st</sup> January 2001 communes, municipalities and regions exercise the right of imposing taxes and tariffs set by law. They have full autonomy to set local fees for the following categories:

- a) Fees for public services
- b) Fees for the use of public goods, excluding those produced by the central government
- c) Administrative fees for licenses, authorizations, certificates and official documents

### **Fiscal decentralization in Albania under the spirit of the European Charter**

In this context, the Albanian Parliament in 2002 passed the Law number 8982 date 12.12.2002 "On the Local Tax System" which realized a very important step towards fiscal autonomy of local governments, as a prerequisite to ensure their fiscal autonomy with much more incomes from direct sources. This system is one of the main pillars of local autonomy and independence of decision making in the planning and implementation of policies that are supported now by independent budgets which are administered directly by the decisions of the local units. Other sub-legal acts have been adopted under this fiscal decentralization whose aim is to establish co-operation between central and local government and more specifically the establishment of good management of local taxes and fees. In accordance with constitutional principles and political commitment of the Albanian state for overall reforms in general and the modernization and decentralization of specific sectors, the Parliament adopted Law number 8652 date 31.07.2000 "On the organization and Functioning of Local Government". Article 74 of this law sets the timeframe of 1<sup>st</sup> January 2001 as the time when local governments should start exercising independent fiscal powers given by this law. But this last is an organic context law which only started the local decentralization reform in general and in particular the fiscal one. This because the transfer of these powers is related to the need of current legislation harmonization with the general principles of decentralization and the planning of legal and sub-legal acts, sectorial that abolished the legislation obstacles, or the inconsistencies that it has with the documents of

decentralization. For this purpose the Council of Ministers planned and approved the National Decentralization<sup>7</sup> Strategy as a policy document and concrete action agenda which defines main lines for the extension of decentralization reforms in various sectors of the state. For this purpose as well structures are set up and are actually operating in order to encourage and promote the continuation of the reform. They ensure the implementation of action plans for specific areas, coordinate work between state bodies concerned with the process and representatives of local government units in order to facilitate their direct participation in these reforms. Such are the inter-ministerial committee of decentralization and the expert of the decentralization<sup>8</sup>. The autonomy of fiscal decentralization was assessed as the growth premise of fiscal autonomy of local governments and this last as a basis of independent exercising of all other public functions, which are already financed by their own resources. So the experts recommended that many of the local taxes defined by law number 8435 should be redefined as fees in conformity with the local power law. Tax level and their base had to be adjusted in order to respond to economic conditions. The general recommendations of the experts focused primarily on: a review of concepts (taxes, fees and national and local taxes) reviewing the autonomy of local government on the basis of incomes, tax levels and administration<sup>9</sup>.

### **Case Study: Water and sewerage system transfer under the ownership of Local Government (Elbasan Municipality and Elber Ltd)**

Insufficient funding and the slow pace at which the old practices change have left the Water and Sewerage sector in a difficult situation. Although defined as one of the priorities of central government and assigned by law to be provided by local government as one of its own functions, the drinking water supply sector and sewerage has continually been having problems of qualitative and quantitative aspect. The case that we are going to deal with refers to “Elber” Ltd Company which provides water and sewerage in Elbasan city by providing network coverage in 99.6%. In this case we are going to analyze the reasons why this company has not yet passed into local government ownership and the benefits it would achieve in case it was transferred to the relevant municipality. Given that this transfer is the joint responsibility of the Ministry of Transport, Public Affairs and Communications (MTPAC), Ministry of Economy, Ministry of Finance and with their joined order they set up the working group which prepared all the necessary acts to transfer the real state property of W-S<sup>10</sup> to the local government units. In order to completely transfer the ownership and the management of companies from central government units towards the local ones the working group planned it and then the Council of Ministers<sup>11</sup> approved it. This transfer will be accompanied by several challenges which are mentioned as follows. Challenges of transfer:

<sup>7</sup>National Decentralization and Local Autonomy (Self Government) Strategy, DCM number 615 date 02.11.2000.

<sup>8</sup>This law was the result of the expert group's work who conducted 12 regional meetings for this purpose. These 12 regions are: Berat, Durres, Dibra, Elbasan, Kukes, Lezha, Fier, Korca, Gjirokastra, Shkodra, Vlora and Tirana.

<sup>9</sup>These conclusions are detached from the studies of “Tax and fee system in Albania – Options on policies and recommendations for reforms” of the Institute of Contemporary Studies and the Urban Institute part of the program “Support for local governance in Albania”.

