

CHALLENGES OF DEMOCRACY AT LOCAL LEVEL

An Analytical Overview of the Draft Law “On Some Additions and Amendments to Law No. 8652, dated 31.07.2000, ‘On Organization and Functioning of Local Governance’”

ALBANIA'S TERRITORIAL CONSOLIDATION through the administrative-territorial reform and the adoption of the Law No. 115/2014, dated 31.07.2014, “On Administrative-Territorial Division of the Local Government Units in the Republic of Albania” have imposed the need for amendments to the legal framework that guides the organization and activity of local authorities. Currently, the central government has, through the Minister of State for Local Issues, proposed amendments to the Law No. 8652, ‘On Organization and Functioning of Local Governance’. These amendments have been shared with local elect associations, civil society actors, and donors that support reformatory processes at local level in order to solicit their input.

The amendments proposed in the Draft Law “On Some Additions and Amendments to the Law No. 8652, dated 31.07.2000, ‘On Organization and Functioning of Local Governance’” give way to several concerns with regard to democracy. According to Dahl¹, the most important elements of a democracy are political equality and citizens’ participation in decision-making processes. Local democracy runs on principles of representative and participatory democracy exercised at local level. While representative democracy is linked with the electoral processes and local politics, participatory democracy emphasizes the participation of the civil society and interest groups that influence local politics.

This second policy brief in support of decentralization reform seeks to analyze the proposed legal amendments to the Law on Organization and Functioning of Local Governance paying special attention to the mechanisms of vertical respon-

sibility and accountability, such as elections and inter-institutional relationship, and to the mechanisms of horizontal responsibility, such as the sharing and control of power and civic participation.

VERTICAL RESPONSIBILITY AND ACCOUNTABILITY

THE AMENDMENTS to the Law on Organization and Functioning of Local Governance, as proposed by the government, incorporate consultation as provided for in Article 2, Definitions. According to this draft law, consultation is defined as “an institutional, transparent and direct process between the institutions of central government and local government units with regard to information, consultation, and exchange of opinions on policies, legislation and rules that regulate local governance, which is conducted regularly and continuously, in accordance with the procedures and a determine structure.” In addition, consultation is included as an additional principle in Article 3 of the draft law, alongside with the principles of subsidiarity and collaboration and as a right of local governance (Article 8, paragraph VI/1).

At a glance, this addition to the law marks a positive step considering that the consultation is included as a principle and as a right. According to the addition specified in VI/I/a of the draft law, local government units must be consulted with over legislation or policies that directly affect local autonomy and functioning of local governance authorities. This addition harmonizes with Congress of Local and Regional Authorities of Council of Europe’ Recommendation No. 349 for Albania and European Charter for Local Self-Government

1 Robert A. Dahl, *On Democracy*, London: Yale University Press, 1998.

(Article 4, point 6). Yet, the definition (in Article 2) leads to inherent issues. Confusion stems from the very definition of consultation, which is unclear and is not interchangeable with the other concepts of information, counseling, and exchange. According to Arnstein² and her influential model of the degree of participation, informing, consultation, and counseling are separate processes with distinctive features. Informing is known as the process that reveals what will be done and what is planned; consultation provides a number of opportunities and encourages listening and action based on the feedback; and, counseling encourages generation of options and ideas. These concerns are further augmented in Articles 3 and 5 of the proposed draft law, which state an evasive provision regarding consultations with LGUs "in the appropriate time and manner" authorizing the Council of Ministers as the responsible authority to develop the sublegal framework and implementation of this article. The draft Law on Public Notification and Consultation may also be a binding law, but the absence of sanctioning in the Law on Organization and Functioning of Local Governance with regard to the activity of consultation makes this process a matter of government's will rather than a binding obligation.

Local elections are the most important element of vertical responsibility and accountability. According to Article 23 of the Law Organization and Functioning of Local Governance, local councils are composed of councilors elected by procedures set forth in the Election Code of the Republic of Albania. The geographical expansion of the LGUs brings about a weak and difficult representation of the interests of the citizens, interest groups, marginalized groups, remote communities and villages, a low participation in elections, and little confidence in the local elected people. Facts indicate that the participation in local elections in Albania is closely linked with the size of LGUs. The data on the last three elections obtained from the Central Election Commission indicate that large LGUs have a lower participation than smaller LGUs. Local elections of 2011 show that (i) LGUs with a constituency of 3,000 voters have a participation rate of over 60%; LGUs with a constituency 3,000-7,000 voters have a participation rate of over 55%; this rate is over 50% in LGUs with a constituency of 7,000-20,000 voters; and, in LGUs with more than 20,000 voters, the participation rate is under 50%. It should also be pointed out that the current electoral system

does not favor the increase of participation in elections. Albania has a closed proportional system; voters cast their ballot for the political party, not for the individual. A citizen needs to see, know and listen to his/her representative, to what the representative thinks about the local issues and what he thinks the elections' outcome will be. In this respect, we think that the electoral system should be amended.

Amendments concerning vertical responsibility in the hierarchy of LGUs within their own structures are foreseen. According to Article 113 of the Constitution of the Republic of Albania, the communal/municipal councils regulate and administer in an independent manner local issues within their jurisdiction. Furthermore, Article 6 of the European Charter of Local Self-Government emphasizes that local authorities must be able to determine their own internal administrative structures. The Law on Organization and Functioning of Local Governance provides that LGUs have full administrative, service, investment, and regulatory authority over exclusive functions and are entitled to create administrative structures to carry out their functions and exercise powers. Explicitly, Article 8 of this law recognizes the right of LGUs to create any administrative-territorial subdivision within its jurisdiction to perform its governing functions. However, the amendments foreseen by Articles 4, 10, and 13 of the draft Law "On Some Additions and Amendments to the Law No. 8652, dated 31.07.2000, 'On Organization and Functioning of Local Governance'" do not harmonize with the above-mentioned provisions, because municipalities are deprived of the right (i) to regulate and administer in an independent manner local issues within their jurisdiction; and, (ii) to create any administrative-territorial sub-division within its jurisdiction to aim at enhancing efficiency. The establishment of administrative-territorial units as extensions of the municipal administration leads to a significant centralization and the administrative-territorial subdivisions are not determined on real local needs seeking to ensure efficiency improvement.

