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## Local and regional democracy in Albania

Monitoring Committee

Rapporteurs : Ždenek BROŽ, Czech Republic (L, ECR<sup>1</sup>)  
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### *Summary*

The present report on local and regional democracy in Albania follows upon Recommendation 201(2006). The report notes with satisfaction that decentralisation of the state power has been a major component of democratisation in Albania and that the legislative framework is in line with the Charter. It also notes, however, that regional authorities appear to be very weak, the local government associations appear fragmented and without a unified voice, and that there are no clear regulations for the process of consultation between the local and central governments. It draws attention to the fact that a territorial reform as well as a comprehensive and intensive fiscal reform could promote local economy.

The report recommends that the Albanian Government elaborate a territorial policy which can offer small communes and municipalities the possibility of performing their tasks and benefiting from economies of scale, to enhance local authority competences, to ensure concomitant financing of delegated competences and to clarify and increase regional competences. It encourages the government to develop legislation that will set up clear requirements for the central authorities to consult with local authorities on matters which concern them directly. It also invites the government to work with all the existing associations to achieve the establishment of a body that could represent all local authorities. It invites the authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

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<sup>1</sup> L: Chamber of Local Authorities / R: Chamber of Regions  
EPP/CCE: European People's Party Group in the Congress  
SOC: Socialist Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Not registered

# Local and regional democracy in Albania

## RECOMMENDATION 349 (2013)<sup>2</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b. of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the above-mentioned Statutory Resolution CM/Res(2011)2, which stipulates that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Resolution 307 (2010) REV2 on Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No.122);

d. Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government;

e. Resolution 299 (2010) of the Congress on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply made by the Committee of Ministers to the Congress Recommendation 282 (2010) [CM/CONG(2011)Rec282final], encouraging the governments of member states to take account of the above mentioned Reference Framework;

f. the previous Recommendation 201 (2006) on local and regional democracy in Albania;

g. the explanatory memorandum on the situation of local and regional democracy in Albania, presented by Mr Zdenek Brož, Czech Republic (L, ECR) and Mr Åke Svensson, Sweden (R, SOC).

2. The Congress recalls that:

a. Albania signed the European Charter of Local Self-Government (CETS No. 122, hereafter "the Charter") on 27 May 1998 and fully ratified it on 4 April 2000, with entry into force on 1 August 2000;

b. Albania has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

3. The Congress delegation carried out an official visit to Albania from 12 to 14 December 2012.<sup>3</sup>

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<sup>2</sup> Debated and adopted by the Congress on 31 October 2013, 3<sup>rd</sup> Sitting (see Document [CG\(25\)11FINAL](#) explanatory memorandum), rapporteurs: Zdenek Broz, Czech Republic (L, ECR) and Åke Svensson, Sweden (R, SOC).

<sup>3</sup> In their work, the rapporteurs were assisted by David Melua, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Sedef Cankoçak, Co-Secretary of the Monitoring Committee of the Congress.

4. The delegation would like to thank the Permanent Representation of Albania to the Council of Europe and the Albanian authorities at all levels of government, the associations of local and regional authorities, experts and other interlocutors for their valuable co-operation at different stages of the monitoring procedure and for the information conveyed to the delegation.

5. The Congress notes with satisfaction that:

a. the Albanian authorities have adopted a strategy for decentralisation that is a roadmap for more local and regional development in Albania, which constitutes an important step forward, in the establishment of multi-level governance and electoral democracy in the country;

b. the Albanian system of local and regional self-government can, in general, be considered to correspond to the spirit and principles of the Charter;

c. the establishment of the "Regional Development Fund" has been instrumental in reducing the disparities between various local authorities which should be recognised as a successful example of the decentralisation policy in Albania.

6. The Congress nevertheless expresses its concern that:

a. the partisan behaviour of local government leaders continues to prevent them from speaking with one unified voice, resulting in a situation where local elected representatives cannot find consensus inside local government associations and consolidate their position vis-à-vis the central government;

b. the co-existence of regional councils and the prefects as parallel structures in each region (*qark*) makes it unclear what competences are under the exclusive mandate of the council and is not in conformity with the provisions of Article 3 of the Charter, also giving rise to the risk of duplication and constituting the main obstacle for regional autonomy in Albania;

c. the organic law regulates, in a confusing manner, the structure, roles and competences of both the local and the regional authorities;

d. there are no clear regulations formalising the participation of the local government associations in the process of consultation with the central government ;

e. the system of administrative supervision allows for a wide interpretation as regards the scope of supervision of local authorities' own functions;

f. local authorities do not have concomitant financial resources or local revenues commensurate with their own and shared competences, which is not in compliance with Article 9 para. 2 of the Charter;

g. local authorities are heavily dependent on financial assistance from the State, which resorts to the practice of cutting unconditional grants in certain cases. This is in contradiction with the provisions of Article 9 para. 5 of the Charter;

h. the city of Tirana does not have financial, fiscal and budgetary instruments adapted to its status as capital city.

7. In light of the above the Congress requests the Committee of Ministers to invite the Albanian authorities to take account of the following recommendations:

a. intensify the decentralisation process in the light of the Charter and the recommendations provided by the Congress, and begin a reform of the territorial system that will allow communes and municipalities to carry out their responsibilities, particularly in the area of the spatial development of their territories and urban planning;

- b.* revise legislation to clarify the competences of local and regional authorities, revising in particular Articles 2, 7, 8, 9 and 10 of Law No. 8652 in the light of Article 4 of the Charter;
- c.* clarify the respective areas of competence of the prefect and the regional (*qark*) council, and consider setting up a unified administrative structure accountable to the regional council, as well as introducing direct and universal elections for the regional council;
- d.* consolidate the institutions of the regional level and reform the system of regional finances;
- e.* introduce a specific provision in Law No. 8652 aiming to formalise the process of consultation of local authorities by the central authorities, to ensure consultation "in due time and in an appropriate way, on matters which concern them directly", as required by Article 4 paragraph 6 of the Charter;
- f.* provide support to the Council of Europe and the Congress in the implementation of their project entitled "Strengthening the local government structures and co-operation between local officials in Albania" funded by the Swiss Confederation and, in particular, support the efforts of local officials to build a platform of pluralist dialogue involving all representative bodies of local communities to protect their interests;
- g.* ensure, through legislation, that the supervision exercised by the central authorities on the decisions taken by the communes and municipalities within the remit of their delegated and shared competences, does not allow for a disproportionate control over local government affairs;
- h.* improve the legal status of Tirana in order to provide the capital city with the relevant financial, fiscal and budgetary instruments to allow it to function adequately as a capital city;
- i.* sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

# Local and regional democracy in Albania

## EXPLANATORY MEMORANDUM

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## 1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. In accordance with Article 2 of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. Albania joined the Council of Europe on 13 July 1995, signed the European Charter for Local Self-Government (CETS No. 122, hereafter "the Charter") on 27 May 1998 and ratified it, without any declarations or reservations, on 4 April 2000, with entry into force on 1 August 2000.

3. Albania ratified the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (CETS No.106) on 7 November 2001, with entry into force on 8 February 2002. It has ratified the Additional Protocol to the European Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (CETS No. 159) on 11 December 2001 with entry into force on 12 March 2002. It has not signed or ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. Albania was the subject of two Congress reports in the past, drawn up following visits in 1995/1996 and in 2006, resulting in Recommendations 28 (1997) and 201(2006) on local and regional democracy in Albania, respectively.

5. The present report relates to a Congress delegation's visit to Albania from 12 to 14 December 2012, to monitor the situation of local and regional democracy in this country on the basis of the Charter. The Monitoring Committee appointed Ždenek Brož (Czech Republic, L, ECR) and Åke Svensson (Sweden, R, SOC), as co-rapporteurs on local and regional democracy respectively. They were assisted by David Melua, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and a member of the Secretariat of the Congress.

6. The Congress delegation met with the Deputy Minister of the Interior, the Director General of Budget, members of Parliament, the President of the Constitutional Court, the Director General of the State Supreme Audit Control, the Mayors of Tirana, Pogradec, Elbasan, Durrës, Korçë and Vlorë, the Chair and members of the Regional Council of Elbasan, the Ombudsman, representatives of the associations of local and regional authorities and with representatives of international organisations working on local democracy issues in Albania. The detailed programme is appended to the present report.

7. The co-rapporteurs wish to thank the Permanent Representation of Albania to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. It also thanks the Associations of local and regional local authorities for contributing to the organisation and smooth running of the visit.

8. The report also draws on information obtained through the wide-ranging contacts with local elected representatives that have taken place in the framework of the Project "Building a sustainable, pluralistic and unified platform of dialogue for local government in Albania", implemented by the Congress.

## 2. POLITICAL CONTEXT

### 2.1 Background information

9. The Republic of Albania (*Republika e Shqipërisë*) is situated in Southeastern Europe, bordering the Adriatic Sea and Ionian Sea on the west, and between Greece in the south, "the Former Yugoslav Republic of Macedonia" in the east, and Montenegro and Kosovo<sup>4</sup> to the north. It is a parliamentary democracy since 1991. Its capital is Tirana.