<sup>10</sup>Water -Sewerage

<sup>11</sup>Decision number 677 date 03.10.2007”On some changes and amendmentsto the decision number 642 date 11.10.2005 of the Council of Ministers”, Decision number 678 date 03.10.2007 ”On amendments to decision number 271 date 09.05.1998 on the Approval of the Statute of state joint stock companies”



- W-S companies will repay all the outstanding obligations and that with a special fund from the state budget.
- Payment of overdue debts in the W-S<sup>12</sup> companies.
- The gradual elimination of annual subsidies for W-S companies within 2009-2015.

In the case of Elber Ltd this transfer has not been possible due to some financial difficulties of the former W-S company which offered this service in Elbasan city. It was considered reasonable the signing of an agreement contract with the participation of the private sector. What would we obtain in case Elber Ltd was transferred to the Elbasan Municipality?

- Increased responsibility of local government towards citizens.
- Increased effectiveness of public investments.
- Increased percentage of revenue collection.
- Increased overall management of the company.
- Reduction of illegal interventions.

Among the negative effects that this transfer could bring we find:

- A kind of confusion in competences and relationships between local and central government.
- Financial difficulties it would face after removing the central subsidies.
- The management capacities of local government.
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Leaders and local experts expressed a somewhat high level of uncertainty regarding the process of passing these enterprises to the respective municipalities and how to regulate the relationship between the two levels of government, some municipalities and communes and the enterprise itself. It is understandable and almost accepted that this process has encountered legal obstacles and shortcomings in transparency. It is also present the concern that the politics would influence it. Our opinion is that the transfer of public assets should be accompanied by appropriate financial support to carry out investments, to properly manage the risk of failure and to establish appropriate regulations for the management of these enterprises. The commitment of leaders and local experts in the familiarization of specific legislation related to the organization and management of JSC type enterprises is very important in order to recognize and exercise the new role and relationships that they have with the central government and other instances. First they should set a deadline and after that punishment measures. Eventhough it is a long duration process the citizens' responsibility for their rights and obligations under the new conditions should become a priority for the municipalities and the former W-S companies.

## CONCLUSIONS AND RECOMMENDATIONS

We think that it should be noted that in terms of the decentralization process of governance is the fact that this process should be realized in accordance with the specific characteristics of the country, paying particular attention to the harmonization strategy according to cultural, social, and economic local functions. It is never possible to apply a strategy without first adopting it to the specific conditions of the country even though a similar strategy may have been successful in another country. The process of implementing changes in the administrative-territorial division of local governments is one of the mechanisms that should be used in the reforming process

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<sup>12</sup> DCM number 660

related to the role improvement of local government in order to be able to better respond to the fulfillment of the functions that they are transferred to in the decentralization process. An intensive work should be done in order to develop and support the inter communal cooperation as a useful measure to improve the fulfillment of its functions and competences transferred to local governments especially those of first level in the quantitative part and their alignment, and in particular the implementation of the highest standards in zonal levels. These and many other mechanisms which the return to local governments and their governing bodies requires, should all accompany each other through the entire process. Decentralization is a process mainly useful for the development of democracy and for increasing the efficiency of local government. The constitution, the laws and the regulations should codify the form of a decentralized system functioning. Relations between central and local government should be more complex. Laws and regulations should clearly define the devolved political responsibilities in certain governing segments. With the increasing degree of decentralization it should and can also increase the community participation in decision making. Country's vital functions should not be decentralized.

### References

- E Drejta Administrative, Ermir Dobjani.
- The Constitution of the Albanian Republic
- The European Charter of local Autonomy (Self Government)
- National Strategies of Decentralization
- The law on local government finances
- Statistical reports from INSTAT
- Reports from ITAP
- The Hungarian Public Administration in the system of state organs, Prime Minister's Office Budapest 2005.
- Local-Government Non-Tax Revenue Sources in Transitions Countries by Zeljko Sevic
- Law number 8652 date 31.07.2000 "On the Organization and Functioning of local government"
- Law number 8653 date 31.07.2000 "On the administrative-territorial division of local governments of the Republic"
- Law number 8743 date 22.02.2001 "On county's real estate properties"
- Law number 8982 date 12.12.2002 "On local tax system, the changed one"
- Other laws related to certain functions of the local government units in the implementation of the organic law number 8652 date 31.07.2000 "On the Organization and Functioning of local government"