Furthermore, the creation of administrative units does not solve the problem of low access to local administrative services as a consequence of the increase of the citizens' distance from the center. Indeed, it adds to the administrative costs of the local government unit and renders null and void the strongest argument –saving of costs– of the supporters of the territorial consolidation sys-

2 Arnstein, Sherry R. "A Ladder of Citizen Participation", JAIP, Vol. 35, No. 4, July 1969, p. 216-224

tem. Similar to today, a citizen will have to travel to town to prepare the paperwork for economic and social aid, to obtain a copy of the ownership certificate of house, land or car, a document of jobless status, pension, disability, and will return to his/her village and spend another day to submit these documents to the local administrative offices.

Finally, in addition to determining administrative units, the proposed amendments stipulate that these units will be headed by administrators, who, according to Article 44/1, are "hired and released of duty by the mayor at his own discretion and report to him with regard to functions and activities carried out by the administration of the administrative unit". Administrators appointed by the mayor will thus be positioned in a relationship of political subordination and to the service of the political party they represent rather than to the service of citizens for addressing their needs. If administrators were civil servants, they would be in more sustainable working position and would be encouraged to perform better in accomplishing the duties assigned to them by law.

LGUs are now deprived of the right to determine the territory of villages. Also, the draft law repealed the criteria that "a village cannot have less than 200 inhabitants." Thus, on one hand, there are villages with very few or no inhabitants at all and, on the other hand, LGUs are legally unable to intervene.

HORIZONTAL RESPONSIBILITY AND ACCOUNTABILITY

THE MAIN ELEMENTS of horizontal responsibility and accountability are the separation and control of power and citizen participation. In terms of the first element, the proposed amendments envisage an enhancement of the mayor's role since, as already provided for in Article 10 of this draft law, the mayor is granted the function of approving the organizational structure and the basic regulation of the municipal administration and subordinating units of budgetary institutions, which is a function currently assigned to municipal council. In addition, in accordance with the amendment to the law, the mayor has the right to dismiss administrative units' administrators. These enhanced competences bestowed upon the mayor make him/her more powerful hindering the local council in playing the role of a small municipal parliament.

Involvement of citizens at local level is important, particularly in the newly-reorganized units, because it impacts the increase of legitimacy of local elects and governing activity, enhancement of efficiency, responsibility, transparency, and accountability. The draft Law "On Some Additions and Amendments to the Law No. 8652, dated 31.07.2000, 'On Organization and Functioning of Local Governance'" contains no provisions that regulate the active participation of citizens in the decision-making. Nor does it have any provisions to regulate planning or joint implementation of policies, decision-making, civil initiatives, public hearings, petitions, common groups, etc., even though it is widely recognized that citizen participation is an important indicator of the level of democracy.

The legal amendments foresee no innovation with regard to structures that support citizen participation (liaison structures), which according to the law in effect are the village head and chairmanship in rural areas as well as neighborhood administrators in towns and cities. These people are civil servants. The community sub-municipal structure (i) ensures legitimacy of governance through representation and accountability; (ii) provides mechanisms for political and social accountability; (iii) ensures involvement in decision-making; (iv) ensure transparency of LGUs and public procedures; (v) reduces the negative effects of the closed proportional system in representation; and, (vi) promotes development by placing the community demand/need in its foundation. Re-dimensioning of community sub-municipal structures in the mission, scope of work, manner of election as well as in the relations and interactions with other public institutions should be seen as a potential way to improve citizen representation and participation.

RECOMMENDATIONS

1. Provide a clear definition of consultation (Article 2) and conceptual separation among consultation, informing, and exchange;
2. Determine procedures and minimal standards of consultation and their classification in the Law on Organization and Functioning of Local Governance; make an exhaustive elaboration of structure, form, manner of organization, functioning, nature of issues for discussion, and time frequency by means of sublegal acts;

3. Change the local election system from a closed proportional system to a geographic proportional system that ensures a higher representation of the interests of citizens and suburban areas and increases participation of citizens in elections;
4. Recognize as an exclusive right of local governance the determination of administrative structures and creation of administrative-territorial subdivision in accordance with the local needs and with the purpose of increasing efficiency;
5. Review Article 44/1, where the status of administrative unit's administrator should be civil service rather than a political nominee of the mayor;
6. The function of approving the organizational structure and basic regulation of municipal administration and subordinating units of budgetary institution should remain under the authority of the municipal council in order to ensure control of power;
7. Provide dispositions that regulate the active participation of citizens in decision-making;
8. Re-dimension the community sub-municipal structures in the mission, scope of activity, and manner of election in the Law on Organization and Functioning of Local Governance.

INSTITUTE FOR DEMOCRACY AND MEDIATION

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

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

Rr. Shenasi Dishnica, Nr. 37, P.O.Box: 8177, Tirana, Albania,
Tel: +355 4 240 0241 Fax: +355 4 240 0640 Email: info@idmalbania.org www.idmalbania.org

This edition benefitted from the support of Swiss Agency for Development and Cooperation.



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra
Swiss Confederation
Embassy of Switzerland

The views expressed in this brief do not necessarily reflect those of the Swiss Agency for Development and Cooperation or the Government of the Swiss Confederation.