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<sup>4</sup> All references to Kosovo\*, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

10. Its population is 2.8 million according to the 2011 census. It is estimated that since the transition to a parliamentary democracy, around 1.4 million people have migrated to Europe or the USA and Canada. 53.7 % of the population lives in urban areas (2013).<sup>5</sup>

11. The population is composed of an Albanian majority (82.5%) and Greeks (0.87%) with a remaining 2% of Vlachs, Roma, Serbs, Macedonians and Bulgarians. 15% of the population did not declare nationality during the 2011 census. The population is 56.7% Muslim, 6.75% Albanian Orthodox and 10% Roman Catholic.

12. As underlined in the 2006 Congress report, Albania has traditionally been a highly centralised state until its transition to democracy in 1991 without having experienced a significant form of local democratic government. After World War II, local government was administered by People's Councils at the district (*rreth*), the city (*qytet*), the locality (*lokalitet*) and the village (*fshat*) levels.

13. Today, Albanian local government consists of two levels: The first level comprises 373 local government units (LGUs) divided between 65 municipalities (*bashkia*) in urban settlements, and 308 communes (*komuna*) in rural areas, which may be further sub-divided into "villages". The second level consists of 12 regions (*qark*).



<sup>5</sup> [INSTAT](http://www.instat.gov.al/en/themes/population.aspx) 2013 figures on urban population by prefectures: see <http://www.instat.gov.al/en/themes/population.aspx>.

## 2.2 *International situation and relations with neighbouring countries*

14. Albania has longstanding territorial and ethnic disputes with Greece (presence of ethnic Greeks in southern Albania and of Albanians in Greece) and Serbia (over Kosovo\*). Although Kosovo\* is claimed by Serbia as a Serbian province, Albania recognised its declaration of independence on 18 February 2008.

15. There have been waves of illegal immigration from Albanian ports to Italy. On 14 January 2011, Albania signed a pact with Italy for a corporal foreign strategy. Italy is one of the main investors in Albania; currently, 400 Italian or Italian-Albanian companies are operating in the country.

16. Albania joined the Council of Europe in 1995, the NATO in April 2009 and is a potential candidate for EU accession.

17. There are many international organisations present in Albania, notably the EU, the OSCE, the Swiss Agency for Development and Cooperation, the World Bank and USAID who participate in various development programmes. All these organisations as well as numerous Albanian think tanks and NGOs are in broad agreement that decentralisation is an essential element of Albania's transition to democracy and an important vehicle for Albania's integration into the EU. At the same time, there is a broad understanding that the country has serious obstacles to achieving effective regional and local democracy.

## 2.3 *Government structure and elections*

18. The Constitution of Albania, adopted in 1998, organises a unitary state with no federal structure and with parliamentary democracy as form of government. It also stipulates that "Local government in the Republic of Albania is founded upon the basis of the principle of decentralisation of power and is exercised according to the principle of local autonomy" (Article 13).

19. Elected by the Assembly for a five-year term and eligible for a second term, the President is granted specific powers such as setting the date of the elections for the Assembly, for the organs of local power and for the conduct of referendums. Since 24 July 2012, Mr Bujar NISHANI is the President of the Republic.

20. The Parliament (*Kuvendi*), as the seat of legislative power, is unicameral, with 140 deputies elected for a four-year term. 100 of the deputies are elected directly, in single member electoral zones with an approximate number of voters. 40 deputies are elected from multi-name lists of parties or party coalitions according to their respective order.

21. Since the establishment of a multi-party democracy in 1991, and for the first time in Albania's history, a coalition government has been in place, following the general elections held on 28 June 2009. Mr Sali BERISHA is Prime Minister since 10 September 2005.

22. As to the judiciary, the Constitutional Court consists of nine members appointed by the President with the consent of the Assembly who serve nine-year terms (the chair is elected by the Parliament for a four-year term). The High Court's members are also appointed by the President with the consent of the Assembly for a nine-year term. There are also courts of appeal and courts of first instance.

### *Elections*

23. The 2009 parliamentary elections were the eighth in the short history of Albanian pluralist elections which, according to the OSCE, altogether do not "fully realise Albania's potential to adhere to the highest standards for democratic elections".<sup>6</sup> This election was considered an important signpost for the future of Albania's integration in the European Union.

24. The elections produced a thin victory for the Democratic Party (*Partia Demokratike e Shqipërisë*, DP) with 70 seats, followed by the Socialist Party (*Partia Socialiste e Shqipërisë*, SP) obtaining 66 seats and the Socialist Movement for Integration (*Lëvizja Socialiste për Integrim*, SMI), who won 4 seats. Under the new system, only three small parties could enter the Assembly with one seat each.

<sup>6</sup> <http://www.osce.org/odihr/elections/albania/38598>

25. After the elections, the DP opted for a coalition with the centre-left SMI (whose campaign had consisted of criticising the DP's governance). The resulting "government of integration" ensured a comfortable legislative majority.

26. Confrontational dialogue and polarisation continue to dominate political life in Albania. The DP and SP groups are still perceived as antagonistic blocks which rarely come together to discuss or decide on urgent issues facing the country. While each party, once in power, has adopted a "winner takes all" approach, opposition parties have made it a habit to boycott the Assembly. The 2009 elections reinforced the country's conflict-laden politics. The regional proportional system has strengthened incentives to cut deals with the dominant parties to enter their respective lists, reinforcing the structure of a two-party system.

27. A joint opinion from the Venice Commission and the OSCE on the elections in Albania adopted on 15 December 2011 has concluded that "The recurring problems with the conduct of democratic elections in Albania cannot be resolved merely through changes in electoral legislation. Any meaningful improvement in the quality of the electoral process will not be achieved without a change of attitudes and practices of the main political groupings and their leaders."<sup>7</sup> The Parliamentary Assembly of the Council of Europe also prepared a report remarking that the elections had been "overshadowed by politicisation of technical segments of the process and by the infringements found during the campaign, which shook the public's confidence in the electoral process".<sup>8</sup> They recommended that Electoral Code should undergo revision on the points where this is dictated by international standards or particular difficulties.

#### *Local elections*

28. The local elections that took place on 8 May 2011 concerned the election of mayors and town councils in 384 municipalities and were based on the legal framework voted through in 2008 by the ruling DP and the SP in opposition. According to the data from the Central Election Commission, voter turnout was 51%. This percentage is slightly higher than in 2007 (47%).<sup>9</sup> Mayors and the heads of municipalities were voted for directly, the candidate ranking first being declared the winner. City and town councils were selected through a system of proportional representation based on party lists.

29. The election was, a race between two coalitions, namely the "Alliance for the Citizens" (*Aleanca për Qytetarin*) formed by the DP (24 parties) and the "Alliance for the Future" (*Aleanca për të Ardhmen*) formed by the SP (22 parties). The results were as follows:<sup>10</sup>

<b>Official election Results</b>			
Party	Votes for the Party list	%	Mandate
<b>Coalition 'Alliance for Change'</b>			
Democratic Party of Albania (DP)	610.463	40,18%	68
Party for Justice, Integration and Unity (PDIU)	14.477	0,95%	1
Republican Party of Albania (RPA)	31.990	2,11%	1
<b>Union for Change coalition</b>			
Socialist Party (SP)	620.586	40,85%	65
Union for Human Rights Party (UHRP)	18.078	1,19%	1
<b>Socialist Alliance Coalition for Integration</b>			
Socialist Movement for Integration (LSI)	73.678	4,85%	4

**Source:** Central Election Commission Albania

<sup>7</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)042-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)042-e)

<sup>8</sup> <http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=12831&Language=EN>

<sup>9</sup> [http://www.partnersalbania.org/skedaret/1331912000-Advocacy\\_and\\_local\\_elections2011.pdf](http://www.partnersalbania.org/skedaret/1331912000-Advocacy_and_local_elections2011.pdf)

<sup>10</sup> <http://www.europeanforum.net/country/albania>

30. The SP coalition won in 35 municipalities (mainly bigger cities) and in some boroughs of the city of Tirana, whereas the DP coalition prevailed in 30 municipalities (mainly small and medium-sized towns). The DP coalition secured more rural communes than the SP coalition and also prevailed in the votes for City Councils. Both camps won some municipalities belonging to the other in the past. For Tirana, the Central Electoral Commission declared Lulzim BASHA (DP) winner of the election on 25 June 2011 against the leader of SP, Edi Rama, by a very small margin.

31. Partisan behaviour continues to prevent local government leaders to speak with one unified voice, resulting in a situation where local elected representatives cannot find consensus inside local government associations and consolidate their power vis-à-vis the central government. Not only do local interests fall victim to party politics, but, at the end of the day, this polarised situation works against Albanian democracy in general.

32. A Congress delegation of election observers were deployed to several cities including Durres, Elbasan, Himare, Shkoder, Vlorë and Tirana on 8 May 2011. An OSCE/ODIHR-Congress common report was drawn up, which underlined that the elections “were competitive and transparent, but took place in an environment of high polarisation and mistrust between parties in government and opposition” and that the electoral code “contains gaps and ambiguities and does not always take into account the specifics of local elections”.<sup>11</sup>

33. While the electoral law and a 2008 law on gender equality seek to increase women’s representation as candidates in elections and ensure equality in decision-making positions in public institutions, women have largely been excluded as candidates for the 384 mayoral seats, with only 14 women candidates out of 874 mayoral candidates. The result is that there are only three women mayors at present (in Patos, Burrel and Konispol). There are also some Chairs of local councils who are women.

