

3 GOVERNANCE & PUBLIC ADMINISTRATION

3.1 Key elements of the administrative environment

3.1.1 Administrative culture, law implementation and enforcement capacity

Lack of respect for the rule of law is an institutional weakness.

The current administrative culture in Albania is a combination of many influences, in particular the ancestral Albanian culture (as still evident in the application of the *Kanun*¹ in the north of the country), the continuing organisation of society into clans, the historical fact that for many, “the State” has represented an occupying power (for example, at various times, the Ottoman Empire, the Fascist Occupation, etc.), 50 years of the Enver Hoxha system of communism. In addition, a decade of difficult transition was marked first of all by the war in the region and second by the collapse of the pyramid schemes.

While some signs of better functioning of the public administration have been observed² (at least with the formal adoption of laws and European standards), Albania seems to have made only limited progress as regards general respect for the rule of law. The lack of respect is considered as a significant “institutional weakness”.

In particular, the poor performance of the judicial system is a major stumbling block for the consolidation of the rule of law in Albania. As stated in the EU Justice and Home Affairs Report, “the lack of court ruling enforcement is a recurrent theme”³. The Law on the Bailiff’s Office of 2001 unified the bailiff service and its practices for the whole of the country. A judgment should be enforced within six months, but corruption continues to be an issue.

Moreover, as the powers of the police in the area of public order and security are perceived by citizens to be based on police orders,

¹ The *Kanun* is a set of unwritten, traditional rules on the basis of which ancestral society is organised.

² Department of Public Administration, Report, p. 2

³ EU CARDS Regional Programme, *First assessment mission in the fields of Justice & Home Affairs in Republic of Albania*, June 2002, p. 19

Laws are often drafted to comply with donor requirements.

not on the law, and the police themselves have had little training, citizens' "identification with the rule of law is nearly non-existent, despite interesting internationally-funded projects in (that) area"⁴. Violations of human rights by the Albanian police are a topic common to all human rights-related international reports⁵.

In fact, the European concept of rule of law does not belong to the legal and administrative tradition as such in Albania. Its promotion in Albania was largely influenced by international donors. As a result, Albanian authorities very often tend to draft and adopt a new law or revise an old one in order to comply with international pressure, without taking into consideration the potential risk of law confusion and legal uncertainty. In addition, newly adopted laws favoured by international donors usually are difficult to implement, as they do not always take into account the actual law enforcement capacity of Albanian authorities and the country's particular legal culture. A recent example of the weak understanding of the role of law in society and politics occurred when the Parliament ignored the ruling of the Constitutional Court in the impeachment case of the General Prosecutor in 2002, and instead a political consensus emerged that the powers of courts need to be curtailed.

3.1.2 Administrative legal framework and civil service

The administrative legal framework is here defined as all laws and by-laws necessary to ensure that the administration as a system functions in line with generally accepted principles, e.g. rule of law, transparency, accountability, and legal certainty. This implies that the administrative legal framework also includes, besides general administrative laws (such as the law on administration, law on administrative procedures, and legislation covering redress and appeal), there are also laws regulating general management (horizontal) systems in the public administration. The most important of these laws are: the law on civil/public service, the organic budget law, and laws on financial control and internal audit and external audit. In addition, it encompasses such laws as freedom of information, data protection, the ombudsman, and conflict of interest (i.e. "annex" legislation to ensure the implementation of the accepted administrative principles).

In this chapter only general administrative law - and some aspects of the civil service laws and some "annexe" legislation - will be discussed, as the other main components of the administrative legal framework (regarding public procurement, public expenditure management, financial control and internal/external audit) are discussed in the context of the relevant specific sections..

⁴ Ibid., p. 10

⁵ See *Human Rights Watch World Report 2003*, at <http://www.hrw.org>. See also Amnesty International reports at www.amnesty.org

There is little evidence of a modern administrative law system.

It is not easy to form a clear picture of the administrative law background in Albania, but it seems that only a few elements of a modern administrative law system exist. Little development took place in the period between liberation from Turkish rule and the communist take-over and, during the communist period, administrative law remained largely undeveloped. Unlike a number of other former communist countries, Albania did not adopt an administrative code of general application and the idea that government departments and agencies should be subject to a detailed code of procedure was never seriously entertained. To the extent that there were laws governing the making of administrative decisions and providing for appeal or review of those decisions, the laws were made on a piecemeal basis in relation to specific subject areas.

