

3.1.4 Decentralisation process

3.1.4.1 Legal framework

The Albanian local Government system remains highly centralised.

The introduction of local self-government in Albania began with the *Local Government Act 1992*. Despite this reform, the Albanian local government system has remained highly centralised. However, the Constitution of 1998 gave a new impulse to decentralisation. The government adopted in November 1999 a “National strategy for decentralisation and local autonomy” prepared by a newly created National Committee for Decentralisation, supported by experts commissioned by USAID. This resulted in a package of legislation.

According to the Constitution of November 1998, Albania is a “unitary and indivisible state” (art.1) in which local government is based on the “principle of decentralisation” and exercised according to the “principle of local autonomy” (art.13). The coexistence of Albanians with ethnic minorities is enshrined in the Constitution, whereby the State has the duty to protect them (art.3); members of national minorities have the right to express and preserve their culture, and in particular they have the right to be taught in their mother tongue (art.20). These provisions are of special interest for the Greek-speaking minority in the southern part of the country: Greek-speaking representatives may have the majority of seats in some communes. Albania joined the European Charter on Local Self-Government in May 1998.

Communes are the basic local government unit.

Part 6 of the Constitution is devoted to local government. Units of local government are municipalities or communes, and regions (*qarqe*); others may be created by the law. Communes and municipalities are the basic units of local government; this means that they perform all self-government duties, except those devolved by law upon other local government units. Self-government is exercised in the local government units by representative organs and by referenda. Whereas representative organs and the mayors are directly elected in communes and municipalities for three years, members of regional councils are delegated by local councils, in proportion to their population, and include all mayors of the region (art.108-110). Units of local government have an “independent budget” (art.111); this means a budget for independent functions, which are a small part of the bulk of functions performed by local government. Organs of local government may refer to the Constitutional Court, which is competent to adjudicate on competence conflicts between central and local government, and to assess the compatibility with the Constitution of normative acts of central or local organs (art.131 and 133).

A Prefect is appointed in each region by the government (art.114); he supervises the legality of regulations and decisions adopted by local government units, and coordinates local offices of central

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government ministries. From September 2000, the audit of local government has been transferred to newly created audit departments of the 12 prefectures of the country, and the 170 civil servants of the regional branches of the Supreme Audit Institution (SAI) are now subordinated to the Prefects.

The legislation package could not be fully passed by the end of 2000 as expected, because of the succession of electoral campaigns (parliamentary elections of 21st June 2001, presidential election by the parliament of 24th June 2002, and local elections of 12th October 2003) and of political struggles between the two political blocs (led by the Socialist Party and the Democratic Party). The local elections of 2003 maintained the socialist leadership in the majority of local government units, but were challenged by the Democratic Party although they were recognised as valid by international observers. The results in Tirana were invalidated by the central electoral commission on December 3rd, and a new ballot took place on the 28th of December in 118 voting centres (among 346) for the election of the mayor and councillors.

Several taxes have been created for local government to finance responsibilities.

The main elements of reform are three laws of July 31st, 2000: the new Local Government act, the act on the special organisation of Tirana, and the act on the territorial division of the territory. In 2001 two new laws, on immovable properties, and on the transfer of state properties to local government, were passed. Two other laws were proposed but not passed: the amendments to the law on prefectures, and to the town planning act. The law on recognition, compensation and restitution of property is still pending, and will have impacts on municipal property. Three laws of 12th December 2002 reinforce the financial basis of basic local government units as a consequence of the transfer of tasks given effect by the new local government act: the law on the local tax system (No. 8982); the law on the local tax on small business (No. 8978) and the amendments to the income tax law (No. 8979); these pieces of legislation were completed by provisions of the law on the state budget 2003.

The law on recognition, compensation and restitution of property is still pending.

Local Governments lack human capacities

However the main challenges remain the lack of human capacities at the local level, made worse by the turnover of personnel after each election, the transfer of tasks without due resources, and pervasive corruption, all of which undermine the protection of local self-government rights and powers.

3.1.4.2 Institutional framework

Albania is divided into 12 regions and 373 basic units of local government, including 65 municipalities and 309 communes, plus Tirana.

Communes are *de facto* federations of villages, although villages are in law subdivisions of communes; municipalities are local

The size of Tirana has approximately doubled in the ten years to 2003

government units of urban areas and they are subdivided into sections (*lagje*), they may include villages as well. However, only villages have to elect their own representatives, the leadership (*kryesia*), which in turn elects its chairman (*kryetar*), which is the village authority; the leadership is advisory to the chairman. In sections there is a public officer appointed by the mayor. The chairman and the leadership of the village support the governing functions of the commune and take care of the economic conditions, the use of common resources and the “social harmony” of the village. There are more than 3,000 settlements, of which nearly 2,400 have less than 1,000 inhabitants. There are 80 basic units over 10,000 inhabitants, most of them being municipalities; 3 municipalities have more than 100,000 inhabitants. The population of Tirana has grown rapidly after the political change, now exceeding 600,000 inhabitants compared to 350,000 in 1992. Tirana is divided into 11 boroughs, with their own elected council and mayor. The capital city has no special responsibility in law. The law on Tirana provides for the distribution of functions between the city and the boroughs.