34. Legal provisions regarding the election of municipal councillors, however, do carry a gender quota of 30 % using a so-called zipper system, in which every third candidate down the party’s list must be of a gender other than the preceding two candidates. Apparently, parties have generally complied with this legal provision following considerable pressure from women’s groups—including women activists within the parties—to abide by the election code.

35. Finally, amendments made to the electoral code of Albania on 19 July 2012 (Law no. 74/2012) give the right to nominate candidates for election to local councils to voter groups. An individual cannot present his/her candidacy for more than one council, just as an individual nominated by the group of voters cannot be directly or indirectly supported by other candidates of an electoral subject (for example a political party) running for that particular election. This latest provision of the Albanian electoral code has already become a subject of criticism from the OSCE and other international organisations.<sup>12</sup>

## **2.4 Previous report and recommendations**

36. In 1992 an administrative reform was launched and decentralisation was established as one of the basic goals and principles of local governance in Albania. Both the new Constitution of 1994 and the 1998 Constitution (Article 108) which followed have enshrined the principle of local self-government in their texts. The National Strategy for Decentralisation and Local Autonomy adopted in 2000 aimed at meeting the objectives of the Stabilisation and Association Agreement (SAA) and the modernisation of local government in Albania according to European Union standards. A series of laws touching upon various aspects of local government were adopted.

37. The 2006 report concluded that the constitutional and legislative bases of Albanian local government formally met the norms established by the Council of Europe; however, the actual practice of local democracy was beset with difficulties. Moreover, a number of provisions of the existing laws were not in harmony with the principles of the Charter, such as the Law on urban planning (no. 8991 as amended in 2003), the Law on local tax on small business (no. 8978) and the Law on Prefects (no. 8927).

<sup>11</sup> <http://www.osce.org/odihr/77446>

<sup>12</sup> Joint opinion on the election code of the Republic of Albania. Adopted by the Venice Commission. 2009, CDL-AD (2009)002

38. The difficulties are partly the result of the rather weak nature of Albanian civil society (a legacy of the past) and are partly due to the fact that the central government has been reluctant to devolve real political and financial powers to local authorities. To some extent, this is understandable given the lack of expertise and the poor financial and human resources within the local authorities. All political parties and the most important interest groups in society as well as international organisations agree that the process towards political decentralisation must continue and, indeed, be strengthened.

39. There are, however, differences among the domestic stakeholders as to the most appropriate measures to take (for example, on the role of the regional councils) and political leaders sometimes change their position when they pass from being in opposition to being in government. The Rapporteurs would like to underline that it is very important that the decentralisation reform is implemented on the basis of openness, participation and consensus, with a timely consultation of local government for any decision that affects them.

### 3. HONOURING OF OBLIGATIONS AND COMMITMENTS

#### 3.1 *Constitutional and legislative developments*

40. Article 13 of the 1998 Constitution states that “Local government in the Republic of Albania is founded upon the basic principle of decentralisation of power and is exercised according to the principle of local autonomy”. In 2008, an amendment was made to Article 109, paragraph 1, of the Law no.9675, 1(3.01.2007) that increased the duration of the mandate of local elected representatives (both mayors and councillors) from 3 to 4 years.

41. Article 13 of the Constitution was expanded by the 2000 Law on the Organisation and Functioning of Local Governments, which, in its Article 3, outlines the basic purpose of the legislation:

- recognition of the existence of different identities and values of the communities in Albania;
- respect and enforcement of the fundamental rights of citizens provided in the Constitution and other laws in those communities;
- opportunity for communities to make choices between different kinds of local public facilities and services;
- efficient and effective exercise of the functions, competencies and duties of various bodies of local government;
- delivery of appropriate services;
- promotion of effective participation of local residents in local government.

42. There have been no further legislative developments since the enactment of these texts (see Section 5.1 for a detailed analysis of the legislation).

#### 3.2 *The territorial scope of local government in Albania*

43. As mentioned above, the first level of Albanian local government consists of 373 LGUs, i.e. 65 urban municipalities (*bashkia*) and 308 communes (*komuna*) in rural areas which may be further sub-divided into “villages”.

Population size categories	No. of municipalities & communes	%
0-1,000	-	
1,001-2,000	11	2.9
2,001-5,000	131	35
5,001-10,000	152	40.9
10,001-50,000	71	18.9
50,001-100,000	6	1.7
100,001-1,000,000	2	0.5
1,000,000+	-	-
<b>Total</b>	<b>373</b>	<b>100.0</b>

44. The second level consists of 12 regions (*qark*). The regional councils are *ex officio* composed of the mayors/ heads of communes from the municipalities and communes located on the territory of the respective region. The number of delegates from municipal and communal councils is defined in proportion to their populations, with the condition that there must be at least one representative from each LGU, who automatically must be the mayor; if there is more than one representative, they are elected by the respective councils from among their members.

<i>Regions in Albania by territory, population and number of municipalities</i>						
Region	Municipalities/com munes		Population		Surface	
	Number	%	Number	%	km <sup>2</sup>	%
Berat	25	6	239,185	5	166.4	0.6
Diber	35	9	194,873	4	2373.1	8.57
Durres	16	4	397,925	9	704.7	2.55
Elbasan	50	13	431,113	10	3251.2	11.7
Fier	42	11	473,611	11	1739.5	6.28
Gjirokaster	32	8	161,817	3	2902.2	10.48
Korce	27	7	359,091	8	3503.2	12.66
Lezhe	37	9	115,120	2	1514.4	5.47
Kukes	21	5	210,692	4	2479.1	8.96
Shkoder	33	8	334,462	7	3184.2	11.5
Tirane	29	7	951,364	22	1645.9	5.94
Vlore	26	6	359,177	8	2719.5	9.82
<b>Total</b>	<b>373</b>	<b>100</b>	<b>4,228,430</b>	<b>100</b>	<b>27682.4</b>	<b>100.0</b>

45. Tirana, the capital of Albania, has a special status defined in Law No. 8654 of 31 July 2000, which sub-divides the city into eleven municipal units, of which the heads are directly elected by the population. Each municipality also has a local council elected by the same electoral system. The Municipal Council of Tirana has authority over the municipal units with regard to decision-making and delegation. Local authorities have the right to create their own forms of local administrative organisation and to employ their staff to carry out administrative tasks.

46. Alongside the system of local authorities there are also the territorial units of "state agencies" (prefectures) which conduct their activity at local and regional level. The highest representative of the central administration at regional level is the "Prefect". The office of the Prefect was created by Law no. 7608 of 22 September 1992 "On Prefectures" which, for the first time after the fall of communism, stipulated the establishment of the Prefect as a representative of the Council of Ministers at regional level.

47. There are twelve prefectures, which correspond to the boundaries of the twelve regions. A new Law "On Prefects" no. 8927 was adopted on 25 July 2002. The Constitution provides that the prefects conduct their activities at regional level. In compliance with Law no. 8927 (2002), prefects are the representatives of the Council of Ministers in the region. They are appointed and removed by the Council of Ministers and report to the Prime Minister. From an administrative point of view, the prefects are under the responsibility of the Minister of the Interior.

48. Article 6 of the Law "On Prefects" stipulates the mission of the prefect as follows:

- to guarantee the sovereignty, constitutional order and protection of public health;
- to manage, supervise, monitor and coordinate the activity of state institutions at local level;
- to coordinate the activity of the central institutions at local level with the local government units in communes, municipalities and regions;
- to verify the legality of the acts approved by the bodies of local governance in the communes, municipalities and regions.

49. In reality, the prefect exists to ensure that the policy approaches of the central government are followed at the local level. This has been criticised because of the political partisan bias this may imply at the local level and creates an opportunity for the central government to exercise a direct control over the local and regional authorities. The Prefecture monitors the social, economic and political affairs of the region. All policy documents and budgets are passed to the Prefect who can hold them for ten days to assess their legality.

#### *Fragmentation of LGUs*

50. The territorial scope of the local authorities in Albania has always been a subject of criticism from domestic and international democracy assistance organisations. Congress Recommendation 201 (2006) asked Albanian authorities to consider a territorial reform for small rural communities, by enabling them to perform a larger share of public affairs. The vast majority of domestic and international interlocutors interviewed during the monitoring visit recognise the necessity of a voluntary amalgamation of small LGUs, as fragmented communities do not possess enough economy of scale to be financially and politically viable institutions.

51. The Rapporteurs took good note of the fact that, in a number of rural municipalities, local councils meet very rarely; local officials live in big cities and do not reside permanently in their constituencies. According to the Civil Census Register of Albania, the vast majority of communities (294 out of 373) have less than 10 thousand inhabitants. Small scale and limited resources prevent the vast majority of communes and some smaller municipalities from being efficient managers of local affairs and, in the majority of cases, they function as a complementary administration to the regional level where all the basic decisions are taken.