In common with other communist countries, the underlying principle was that administrative matters ought to be kept within the administration and that complaints and grievances should be dealt with internally. This idea was particularly powerful in Albania where the omnipresence of the Communist Party was the decisive influence on the nature and workings of the administration. This is not to suggest that citizens did not complain or air their grievances; they did, and when they did their complaints were handled internally within the administrative structure and under the eye of party officials. There may have been limited legal provision for a citizen taking a complaint to a court, during that period, but it almost never occurred. In any event, the court system itself was closely aligned with the Communist Party and in no real sense independent of government. The Prosecutor General, as in other communist countries, exercised a general jurisdiction on behalf of the State to ensure that both individuals and institutions complied with the law or, perhaps more accurately, with the interests of the State. One form of administrative scrutiny, therefore, was exercised by the Prosecutor's Office, although it was a form of scrutiny directed to safeguarding the interests of the State rather than the rights of citizens.

Administrative courts were established in 1996, and the Administrative Procedure Code only in May 1999.

In short, when the new system began in 1992, administrative law and procedure, and forms of independent supervision of government and administration, did not exist in Albania in any systematic sense. Administrative courts were established in 1996, and Parliament adopted Law no. 8485, the Administrative Procedure Code, only in May 1999. This law covers, *inter alia*, the control of the organisation and functioning of public administration, decision-making in public administration and administrative procedures. The Code makes government officials more accountable for unlawful acts or for the failure to act. This Code was a positive legislative step, but it is frequently circumvented in practice.

In June 1999, Parliament adopted Law no. 8503 on the right of access to information on official documents, which grants any person the right to request official information from the State, and obligates the government to make official information public. The practical application of this legislation is uneven.

The Ombudsman is largely ineffective, partly because of a ruling by the Constitutional Court.

The 1998 Constitution establishes a national ombudsman, referred to as the People's Advocate, who is explicitly empowered to enforce the public's right to information. The ombudsman is empowered to "defend the rights, freedoms, and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration" (Constitution, Article 60). In practice, this institution is largely ineffective for the time being, among other reasons because the Constitutional Court's ruling of November 2001 severely restricted the ability of the Ombudsman to initiate judicial review of legislation. Nevertheless, since 2002 the Ombudsman has been making an effort to consolidate the institution by engaging several government institutions in human rights dialogue and focusing his activities in promoting freedom of information, privacy rights and the right to effective judicial remedies.

3.1.2.1 Administrative Justice

Administrative actions may be reviewed by the courts in Albania according to two procedures. The normal procedure is for an action to be brought in the administrative division of the District Courts; the second and less usual course is for review to be sought directly in the Constitutional Court.

The first and main procedure for judicial review was created by the Civil Procedure Code which came into effect on 1 June 1996. Article 1 of the Code provides for the creation of three special divisions within the District Courts - Administrative, Commercial, and Family. An action can be brought in the administrative division against an administrative act (or refusal to perform an act) where the act or refusal is unlawful, or the rights or interests of the party are adversely affected.

Administrative Courts have a wide jurisdiction.

The jurisdiction of the Administrative Courts extends to administrative acts generally, subject to three exclusions: general normative or legislative acts, administrative acts which, under the Constitution, are subject to the direct jurisdiction of the Constitutional Court; and administrative acts against which an appeal is out of time. The effect of these provisions is to confer on the courts a wide jurisdiction to review administration. Time limits are also set for the hearing of the appeal and the court must give its reasons.

Appeals from the administrative division of the District Court are heard by the Court of Appeal, with final recourse in special cases to the Court of Cassation. The Supreme Civil Court, since 1992, has

functioned as the Court of Cassation. Since its creation, it has developed a limited jurisdiction of reviewing administrative acts for legality. The legal basis of that jurisdiction was not entirely clear, but apparently derived from the right each person had to test the legality of an action in the courts: the jurisdiction is now conferred under the Civil Procedure Code which confirms the Court of Cassation as the final Court of Appeal in all civil matters, including administrative matters.

A full sense of the concept of the Court of Cassation is still being developed.