According to article 7 of the local government act (No. 8652), local government units are allowed to take any initiative of public interest, as long as they do not infringe on the competence of other authorities. The rights of local government units are set out in article 8 and articles 9 to 12 are devoted to responsibilities of communes and municipalities.

Communes have a wide range of functions.

The law distinguishes “own functions” of communes and municipalities from those of central government (art.10), joint functions (art.11) and delegated functions (art.12), and gives for each category a definition of functions. In relation to “own functions”, communes and municipalities have full administrative, service, investment and regulatory responsibility, subject to specific norms and standards. “Own functions” also result from the right to undertake any initiative of local public interest according to article 7. Some new own functions were previously performed by the district (water supply, local roads), or as agency functions for central government (cemeteries and burial services; nurseries and shelters); others are fully new (local economic development programmes, public markets and commercial networks; supporting small business). Urban planning, land management and housing are also own functions, according to the planning law. Planning documents have been adopted, and construction permits granted, by “territorial adjusting councils” (TCA) of districts and bigger cities (Urban Planning Act of 17th September 1998). This procedure has proved to be prone to corruption.

“Joint functions” are shared with central government, which sets standards and has to provide the necessary material and financial support for communes and municipalities to achieve them. Education under university level, primary health services, social

care, public order, environmental protection are listed as joint functions; others may be added by the law. As a rule, central government has to provide salaries and social contributions for the personnel, and local government provides the other costs (e.g. capital investment, maintenance, and equipment expenses).

“Delegated functions” are performed by local government as an agent of central government, either as responsibilities established by a law, or as functions delegated under an agreement with a local government. For delegated functions all costs have to be borne by central government.

The transfer of functions came into effect only after the new laws on local financing.

However, according to the law on the state budget 2003 all educational facilities below university level, and primary health care, are defined as delegated functions, although sharing of expenditure is unchanged. Investments funded by local government units in these sectors are subject to prior approval by the line ministry. Furthermore, due to the lack of new legislation in several sectors, some functions have remained as delegated functions and therefore in the “conditional budget” (see sub-section (c) below). This is the case of water supply and sewerage, investment funds for urban roads, investments in primary health care and education.

Several local governments may join together for one or several functions, including the creation of a new corporate body funded by the parties (art.14).

The new functions were transferred to communes and municipalities in three steps, up to 1st January 2002 (art.72), but the transfer became effective only on the 1st January 2003, with the new laws on local finance coming into force.

“Regions” have no clear role in practice...

With the law of 31st July 2000 on the division of the territory, the 36 districts (an arrangement going back to pre-war times) were joined into the new regions. According to the constitution, regions consist of “several basic units of local government with traditional, economic and social ties and joint interests”; they are the “units in which regional policies are constructed and implemented”, and “harmonised with the state policy” (art.110). Regions were indeed established in the 12 existing jurisdictions of the prefectures. Districts are maintained as subdivisions of the region (art.5.6).

... but could be used as a forum for co-ordination and co-operation between

There is, however, no clear view of what should be the role of regions in the new government system. According to article 13 of the local government act, the new regional “own functions” are: i) “the construction and implementation of regional policies and their harmonisation with state policies at the level of the region”; ii) “every other function given by the law”, and iii) functions delegated by constituent local governments or by central government. The regions are seen as potentially useful in co-ordination of policies and as a framework of municipal co-operation. Regions could offer

communes.

a forum for local governments to adjust their priorities for the better use of foreign assistance, especially from EU programmes. Whether other functions should be transferred to them is disputed: there are fears that in such a small country, a regional level of governance might be detrimental to the consolidation of self-government at the municipal level.

3.1.4.3 Local financing

Municipalities and communes are managing two budgetary components: the so-called “conditional budget” and the “independent budget”. The former is delegated by central government, as an aggregate of expenditures included in the budgets of the various ministries. For the execution of this budget, local governments are agents of the central government.