52. The one recent LGU boundary change recorded in Albania seems to be the case of two communes, Bushat and Barbullush, in the Region of Shkoder, which were merged into one single commune in 2003. The decision on merging was taken based on the consent of both mayors and the decisions of the respective communal councils. Community consultations took place in each commune. Following the decisions of the communal councils, a law<sup>13</sup> that regulates the administrative and territorial division of the LGUs was adopted by the Parliament, and amendments were made to the law no. 8653, to reflect the new number of communes, which was reduced from 309 to 308.

53. The Rapporteurs welcome this practice of voluntary amalgamation of communes and would recommend the Albanian Government to provide Albanian LGUs with specific incentives to support further continuation of this practice. These incentives may include, but are not limited to, the allocation of more financial resources to the merged communes, the devolution of more state functions and powers to the LGUs, the provision of adequate legal status and social protection to the elected and appointed officials in the new larger communes.

54. While it is true that it is the sovereign right of Albania to decide on the territorial boundaries of its communes and municipalities, it is also desirable that, in deciding on the territorial scope of LGUs, the central authorities take into account the principles of the Charter and endeavour to fully meet the requirements of Recommendations 28 (1997) and 201 (2006) as well as of Resolution 45 (1997) of the Congress. The primary aim of the territorial optimisation of LGUs in Albania should be the strengthening of communes and municipalities by making them equipped with the proper scale and competences to address the needs of the local population in the most efficient manner.

55. The Rapporteurs recommend that the Albanian authorities begin a reform of the territorial system through either the amalgamation of those small communes and municipalities that are unable to perform the tasks required of them into larger units or through voluntary association. Such a reform would need to go hand in hand with the reduction of the number of regions. It goes without saying that any solution to this problem should be a result of a democratic and participatory process, which respects the constitutional provision regarding consultation with the respective community (when a change of the borders of the local units needs to be carried out), and which also takes into account the coordination of territorial government units at all government levels.

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<sup>13</sup> Law No. 9123 dated July 29, 2003, "On the administrative and territorial division of local government units in the Republic of Albania".

### **3.3 The competences of Albanian local government**

#### *3.3.1 Powers and functions of local authorities in Albania*

56. Article 9 of the Law “On the Organisation and Functioning of Local Government” defines three types of competences (functions) for local authorities: exclusive, shared and delegated functions. Article 10 thereof says that LGUs have full administrative, service, investment and regulatory powers for their exclusive functions. Nevertheless, the same article does not stipulate it clearly that local governments should perform their exclusive functions independently and under their own responsibility. Absence of such a provision in the organic law may lead to misinterpretation for exclusivity of powers, especially when the same article (paragraph 2) sets up the requirement that the “communes and municipalities exercise their functions in compliance with regional and national policy”.

#### *3.3.2 Exclusive functions*

57. According to the law “On the Organisation and functioning of Local Government”, communes and municipalities have four main categories of exclusive functions:

a. Infrastructure and public services such as water supply, sewage systems, waste management, public transportation, public lighting, parks and public places, etc.

b. Local economic development such as preparation of programmes, regulation and functioning of public markets and trade networks, small business development, veterinary services and protection and development of local forests, pastures, etc.

c. Social, cultural and recreational functions such as preservation and promotion of local historical and cultural assets, management of relevant institutions, organisation of recreational activities and social services, including orphanages, day care, homes for the elderly, etc.

d. Civil security: public order and civil security.

58. Assignment of exclusive functions to municipalities has been implemented in two stages. The vast majority of exclusive functions were put at the disposal of LGUs just after the enforcement of the organic law. Some functions, such as water supply, sewage system and urban planning become competences of local governments in January 2002.

#### *3.3.3 Shared functions*

59. In addition municipalities may have shared functions, such as pre-school and pre-university education, preventive health care and public health protection, social assistance, environmental protection, etc.

60. Article 11 of the organic law stipulates that communes and municipalities may undertake shared functions separately or jointly with the central government. Such a loose definition of shared functions makes it difficult to understand the nature of the so-called “shared functions”. This provision needs more clarity about the procedures for using shared functions as well as about legal regimes and the financial aspects for their implementation. It should also be underlined that identification of shared functions must not be the subject of any laws other than the law “On the Organisation and Functioning of Local Government”. The Rapporteurs strongly recommend that the list of shared functions be completed without any reference to other laws that may list additional shared functions.

#### *3.3.4 Delegated functions*

61. Albanian municipalities and communes also have delegated functions. These are functions of the central government or administration, which, by law or by a contractual agreement, are assigned to the local government. The central government guarantees the necessary financial support for the exercise of these functions but the local government may commit its own financial resources to the task in order to attain a higher level of service.

62. Delegated functions may be mandatory or non-mandatory. The organic law does not specify which functions may be delegated to local authorities, which is quite unusual for the Council of Europe member States, in the majority of which, delegated powers are stipulated in the organic laws and constitutional provisions.

63. Under Article 13 of the organic law, communes and municipalities have the right to delegate functions to the second level of local or subnational administration (Region), which has the responsibility to align regional policies with State policy. This provision of the Albanian legislation is quite an uncommon practice among member States. Paragraph 2 of the respective article just mentions that this delegation is to be based on an agreement between the regional administration and LGUs. There is no specific or well-defined regulation as to how and in what form such delegation of the function will be made. There is no legal mechanism provided for the protection of the local authorities in this process, and the legal system lacks clarity about the financial aspects of such delegation of functions.

64. Whereas in most new democracies, the term “voluntarily” in practice refers to “mandatory”, this particular provision of the Albanian legislation can be viewed as a potential risk factor for local autonomy. The Rapporteurs are of the opinion that Albanian legislation should provide legal guarantees to LGUs in such a way that, the delegation of functions from the lower level to the upper level is used for reasons of subsidiarity and not for taking function away from Albanian communes and municipalities.

### **3.4 Local self-government structure:**

#### *3.4.1 Local deliberative bodies: Councils*

65. Local councils are the representative organs of the communes and municipalities. Their members are directly elected by the citizens. Local government elections are general and are held every four years. The municipalities and communes have representative councils elected by the population using proportional representation and closed lists. The mayors and heads of communes are directly elected by the population using a majority system.

<b>LG units with</b>	<b>Number of Councillors</b>
5 000 inhabitants	13
5 000-10 000 inhabitants	15
10 000-20 000 inhabitants	17
20 000-50 000 inhabitants	25
50 000-100 000 inhabitants	35
100 000-200 000 inhabitants	45
Over 200 000 inhabitants Municipality of Tirana	55

66. As noted above, elections to the council are organised according to a proportional system based on “multi-name lists” whereby political parties submit lists of candidates for election. As mentioned above in paragraph 34, amendments made to the electoral code of Albania in July 2012 by Law no. 74/2012 gave the right to nominate candidates for election to local councils to voter groups, making it impossible for individuals to present their candidacy for more than one council. Neither can individuals nominated by a group of voters be directly or indirectly supported by other candidates of an electoral subject (for example a political party) running for that particular election.

67. The size of the council of a municipality/commune is based on the number of its inhabitants, as set out in the Article 24 of the Law “on the Organisation and Functioning of Local Government”. Competences of the local councils are as follows:

- adoption of statutes and internal regulations;
- election and dismissal of the chairman, deputy chairman and the secretary of the council;
- adoption of the organisational and administrative structures of the LGU and subordinated entities;
- endorsement of funding documents for municipal enterprises, companies and juridical persons that belongs to the municipality;
- adoption of local budgets and their revision;
- deciding on changes in ownership or on usufruct on the property of the LGU;

- implementing and supervising internal control;
- deciding the rates of local taxes and fees;
- taking decisions on credits and liabilities;
- adopting norms, standards and criteria for implementation of the functions of the LGU;
- nominating delegates to the regional council;
- deciding on the credentials of its members;
- deciding on inter-municipal cooperation and approving joint entities;
- authorising legal appeals and proceedings initiated by the LGU;
- giving names to streets, squares, territories and institutions;
- granting honorary titles and bonuses;
- deciding on the LGU coat of arms;
- adopting regulations, standards and forms for implementation of delegated functions.

68. The Local Council is led by a chairperson and a deputy chairperson who are elected from among council members. The chair and deputy chair are elected and can be dismissed by a qualified majority, i.e. two thirds of the members, by secret ballot. The Chair facilitates the meetings of the council, proposes the agenda and signs the decisions of the council. The Deputy Chair takes over the responsibilities of the Chair during latter's absence. The Secretary of the council is appointed and dismissed by a simple majority of the council on bases of nomination from the Chair of the council. The Secretary maintains the documents of the council, drafts the verbatim report of the council sessions, prepares the agenda and sends notice of the meetings to council members, publishes decisions taken by the council and organises public hearings. The procedure for impeachment for the Chair, the Deputy Chair and the Secretary can be initiated by one third of the council members.

69. Local Councils make decisions on budgetary tax and property issues by a three fifths majority of their members. The election of the leadership and other institutional matters are decided by a qualified majority (two thirds of votes) and all other issues are voted by a simple majority. Upon the decision of the council, voting can be open (roll-call) or secret.

70. The local council can be dissolved by a decree of the Council of Ministers if:

- no session was organised during a three months period;
- if the Council was unable to adopt the local budget within a three month period after the deadline determined by the Albanian legislation;
- if the LGU merges with another LGU;
- if the local council violated the Constitution and other laws.