The existing practice of the Court of Cassation in exercising administrative review is directed to the legality of administrative actions, but a full sense of the concept is still being developed. The relationship between the Court of Cassation, and the first instance administrative courts, in developing among citizens a sense of the rule of law, remains to be worked out. The main principles governing the review of administrative action are - breach of law; violation of administrative procedures; failure to take relevant facts into account; and (on higher review) an error in a decision of the lower court. The Court of Cassation does not itself evaluate the facts and merits of the administrative action or of the first instance administrative court's decision. In addition to the principles mentioned, the principle of proportionality appears to be gaining ground as a basis for judicial review.

The Constitutional Court (HCJ) is the highest appeal court for administrative matters.

The Constitutional Court is also responsible for the overall legality of administrative action, and so may consider actions challenging either the legality or the constitutionality of subordinate administrative legislation or specific acts.

The Prosecutor's Office occupied a key role in the legal structure of the Communist State. In Albania, it was created under the 1981 Act on the Prosecution and exercised a wide ranging jurisdiction to ensure that the various institutions of government acted lawfully and in the interests of the State. It could take direct action to ensure that administrative authorities, as well as social organisations, discharged their obligations. Where direct action failed, the Prosecutor's Office could take matters before the courts, although in practice that was rarely done. The Prosecutor's role was closely associated with the interests of the Communist Party and was reformed in 1992, with the result that the Prosecutor now has no public law power to monitor the legality of administrative action. The role of the office is now governed by the Criminal Procedure Code and is confined to investigating and prosecuting criminal offences.

3.1.3 Central policy capacity

The system for the central management of policy and decision-making in Albania has some obvious strengths, in particular, the inclusion in the Office of the Prime Minister (PMO) of the Department for Public Administration, the Department of European Integration, and a Department for Policy Development and

Coordination. There is also an effort to structure the Government work around strategic priorities, to develop capacity for monitoring performance and progress, and to support decision-making by the Council of ministers with inter-ministerial committees that may resolve issues in advance.

However, in the last few years, the PMO has been weakened by increasing managerial and organisational fragmentation, raising questions about its capacity to serve the Government collectively in pursuit of strategic objectives, and increasing the risk of politicisation of the senior ranks. There is also competition rather than cooperation between the PMO and the Ministry of Finance with respect to strategic leadership, and at this time donor assistance is not helpful in this regard.

3.1.3.1 Legal framework

The regulations governing the CoM are inadequate.

The basic legal framework for the work of the Council of Ministers is set by Law No. 9000 “On the Organisation and Functioning of the Council of Ministers”, which was approved by Parliament on 30 January 2003. This law covers all the normal aspects of setting up the competencies and rules of conduct of the Prime Minister and other members of the Council of Ministers (CoM), the procedures for preparation and submission of proposals for decision by the CoM, the agenda and voting procedures for the weekly meetings, the role of interministry committees, and the support organs for the Prime Minister and the CoM.

Law No. 9000 is very general. To be effective it requires a subsidiary regulation: the version proposed is inadequate in many respects, in particular due to the fact that it is focused almost entirely on formal matters rather than on policy preparation. As a result, it will in effect limit the capacity of the Secretary-General to advise the CoM, and reduce the requirements for interministry consultation during the policy formulation phase.

There is still an opportunity to improve the present draft of the Regulation. It is important for the CoM to design, pass, and implement a comprehensive, well-designed Regulation that would give the CoM useful tools for improving policy-making and coordination.

3.1.3.2 Institutional framework

The Prime Minister’s Office (PMO) has an official staff allotment of 232, although not all positions are currently filled. The PMO is comprised of five political cabinets: of the Prime Minister (21 positions), the Deputy PM (five positions), the Minister of State for European Integration (six positions), the Minister of State for Governmental Co-ordination (six positions), and the Secretary-

The Albanian PMO has an unstable structure...

... reducing its capacity to provide the Council of Ministers with coherent and co-ordinated planning and policy

The Secretary-General of the PMO has no role in policy formulation.