With the transfer of new functions away from central government, a significant increase of the independent budget had been expected, but it appears that for the first year of application of the reform (2003), change is modest. The independent budget of local government rose only from 12,500 million ALL¹ in 2002 to 14,354 million in 2003, i.e. 7.5% of the expenditure of the Consolidated Fund (central budget + independent budget, and without social insurance scheme). The main reason is that wages in education and primary health care remained in the conditional budget. This is not to be criticized: as wages are regulated nationally, this does not detract from local autonomy, and shifting them to the independent budget would be misleading. Another reason is that several functions deemed to become own functions have remained in 2003 delegated functions, and for that reason in the conditional budget. It is so far reasonable to expect an increase of the independent budgets of local government in the Consolidated Fund in the next few years.

Local councils have been given more discretion for raising taxes.

On the revenue side, however, recent reforms have introduced more discretion for local councils for raising taxes, together with more equity and transparency in the allocation of grants to the independent budget.

Concerning local taxes, the laws of 12th December 2002 have increased the local tax power and overcome the reluctance of the Ministry of Finance to implement the commitments of the new local government act. For instance, the small business tax has been transformed into a local tax levied by communes and municipalities according to categories of business and on the number of premises. A simplified profits tax remains a national tax, the revenue from which is distributed to each municipality and commune on the basis of the registration and activity of businesses.

¹ Albanian Lek (ALL). 1 € ≈ 138 ALL as at 7 January 2004.

Altogether this means 3,054 million ALL more in 2003 in local resources. Local councils may vary the rate (+/- 30% from the indicative rate),

Local councils have the ability to tax a wide range matters.

Additionally, a number of other local taxes are established by the new law on the local tax system. Local councils have the power to determine liability for taxation and to vote the rates within limits set by law. This is the case with taxes on immoveable property, hotel accommodation, new constructions impacting on the municipal infrastructure, transfer of the property rights on real estate, registration of vehicles, occupation of public areas, billboards. All other payments are tariffs, for which the types, rates and regulations are fixed by the local council, as far as they relate to use of public services, use of local public properties or issuing licenses or authorisations.

The share of transfers from the centre diminished

As a result of this reform the share of local resources in the independent budgets has increased from 24% (2002) to 56.1% (2003), while the share of transfers from the centre diminished from 76% to 43.9%. The unconditional transfers from central government (6.3 million ALL in 2003) are adjusted to this change by the law on the state budget 2003, with more attention paid to equalisation in the allocation criteria. The formula applied to the allocation of unconditional grants is set in the law on the state budget 2003. A share (19%) is allocated to regions, including equalisation coefficients. The general grant to municipalities and communes (79%) includes an equalisation component. The total transfer, and the transfer to municipalities and communes, include a compensation fund which is distributed to cover special needs on the basis of criteria set out in advance (for example for municipalities and communes: compensation for the readjustment of the fiscal capacity, and compensation based on the poverty criterion). It is to be noted that Regions taxation revenues.

According to article 16.5 of the Local Government Act (n°8652, 31st July 2000), "Communes and municipalities take out loans for local public purposes in accordance with the manners specified by law". However, loans are not listed in revenues of regions (art.17). As regards communes and municipalities the possibility to borrow is confirmed by provisions on the content of the budget of a local government unit (art.19.7,c):

"c) a forecast of the expenses for investments with the following information:

- i) the purpose of the investment;
- ii) a plan of financing, including the manners and the sources of the financing;
- iii) the annual expenses that are required for repaying the credit, if it is used, as well as a projection of the operating expenses that arise as a result of the making of the investment."

Local Governments

In the organic budget law of 29th July 1998, article 6 on local

are entitled to borrow from Government only

government revenues mentions only “borrowing from government”, and no other kind of loan, and according to article 35.2 “local governments are entitled to borrow only from the Government and these loans shall be made only under specific budget appropriations”.

It would appear, therefore, that the provisions of the organic budget law are those referred to by article 16.5 of the Local Government Act. There is in the constitution no provision that could be interpreted as clearly overriding the provisions of the organic budget law on this point.

There is no evidence of municipalities taking out loans for their investments; on the contrary, municipal investments seem to be financed basically by central grants. To sum up, the legal situation regarding the possibility for local government to borrow is unclear, and there no evidence of borrowing from banks or from bond issues.

3.1.4.4 Conclusions

Priority should be full implementation and consolidation of the decentralisation reforms.

Reforms introduced since 2000 are considered positive as regards local government decentralisation. Responsibilities of communes and municipalities are being increased, and since 2003 independent budgets are reinforced by new tax powers and moderately increased resources. It should however be noted that central Government institutions do not have the management resources and capacities to steer the decentralisation process, and local government cannot escape the problems of the country generally – lack of adequate human resources in local government public service, pervasive corruption, and distrust in government by citizens. These are the main limitations on progress in local government reform.

In the present situation, the priority should be full implementation and consolidation of the decentralisation reforms, and support for good practices in the management of local government functions.