71. In such a case, a new local election needs to be organised according to the electoral code. Albanian legislation does not specify what type of action is identified as a "violation of the Constitution and other laws". The Rapporteurs believe that the vagueness of the term "violation of laws" could be considered a potential risk for local governments. It should be noted that, in the legislation of a vast majority of member States, the causes and procedures for dismissal of local deliberative bodies are stipulated in a very detailed manner.

72. A specificity of the Albanian legislation is that local councils have no authority or competence over the mayor of their municipality. The organic law on the Organisation and Functioning of Local Government does not provide for any clear mechanisms on how balance is to be maintained between the council and the directly elected mayor, or what the procedures are for overcoming a potential conflict between the mayor and the council. The local council has no power to make any kind of legal conclusion on the efficiency of the mayor's performance and/or to initiate his/her dismissal, except in cases where the mayor has been absent for more than three months. The local council has no right to challenge the mandate of the mayor or to initiate a procedure for his/her dismissal (this right belongs to the Council of Ministers); nor can the council set down the procedures for the election of a new mayor after the voluntary resignation of the mayor (this right belongs to Prefect, who is the representative of the central government). These provisions of the organic law weaken the position of local deliberative bodies vis-à-vis directly elected mayors.

### 3.4.2 *Mayors of communes and municipalities*

73. The head of the executive body of a LGU is the mayor, who is elected for a four-year term by universal, direct and secret ballot, by a majoritarian system of elections. Candidates for mayoralty are

nominated by the political parties or by groups of voters. Candidates must be residents in the LGU where they stand for elections. A candidate nominated by a group of voters has no right to enjoy support from other political parties or independent candidates who stand for the same election.

74. The mayor has one or more deputies as determined by the statute of the LGU. Deputy mayors are appointed and dismissed by the mayor. The mandate of the mayor of a municipality or commune has to be verified by a court and official notice must be sent to the respective local council. The mandate of the mayor starts from the moment of taking of the oath and ends when a new mayor signs a similar document. The ceremony for taking the oath is held during a special session of the local council. If the council is not able to organise such a session within 30 days from the official announcement of the official results of an election, the Prefect organises the oath taking ceremony for the new mayor.

75. The mayor of a commune or municipality:

- executes all the functions that belong to the LGU units, except those that are exclusively assigned to the local deliberative body;
- implements the decisions of local councils;
- takes measures for the preparation of local council meetings in compliance with the agenda of the meeting;
- reports to the council on the socio-economic situation and service provision every six months or upon the request of the local council;
- is an *ex officio* member of the regional council;
- appoints and dismisses deputy mayor(s);
- appoints and dismisses the managers of all the institutions and enterprises of the LGU;
- appoints and dismisses the employees of all the institutions and enterprises of the LGU;
- is responsible for fulfilling all the commitments and meeting the liabilities taken by the municipality;
- takes measures for the qualification and training of the LGU staff and subordinated employees;
- has the right to ask the local council for reconsideration of its decisions; however, if rejected by the council, the mayor has no right to repeat the appeal.

76. The mandate of the mayor of a commune or municipality is suspended if he or she:

- refuses to take the oath;
- is no longer resident in the municipality he or she is in charge of;
- stands for or is elected as a member of parliament;
- is recognised as incapable by the verdict of court;
- resigns.

77. The mayor can be dismissed by the Council of Ministers if he or she violates the Constitution and the laws of Albania, and by the verdict of a court on a criminal charge. The mayor can be dismissed by the Council of Ministers upon a request from the local council if the mayor has been absent for more than three months. During the absence of the mayor, the deputy mayor takes over his or her responsibilities.

### 3.4.3. *Administrative-territorial structure of municipalities and communes*

78. The administration of communes and municipalities is divided into departments and directorates. The number of these structural units varies in different LGUs. Municipalities have more structural units than communes but, as a rule, all LGUs in Albania have at least financial, legal, procurement, spatial planning and control, as well as administrative departments. The number and functions of structural units are defined by the decision of the local council. Heads of departments/directorates and employees are appointed and dismissed by the mayor.

79. Municipalities and communes have territorial units (sub-divisions) as defined by Articles 45 and 47 of the organic law "On the Organisation and Functioning of Local Government". The sub-divisions of communes are villages. Each village located on the territory of a commune elects a village board by simple majority of the votes (1/2 of residents plus one vote) once every three years and after each local election. The council of the commune determines the number of the village board members. The board elects its Head from among its members by secret ballot, by a simple majority of votes. The council of the commune supervises the election of the village board and the Head of the Village.

80. The Head and the village board are responsible for local socio-economic development, the use of natural resources and social harmony. The Head of the village has a seal and can verify and confirm property rights and civil registration status. He or she has the right to participate in the sessions of the council as an observer. Decisions made by commune councils are obligatory for the heads and village board members. Detailed functions and obligations for the village board and its Head are stipulated in the statute of village board, adopted by the council of the respective commune.

81. Municipalities also have sub-divisions (quarters). The municipal council determines the structure and number of the employees for each quarter. The quarters have administrators appointed by and directly subordinated to the mayor. Detailed duties of the quarters are defined by the municipal council but, in general, they are executive bodies subordinated to the mayor and their function is to execute the decisions of the mayor and the council on their respective territories.

#### 3.4.4 Councils of Territorial Regulation (former Territorial Adjustment Councils)

82. Territorial planning and spatial development is strictly regulated in Albania, The supreme decision making body on territorial planning is the National Territorial Planning Council led by the Prime Minister and composed of central government officials. Councils of Territorial Regulations (called Territorial Adjustment Councils before the new Law No. 10119 was adopted in 2009; hereafter CTRs) are established at the level of regions, municipalities and communes, as well as at the level of the capital city of Tirana.

83. Territorial planning is centralised according to the sectoral legislation on this field (Laws no. 8405<sup>14</sup> and No. 8991). The National Territorial Planning Agency has the mandate to adopt any studies and documents on planning for territories (all urban studies are done by the Institute of Urban Studies and Projects, directly subordinated to the Ministry of Public Works and Transport) :

- master plans for the zones with more than 10 hectares of land;
- urban studies and master plans for tourist zones;
- spatial plans and urban studies for the cities with population more than 100 thousand;
- urban studies for city centres for municipalities with more than 50 thousand inhabitants;
- partial urban plans for more than 15 hectares in cities;
- urbanisation studies for city parks, national reserves, special zones, ports, physical infrastructure (roads, railroads, electricity networks and waterworks etc.);
- construction sites with territory more than 0.5 hectare in cities, villages and settlements;
- construction permits in city centres.

84. The territorial planning system starts at the national level and goes down to the level of communes and municipalities. The structure is divided into 3 categories. The first category includes the city of Tirana and 13 big municipalities, the second category covers the remaining municipalities and the third comprises the communes. CTRs are established in LGUs of the first category and at the regional level. LGUs of second and third categories (municipalities and communes) have territorial planning offices only. In each LGU, there is an urban planning department that carries out the technical work.

85. The CTRs for the units from the first category are composed of adequate technical municipal staff (urban designers, architects, cadastre experts), the head of the construction police and the mayor. The CTR for Tirana is composed of 21 members and additionally includes the Heads of the urban districts of Tirana. The CTRs decide on matters not covered by the regulation of the National Territorial Planning Agency and, in the vast majority of cases, their function is limited to the preparation of materials for the centralised decision-making process.

86. The same function is given to the CTRs at the regional level. They are involved in the planning of spatial development on the territory of regions. According to the Law No. 8405, representatives of municipal councils may participate in the sessions of these councils at local and regional level. If the representatives of local councils do not agree with the opinion of their CTR, they have the right to ask the CTR to revise but only once. If the CTR rejects the application for revision, then the decision of the CTR enters into force (Article 21, Law No. 8405). Article 23 of the same law says that, in certain cases, the Ministry of Public Works and Infrastructure may dissolve the CTRs.

<sup>14</sup> <http://www1.law.nyu.edu/eecr/bycountryrefs/albaniaUrbanPlan.html>

87. The organic law identifies urban planning and territorial development as exclusive functions of local governments, but, in fact, all decisions on these affairs are made by parallel structures (CTRs) as we have seen, and not by local deliberative bodies. Furthermore, when it comes to spatial development and territorial planning for big territories, city centres and tourist zones, the decisions are made by the National Territorial Planning Agency which is directly subordinated to the Prime Minister of Albania. In addition, supervision over the implementation of territorial planning and maintaining of construction standards are implemented by the construction inspectorates, which is subordinated to the Ministry of Public Works and Transport of Albania.

88. In the Rapporteurs' opinion, such a centralised system does not allow for the protection of legitimate local interests and there is very little participation of local residents in the process of urban and spatial planning. Such a complex, duplicated and heavily administered system of territorial planning does not allow for local governments to implement their exclusive functions or to take action in situations that have created concern both within Albanian society and among international financial organisations, as it was in the case of the demolition of illegal settlements by the construction inspectorate in the village of Jale in 2009.

89. It has been brought to the Rapporteurs' attention that various mayors, participating in the Executive Body of the Council of Europe project and the regional seminars, have highlighted the difficulty (and sometimes the impossibility), for a good number of communes and small municipalities, of applying the legislation on territorial planning because of their lack of both human and financial resources.