General (four positions). The rest of the PMO is divided into departments and directorates under the direct supervision of the Prime Minister, a Minister, or the Secretary-General⁶. The supervisory roles are as follows:

- *under the Prime Minister:* the Directorate of Information and Public Relations (17 positions) and the Directorate of Classified Information (6 positions);
- *under the Minister of State:* the Department of Public Administration (17 positions), the Department of Policy Development and Co-ordination (11 positions), the IT Directorate (4 positions), the PIU for the WB project (4 positions), and the Anti-Corruption Unit (4 positions);
- *under the Minister of State for European Integration:* the Department of European Integration (9 positions);
- *under the Secretary-General:* the Juridical Department (9 positions), the Control Department (7 positions), the Directorate of Documentation (17 positions), the Directorate of Personnel and Logistics (52 positions), and the Directorate of Budget (“economy”) (7 positions).

In recent years, the Albanian PMO has had an unstable structure, subject to continual reorganisation. The current structure is highly fragmented, greatly reducing its capacity to provide the CoM and the Prime Minister with coherent and co-ordinated planning and policy. The position of the Secretary-General, by law the “highest civil servant in the Council of Ministers” is limited and weak. While he is responsible for preparing the meetings of the CoM, this responsibility is almost purely technical, with the exception of his responsibility for the juridical aspects of proposals. However, this too is primarily a technical role (focusing on the constitutional and legal conformity of texts) and does not address the substantive policy aspects of legal acts.

The establishment and development in 2003 of a Department of Policy Development and Co-ordination (DPDC) is a welcome process, but the subordination of this department to the Minister of State (rather than to the PM and/or to the Secretary-General) is not ideal. A Minister who is a voting member of the CoM should not be responsible for co-ordinating the work of other ministers. The

⁶ The Albanian way of presenting the organigram of the PMO is confusing. It uses dotted lines and solid lines to distinguish between “functional” and “administrative” supervision, respectively. In Albania only functional supervision has real meaning in practice. In principle, “administrative supervision” can be important and effective, e.g. when it includes aspects of personnel management. However, in the case of the Albanian PMO it is a misnomer; it indicates nothing more than the clerical documentation of salaries and benefits.

The deliberate fragmentation within the PMO reduces the linkages between policy development and legal drafting.

deliberate fragmentation of the subordination structure within the PMO reduces the linkages between policy development and legal drafting, between monitoring and control, and between co-ordination and European integration. It also greatly reduces the capacity of the Secretary-General of the PMO to conduct a meaningful process of co-ordination and conflict resolution with the general secretaries of ministries. Consequently, the recent initiative of the Secretary-General of the PMO to hold regular meetings of all general secretaries is likely to be of limited effect, in that they are unable to address important policy questions or to contribute to more effective decision-making by the CoM due to the overall weakening of the role of Secretary-General across the administration.

3.1.3.3 Co-ordination capacity

Policy co-ordination is fragmented and duplicated.

In the same way as for the organisation of the PMO, the processes involved in co-ordination, planning and monitoring are both fragmented and duplicated. It is generally agreed that the main strategic document of the government is the National Strategy for Social and Economic Development (NSSD). This plan was prepared by the Ministry of Finance, with World Bank assistance. The Ministry of Finance has established a unit to monitor this plan (it currently has three staff), and a co-ordinator in each ministry is responsible for co-ordinating implementation and monitoring. This monitoring process is supported by the World Bank. Within the PMO, a Three-Year Action Plan was created, including activities brought forward by ministries. This plan, essentially a matrix of legal acts with time frames for their preparation and passage by the CoM, is monitored by the Department of Policy Development and Co-ordination. The UNDP is currently supporting this department through a large assistance project, attempting to “deepen” the process and to add a complex set of priorities and outcomes to the matrix. The UNDP approach is resulting in complete confusion between the tasks of planning and monitoring on the one hand, and policy formulation on the other.

Conflicting donor interventions in the area of co-ordination are likely to lead to confusion.

It is quite apparent to any observer that the two processes of planning and monitoring are in conflict, that each centre of planning and co-ordination is competing with the other, and that ministries are confused by the multiplicity of plans and monitoring matrices. The World Bank and UNDP, aware of this confusion, submitted a joint Memorandum to the Government on these issues in February 2003. However, the joint Memorandum does not really offer a coherent solution; in fact, it glosses over the situation, leaving each of the donors free to maintain its own sphere of influence. A revealing recommendation of the joint Memorandum states: “Line ministries should shoulder the primary responsibility for monitoring both the implementation indicators (for the Three-Year Action Plan) and performance indicators (for the NSSD). The former indicators

should be reported to the CoM's DPDC, while the latter should be reported to the NSSD Department within the Ministry of Finance." This recommendation raises (at least) three questions: How many ministries can tell the difference between "implementation indicators" and "performance indicators"? Why is UNDP supporting a project to turn the monitoring of the Three-Year Plan into performance monitoring and policy formulation? Who will co-ordinate conflict between the plans?