#### *3.4.5 Police in municipalities and communes*

90. According to Law No. 8224,<sup>15</sup> police bodies have been set up in communes and municipalities. As a rule, the police force in municipalities and communes includes the chief police officer (inspector) and employees. Officers of the municipal council are selected by a special commission composed by a representative of the Prefect and the police commissioner. Selected candidates are formally appointed by the mayor.

91. The municipal police is responsible for the protection of municipal property, prevention of environmental pollution, advising citizens on public order issues, preventing illegal occupation of buildings, inspection of commercial activity in streets, enforcement of rules on working hours in bars, restaurants, gambling houses and other public places, for disaster risk prevention measures, organising protection of legally placed posters, advertisements, etc. In certain cases of eminency and urgency, they can act as state police officers and implement proceedings stipulated in the code of criminal procedure of Albania. Salary schemes, conditions of service, operational guidelines and instructions are provided by the Ministry of the Interior. In fact, this institution is functionally more attached to this Ministry than to local authorities themselves, their subordination to communes and municipalities being rather nominal.

### **3.5 Status of the capital city**

92. From a legal point of view, the municipality of Tirana is part of the Regional Council of Tirana. It is represented at the Regional Council of Tirana by twelve members, the Mayor included. Reversely, the Chair of the Tirana Regional Council is a member of the Municipal Council of Tirana. The Tirana city authorities argue that the regional council would be more appropriate as an umbrella organisation for small municipalities (some of which are simply too small). The regional council could then play a coordinating role. For this reason, the Tirana Municipal Council does not see the need to participate in the Tirana Regional Council's<sup>5</sup> meeting. While recognising the special position of Tirana as the capital of Albania and its economic strength aside, the Rapporteurs nevertheless feel that it is unfortunate that there seems to be little contact between Tirana city and regional councils.

93. The City of Tirana itself has a special institutional setting different from other cities of Albania. It is divided into districts, each district electing its own council and head of council. The territorial divisions of the Tirana municipality are part of the city's administration and have similar rights to the Tirana Municipal Council.

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<sup>15</sup> <http://www.legislationline.org/documents/action/popup/id/7488>

94. Despite its economic power and scale, Tirana has no additional financial, fiscal and budgetary instruments that distinguish it from other municipalities; its status is quite similar to the status of an ordinary municipality. The existence of Law no. 8654 “On the organisation and functioning of the municipality of Tirana” does not provide for granting any specific functions to the city in addition to those provided to ordinary LGUs by Law no. 8652. For the Rapporteurs, it is essential that consideration be given to improving Tirana’s legal status, its integration into the system of regional government and the relationship between the Municipality of Tirana and the Region of Tirana, for example by recognising Tirana either as a “city-region” or giving it a region-equivalent status. This would have the additional merit of constituting a solution in the interest of cooperation between the capital and the region, while allowing for a possible extension of the city boundaries.

### **3.6 Citizen participation in local public life**

95. Albania has not yet ratified the Additional Protocol to the European Charter on Local Self-Government. However, Law no. 8652 provides clear mechanisms for citizen participation in local decision making. This law regulates the use of two instruments for citizen participation: a) open meetings and b) informing of local public on decisions to be taken by the local council. Article 34 of Law no. 8652 stipulates that every citizen has the right to participate in the meetings of the local council. Usually all meetings are open to the public but, in special cases, the council may, by majority of votes, announce a meeting closed for citizens.

96. Local authorities are obliged to organise public hearings for decisions pertaining to financial and budgetary matters (Article 35 of Law No. 8652). Public hearings can be organised with citizens, experts and interest groups in a manner that allows participants to express their opinion on the subject under discussion. In addition, Law No. 8503 “On the right of the public to be informed on official documents” obliges all LGUs of Albania to publish their decisions in newspapers and in public places to make them available to the general public. However, participation of citizens in these public hearings has a formal nature and little impact on decisions taken by the administrative bodies at various levels of public administration in the country.

97. Albanian legislation does not recognise such tools for direct democracy as the right of petition, citizens’ commissions, etc. Public participation is nominal in the process of territorial planning and organisation. The CTRs do not have regulations that allow local citizens to be involved in decision-making process.

## **4. REGIONAL DEMOCRACY IN ALBANIA**

98. According to the Albanian legislation there are 12 regions (*qark*) in Albania. The legislation defines the *qark* as a second tier local government. They have functions mostly connected with social-economic development and other functions delegated from LGUs of the first tier as well as from the central government. In this regard, the use of the term “region” for *qark* may not be very appropriate. A more exact translation might be “county”.

99. In classical governance terminology, a “region” is the unit of sub-national administration while the “county” is an administrative territorial unit for managing local entities with bigger territories than villages or cities. The Albanian *qark*, by legal definition, is the second level of local government and not a unit of sub-national administration that regulates a substantial part of national affairs. Thus, by legal definition, there are no regions in Albania. All we have is a second tier of local government with very limited power, without any own competences or financial resources. The administrative structure of the regional councils is weak and widely dominated by the Prefect. Their deliberative bodies are not elected by direct elections but are composed of *ex officio* representatives of communes and municipalities located within the territories of the *qark*.

100. The budget of the *qark* is mostly composed of conditional grants and membership fees coming from the unconditional grants allocated to the communes and municipalities located within the territory of the *qark*. In general, there are two parallel structures in each *qark*. The first is the regional council, its chairperson, communes and municipalities. The second is the Prefect, deputy prefects and districts that constitute the administrative units of line ministries. Such a dual regional structure makes the role of the *qark* council rather general in essence and it is quite unclear what affairs are under the exclusive mandate of this council. Thus, one of the key issues with regional democracy in Albania is

that role and function of the *qarks* needs more clarity. The rapporteurs maintain that there should be a clear distinction of boundaries between the powers of the Prefect and the authority of the *qark* council.

101. The second issue is the efficiency of the scale for *qarks*. Albania is a small country but with some geographical and topographical differences between its different parts. Although there are opposing views as to whether to keep the present number of *qark* or abolish them altogether, there is widespread agreement that the present number of 12 regions is too many for such a small country. A smaller number of larger regions (5-7) would bring Albania in line with other European countries and also enable the regions to develop those functions which are usually allocated to this level of territorial governance, i.e. economic and social development as well as environmental matters.

102. It goes without saying that it is the sovereign right of Albanians to decide whether they need a regional level of subnational administration or not; however, whatever decision is taken at the end of the day, it is the obligation of the government of Albania to ensure that the established model fully corresponds to the European standards. Thus, if *qarks* are meant to be the regional level of administration, then they should have an adequate territory and clear functions, the dual structure of regional administration (the Prefect and the elected council) being replaced by a unified regional structure avoiding any overlapping and hidden administrative control.

103. Although the Albanian term *qark* represents the second level of local self-government, the Rapporteurs think that for clarification purposes, the term "region" used in the official English version of Law no. 8652 should be replaced with the more appropriate "county" designation, avoiding any misinterpretation and analogies with regionalisation. Moreover, being a second level of local self-government, the administrative structure and elected bodies of the *qark* should be in compliance with the principles of the Charter. The rapporteurs would therefore suggest that it might be timely to consider the introduction of direct and universal election for the regional council and clarification of the rules for the election/nomination of the heads of executive power and their direct accountability to the directly elected deliberative bodies of a *qark*.

#### **4.1 Competences and structure of the regional level**

104. The competences and structure of the regional level is defined by the Law on the Organisation and Functioning of Local Government, No. 8652, of July 2000. Article 5 of this law stipulates that the *qark* are the second level of local self-government, composed of several communes and municipalities that have common geographical, historical, cultural, social ties and interests. Boundaries of a *qark* comply with the boundaries of the communes and municipalities under its jurisdiction, the administrative center of the *qark* being located in one of the municipalities located on the territory of the *qark*.

105. Article 6 of Law No. 8652 states that the sub-divisions of a *qark* are the districts, the boundaries and names of which are defined by Law no. 8653 "On administrative and territorial divisions of The Local Government Units in the Republic of Albania".

106. The representative body of a *qark* is the Regional Council. Executive function is exercised by the chairperson and the board of the regional council. The *qark* may have its own seal and symbols. The function of a *qark* is development and implementation of the regional policy and its harmonisation with the national policy. Article 13 paragraph 1 of law no. 8652 provides that the *qarks* may have other competences as provided by the laws of Albania. In addition, the *qarks* implement competences delegated to them by municipalities and communes, based on agreements between the parties (para. 2 of the same Article) and those delegated from the central government.

107. In the rapporteurs' opinion, the powers and competences need to be given a clearer definition in Albanian legislation. On the one hand, Law No. 8652 defines regions as a second level of local self-governance, but on the other, the same law stipulates that the function of a region is just to harmonise regional development policy with the central one and to implement delegated functions.

108. The *qarks* may enter into cooperation with other LGUs (including those on its territory) and establish joint entities for service provision. This provision might be viewed as a potential threat for the first-level of local governance as, in theory, it gives the right to the region, *inter alia*, to fully substitute for communes and municipalities in the implementation of exclusive functions.

## 4.2 The structure of regions

109. The highest decision making body for a region in Albania is the regional council, with *ex officio* elected members. Each commune and municipality nominates delegates to the regional council; this delegation must include the elected mayor. The number of council members depends on the size of the population in each commune or municipality.

110. Thus, 148 LGUs are represented only by mayors in the Regional Councils of Albania, while 152 communes and municipalities have two (mostly mayors and heads of local councils) or three delegates, 71 units have 4 delegates. The Municipality of Durrës has 5 and the Capital City of Tirana 11 delegates in their respective regional councils. The exact number of delegates from each commune and municipality appointed to the regional council is defined by the Prefect of the region based on Article 50 of Law no. 8652 and on the statistical information on the number of population each LGU as of 1 January of the respective year. The biggest regional council is that of Tirana region, and includes 83 delegates.

Number of delegates from communes and municipalities to the regional council	
No. of Inhabitants	No. of Delegates
UP to 5 000	1
5 001 - 10 000	2
10 001 - 30 000	3
30 001 - 50 000	4
50 001 - 100 000	5
Over 100 000	5 + 1 for each additional 50 000

111. Regional councils organise at least one session every three months. The mandate of the regional council is to:

- adopt its statutes and internal regulations;
- take decisions on the amount of subsidies from each commune and municipality to be transferred to the regional budget;
- adopt and amend the regional budget;
- decide on the administrative structure of the regional government, and the status and conditions of service in the administration;
- decide the tariff for regional taxes and fees;
- make decisions on the management of regional property;
- decide on regional symbols;
- elect and dismiss the head, deputy heads and members of the board for regional councils;
- appoint and dismiss the secretary of the regional council;
- take decisions on budgetary and organisational issues by a qualified majority (2/3 of votes) and other decisions by simple majority;
- submit the decisions of the council to the Prefect within 10 days of the decision.

112. The Head of Regional Council is elected from among regional councillors by a simple majority, and is the supreme representative of the council. S/he leads the sessions of the council and is responsible for establishing the agendas of the meetings. S/he signs the decisions of the council and the verbatim records of the meetings. S/he is simultaneously the head of the regional executive power and is responsible for the enforcement of the council decisions, as well as for appointing and firing the administrative staff of the council and of the regional institutions. The chairperson is accountable to the regional council. In the absence of the chairperson, his/her functions are exercised by the deputy chair(s). The Secretary of the council is responsible for organisation of council sessions and for the preparation of the verbatim records of the meetings.

113. The board of the regional council is the coordinating body that adopts the draft decisions, documents and agenda of the council. The board reports to the council every six months on the socio-

economic development of the region. In urgent matters, the council may take decisions on issues under its competence, by the majority of the votes of the members of the board. This decision must be validated at the next session of the regional council. The decisions taken by the board and not supported by a majority of the regional council lose their legality.

114. Law no. 8652 specifies that the functioning of the regional council should, under no circumstances, limit the autonomy of the communes and municipalities. However, Albanian legislation does not provide any additional provision for avoiding duplication of functions and/or conflicts between regional and local self-government units.

#### **4.3 Subdivisions of the regional administration**

115. Regional administrations have several structural units. One of the mandatory units is the above-mentioned Council of Territorial Regulation (CTR; see item 3.4.4) that decides on territorial development and spatial planning. This council is composed of representatives of regional agencies and the heads of the regional development councils. Representatives of municipalities and communes may attend the sessions of these councils only in a consultative capacity. There are departments for socio-economic planning, administrative department, tourism development etc. The number of departments and structural units vary region by region.

116. It is recognised by law that municipalities and communes are territorial units of the regions; but alongside these, there are districts which are to be an additional territorial unit within the current system. There is one deputy prefect appointed in each district, who coordinates the activities of central government agencies on the territory of the districts. According to explanations provided by the Albanian Government, districts have no connection with self-government units and especially with regional administrations. However, in fact, it appears that districts remain a powerful tool for territorial management and vertical administration. Even as part of the central government, the districts are recognised as a territorial structure of the *qark*. The websites of the regions of Diber<sup>16</sup>, Berat<sup>17</sup>, Fier<sup>18</sup> and Shkodër<sup>19</sup> clearly show that districts are marked as territorial units of these regions.

117. Albanian authorities need to decide about the role and place of districts in the public administration system of Albania and the structure of the vertical administration in the country. Today, the districts are under dual subordination; functionally they are attached to the central government (via the Prefects) but, structurally, they are part of the region and belong to the regional administration. Additionally, legislation is needed to regulate the power of the Prefects over districts, as well as clarifying the mandate of regional councils over the district level. In general, the Rapporteurs would like to draw attention to problems created by the existence of dual administrative structures at the regional level and call on the Government to consider setting up a unified administrative structure accountable to the regional council.

118. Another issue is the power of the prefect over the regional councils. All decisions as well as the adoption of the number of councillors and the validation of their mandate are within the power of the Prefect. During the monitoring visit, the Rapporteurs heard numerous and repetitive complaints from mayors (mostly from those belonging to the opposition party SP) that Prefects exercise unlimited power and frequently interfere in the affairs of regional and local councils.

119. One specific case that was brought to the attention of Rapporteurs concerns the Fier Regional Council, when the non-acceptance of a new member of the regional council by the Prefect resulted in a change of political balance within the council. An appeal on this case was submitted to an Albanian civil court. The rapporteurs have been informed that recently the issue has been solved, when (after the pre-electoral coalition between SMI and SP) the SMI chairperson dropped his claim to be the elected chairperson of the Fieri regional council.

<sup>16</sup> <http://www.qarkudiber.gov.al/diber/index2.php?mid=25&art=110&info=more>

<sup>17</sup> <http://qarkuberat.net/?p=173>

<sup>18</sup> [http://www.qarkufier.gov.al/index.php?option=com\\_content&view=article&id=184&Itemid=126](http://www.qarkufier.gov.al/index.php?option=com_content&view=article&id=184&Itemid=126)

<sup>19</sup> [http://www.qarkushkoder.org/index.php?option=com\\_content&task=view&id=400&Itemid=351](http://www.qarkushkoder.org/index.php?option=com_content&task=view&id=400&Itemid=351)

#### **4.4 Conclusions as regards the regional structure**

120. To conclude, it can be said that regional authorities appear to be very weak in Albania both due to their limited powers and competences but also by way of their organisational structure. There are two parallel structures in the region: the first starts from municipal and communal councils and goes up, ending with the head of the regional council (who is meant to be the supreme regional official). And alongside this, there is a vertical administration that starts from the Prime Minister of Albania and goes down through the institution of the Prefect and ends at the district level which is managed by deputy prefects. This dual structure may be identified as the main obstacle for regional autonomy in Albania. Given the fact that Law no. 8652 recognises regions as a second tier of local government, the Rapporteurs believe that there is a contradiction with the principles of the Charter as regards the provisions of its Articles 3 (para. 2) and 6 (para.1).

121. The power and competences of the regions need more clarity and conceptual systematisation. Having been recognised as a local self-government unit, regions cannot just be a mechanical sum of communes and municipalities. In this case their powers (or functions as denoted in Albanian legislation) should be full and exclusive (Article 4, para. 4 of the Charter) and they must derive from the Constitution and laws of Albania (Article 2 of the Charter) and not from the decision of councils of communes and municipalities.

122. The current method of composition of regional councils is also problematic, as the Charter expressly requires (Article 3, para. 2) that deliberative bodies of LGUs (whatever the level) should be composed of members freely elected by secret ballot on the basis of direct, equal, and universal suffrage.

123. There is an on-going debate in Albanian society about the efficiency or territorial scope of regions. Although there are opposing views as to whether to keep the present number of *qark* or abolish them altogether, there is widespread agreement that the present number of 12 regions is too many for such a small country. A smaller number of larger regions (5 - 7) would bring Albania in line with other European countries and also enable the regions to develop those functions which are usually allocated to this level of territorial governance, i.e. economic and social development as well as environmental matters.

124. Whatever the number of regions required for a country with 3.2 million inhabitants, the regions need proper scale of economy to be able to implement a substantial share of public affairs and be financially viable. Thus, in the process of implementation of the strategy for decentralisation, Albanian government should consider organising wider consultation with political groups, civil society organisations and regional leaders to find ways of reforming the current system of regional council and establish efficient and functional regional authorities in Albania.

125. As stated in paragraph 102, it is the sovereign right of Albanians to decide whether they need a regional level of subnational administration or not. However, if there is a second level of local self-government, its powers and structure should fully correspond to the requirements of the Charter. If, on the other hand, the region is a part of the central government coordinated by the Prefect, then its powers and structures should be clear and specific, avoiding any possibility for institutional duplications and direct administrative interference in the local government affairs.

## **5. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN LIGHT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT ON AN ARTICLE BY ARTICLE BASIS**

This analysis is based on the last recommendation.