In addition, it is also a high priority of the Government of Albania to negotiate an SAA with the European Union. The co-ordination and monitoring of the SAA rests with the Ministry of State for European Integration in the PMO, and each ministry has assigned one or two negotiators to chair the process within the ministry, supported by EI working groups. This process involves a third matrix that ministries must complete, in addition to the one for the NSSD and the Three-Year Plan. The European integration process seems reasonably well organised, but it is not co-ordinated with the other two strategic planning processes mentioned above.

3.1.3.4 Assessment

Policy preparation is overly legalistic

The focus of Ministry policy preparation is overly legalistic, with insufficient concern with policy development, including consultations and impact assessment. The focus of the present draft regulation of the drafting, preparation, and submission of draft legal acts does not correct this imbalance.

There is no proper policy coordination capacity

Presently, the Department of Policy Development and Coordination does not have capacity to carry out proper policy coordination. Unfortunately, its development focus at this time is on monitoring, in which it is duplicating the efforts of the Ministry of Finance, as well as the Department of Control within the PMO.

There are too many monitoring matrices, but too little real coordination...

It is generally recognized, and freely admitted by the Ministers and senior officials we interviewed in the PMO and in Ministries that there are too many plans, too many monitoring matrices, too great a reporting burden on Ministries, too little real coordination, and too much competition between donors.

... and too much competition between donors

The PMO is highly fragmented organisationally, and it is thus unable to support coherent strategic planning and policy coordination on behalf of the CoM. The present draft Regulation regarding the drafting, preparation, and submission of draft legal, would, if passed, only exacerbate this fragmentation.

At present, the Albanian government is not able (or perhaps not willing?) to take proactive action to ensure that activities of donors support priorities of the Government. As a result, there are projects supported by donors that contribute to weak coordination,

unfocussed planning, and inefficient implementation of government priorities, as well as waste of donor resources.

3.1.3.5 Recommendations

There is an urgent need to rationalise the planning and strategic documents of the Government (the 3-year plan, the MTEF, the NSSD, and the SAp). The EU should consider encouraging the integration of the other plans within the SAp framework.

As a priority, the Government should freeze the development of the new monitoring process (the UNDP matrix process) until such time as it has rationalised and unified its planning and monitoring processes.

The planned World Bank TA for policy coordination should be focused on making specific recommendations for improving the structure and functions of the PMO to ensure a coherent strategy and policy coordination process.

Until the PMO is restructured under a unified management, specific internal coordination procedures should be established and enforced within the PMO to ensure better quality preparation of items reaching the inter-ministerial committees and the CoM.

The draft Regulation on the drafting, preparation, and submission of draft legal acts (pursuant to the new Law 9000) should be completely redrafted, and its scope should be broadened to cover policy development and coordination prior to preparing legal texts.

A new draft of this regulation should specifically include provisions about the role of the inter-ministerial committees, the quality of inter-ministerial consultations, and the authority of the Secretary General to return items to Ministries on substantive grounds.

Along with the process of preparing and negotiating an SAA, the EU should undertake a more extensive role in coordinating donor assistance to PAR.

3.1.3.6 Technical assistance

As was noted, the UNDP is supporting the development of monitoring capacity and a database within the Department of Policy Development and Coordination in the PMO. This project is expected to spend about \$1.5 million.

The World Bank, via the local PIU placed in the PMO (under the Minister of State) is supporting a PAR programme worth about \$8.5 million, expected to last through 2004, with possible extension to 2006. It has three parts, support to public expenditure

management; Human resource development (assistance to DoPA, Ministries, and the Institute of Public Administration); and assistance to the PMO to develop policy coordination capacity.

EU assistance to the Department of European Integration includes capacity building, IT, and training for the EI Department, and assistance to the Department of Legal Approximation.

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

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 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 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.

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

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.

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

Communes have a wide range of functions.

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 communes.

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 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 ALL⁷ 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.

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

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. 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 immovable 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 are entitled to borrow from Government only

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