### **5.1 Article 2 - Constitutional and legal foundation for local self-government and Article 3 - Concept of local self-government**

#### **Article 2 – Constitutional and legal foundation for local self-government**

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

**Article 3 – Concept of local self-government**

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

126. The organisation and functioning of local government in Albania is guaranteed by the following legal acts:

- the Albanian Constitution, Part I, Article 13 and Part VI on local government, adopted in 1998;
- the European Charter of Local Self-Government, signed on the basis of Decision of Council of Ministers (DCM) No. 203, dated 26.3.1998 and ratified by the Parliament by adopting the Law No. 8548 "On The European Charter of Local Self-Government" dated by 11 November 1999;
- Law No. 8652, dated 31 July 2000 'On the Organisation and Functioning of Local Government in Albania' as amended;
- Law no. 8654, date 31 July 2000, "On the organisation and functioning of the municipality of Tirana";
- Law no. 8653, date 31 July 2000, "On the administrative and territorial division of local government units in Republic of Albania";
- Law No. 8699 dated 23 November 2000 "On the ratification of the Cross-Border Cooperation Framework Convention between municipalities and local authorities, its two protocols and other local governance documents";
- DCM No. 651, dated 29 December 1999 'On the Strategy for Decentralisation and Local Autonomy'.

#### 5.1.1 *Constitutional provisions*

127. The fundamental principles of the Constitution of Albania provide the key provisions for the structure and operation of local and regional authorities: separation of powers, supremacy of the sovereignty of the people, right to direct universal suffrage by secret ballot, political pluralism, and guarantee of the fundamental rights and freedoms of citizens.

128. Article 13 of Constitution affirms that the local government in Albania is founded upon the basis of the principle of decentralisation of power and is exercised according to the principle of local autonomy.

129. Articles 108-115 define the principles of local government and authorities. Thus, Article 108(1) establishes that the units of local government are communes, municipalities and regions, while Article 108(2) establishes that the local boundaries cannot be changed without prior consultation of the inhabitants.

130. Article 109 (1) stipulates that, the representative organs of the basic units of local government are councils that are elected every four years in general direct elections by secret ballot. In addition, the mayor of the municipality and the head of the commune as the executive organ of the LGU, are elected directly in the same manner.

131. Article 110 defines that, the region (composed of several basic unit of local government) is the unit in which regional policies are elaborated, implemented and harmonised with state policy.

132. Basic powers and the principle of the right to local fiscal autonomy are listed in Article 113, establishing that the councils of the communes, municipalities and regions regulate and administer local issues, in an independent manner, within their jurisdiction by exercising the rights of ownership, administering all income created local issues, having the right to exercise economic activity and the right to collect and spend the income necessary for the exercise of their functions. According to this Article, local authorities should be entitled to adequate fiscal financial resources, which they may freely dispose within the framework of their powers.

### 5.1.2 Primary legislation

133. The Law on the Organisation and Functioning of Local Government, no. 8652 of July 2000 (the Organic Law), is the main law that has been prepared and approved within the framework of the decentralisation reform. It affirms the rights and competences of the LGUs in conformity with the Constitution and the Charter, and establishes the framework of the relations between the central and local governments.

134. The Organic Law is divided into 11 chapters covering general provisions, the rights of the LGUs, the functions and competencies of Communes, Municipalities and Regions, local government finance, the composition, establishment, organisation, authority and tasks of municipal and communal councils, the mayors, territorial subdivisions, the organisation of the regional council and the reorganisation of LGUs.

135. By virtue of this law, municipalities and communes are clearly entitled to a substantial autonomy over a large list of functions in the areas of public services, economic development, social and cultural activities, public order and protection.

136. Other important acts with additional amendments of relevance to local government are:

- *Law No. 8743 dated 2.22. 2001* 'On Immovable State Property' that defines: the immovable properties to be transferred in property or in use to the local governments, the regime of property rights and the administrative management of the transfer process with key steps and respective deadlines;
- *Law No. 8744, dated 2.22. 2001* "On the Transfer of Immovable State Public Property to Local Government Units";
- *Law No. 8653, dated 31 July 2000* 'On the Territorial and Administrative Division of Local Government Units', defines the borders of each municipality, commune, district and region;
- *Law No.8654, dated 31 July 2000* on 'Organisation and Functioning of Municipality of Tirana';
- *Law No. 8752, dated 26.3.2001*, 'On Establishment and Functioning of the Structures for the Administration and Protection of Land';
- *Law No. 8927, dated 25.7.2002*, 'On the Prefect';
- *Law No. 8934, dated 5.9.2002*, 'On Environmental Protection';
- *Law No. 8978, dated 12 December 2002*, 'On the Local Tax for Small Business';
- *Law No. 8979, dated 12 December 2002*, 'On some Additions and Amendments to Law No. 8438, dated 28 December 1998, 'On Income Tax ';
- *Law No. 8980, dated 12 December 2002*, 'On Amendments to Law No. 8560, dated 22 December 1999, 'On Tax Procedures in the Republic Of Albania';
- *Law No. 8982, dated 12 December 2002*, 'On the Local Tax System';
- *Law No. 9010, dated 13.2.2003*, 'On the Environmental Administration of Solid Waste';
- *Law No. 7850 dated 29.7.1994* 'The Civil Code';
- *Law No 8991, date 23/01/2003*, "On some additions and amendments to the Law No 8405, date 17.9.1998, "On urban planning", amended by the decision No 2, date 25 November 1999 of the Constitutional Court, and by Laws No 8453, date 4.2.1999, No 8501, date 16.6.1999 and No 8682, date 7 November 2000";
- *Law No. 9232, date 13 May 2004* "On social programs for housing residents in urban areas";
- *Law No. 9632, date 30 October 2006* "On local taxes";
- *Law No. 9675, date 13 January 2007* "On some amendments to law no. 8417, date 21 October 1998 "Constitution of the Republic of Albania";
- *Law No. 9719, date 23 April 2007* "On some changes and amendments to Law no. 9232, date 13 May 2004 "On social programs for housing residents in urban areas";
- *Law No. 9745, date 28 May 2007* "On some changes and amendments to Law no. 9632, date 30 October 2006, "On local taxes";
- *Law No. 9743, date 28 May 2007* "On some changes and amendments to Law no. 8405, date 17 September 1998 "On urban planning", amended;
- *Law No. 9869, date 4.2.2008* "On loans for Local Government";
- *Law No. 10 119, date 23.4.2009* "On territory planning".

137. Article 2 of the Charter stipulates clearly that the "principle of local self-government shall be recognised in domestic legislation and where practicable in the constitution". The Constitution of

Albania (Article 13) recognises the concept of local self-government. Articles 108-115 thereof set up the fundamental rights, functions and power boundaries for the LGUs. The scope of their powers, internal structure and financial guarantees are defined by the organic law; territorial arrangement is established by the law on territorial and administrative division of the LGUs. There are also some 20 legal acts that regulate the local government system in Albania.

138. The Albanian legal system being monistic, the Charter is recognised as an integral part of the legislation and there is a specific law (No. 8548) that sets up the legal mechanisms for the realisation of the principles of the Charter. The Rapporteurs are satisfied to note that the principles of the Charter set forth in Article 2 are fully covered and taken into account by the legal acts of Albania.

139. The rapporteurs would only add that, in many Council of Europe member States, the administrative territorial division and the boundaries of municipalities are an integral part of the organic law on LGUs whereas in Albania, they are the subject of a separate law. This law regulates the structure, roles and responsibilities of both the regional authorities and the LGUs, which creates confusion. In an ideal case, there would be a separate law on regional governments and perhaps, this is a consideration that could be taken up by the legislator in further developing the legislation on local government.

140. It should also be noted that the current procedure for the adoption of normative acts gives the Council of Ministers the right to issue a decision that obtains status of law 40 days after formal adoption by the Parliament. This practice allows the government to make its decisions obligatory for all levels of public administration in the country. The rapporteurs would recommend replacing this procedure with the ordinary practice of adopting normative acts after three readings, giving parliamentary factions more control over the legislative process and improving legislative procedure.

## **5.2 Article 4 – Scope of local self-government**

### **Article 4 – Scope of local self-government**

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

141. Basic functions and competencies of local self-government units are prescribed in the Constitution of Albania (Part VI) and in Laws No. 8652 and 8654. Local self-government units have own (exclusive), shared and delegated functions. Local councils have the right to make decisions on all types of powers assigned to them and LGUs of the first tier can delegate their functions to the upper tier of local self-governance. Local government associations are consulted by central authorities on the subject of allocation of new functions to LGUs. The Rapporteurs would say that Albanian legislation is in compliance with paragraph 1 of Article 4 of the Charter, although there are some issues, which need more clarity and coherence (see the following paras. 140 – 143). However, the Rapporteurs would also note that they have heard complaints from the representatives of Albanian communes and municipalities that these consultations have a sporadic nature and local officials are prevented from active participation due to the setting of strict deadlines.

142. Albanian legislation (Law No. 8652) provides that LGUs have full discretion to exercise their own competences and take decisions on matters that are not prohibited for them by legislation. Albania has two tiers of LGUs. The system of village boards and town boroughs allow true proximity with the

citizens. Therefore, it can be said that the Albanian system of local government formally corresponds to the requirements paragraphs 2 and 3 of Article 4 of the Charter.

143. On the other hand, Law No. 8652 distinguishes between "authority" and "functions". "Authority" is synonymous with "competence" (i.e. authority given by law to a certain entity for carrying out a function/task). "Authority" is further divided into four categories (administrative, service, investment and regulatory). Accordingly, LGUs in Albania may have only an "administrative authority" in one sector of municipal economy and "investment and service authorities" in another, while "regulatory authority" may belong to the central government agencies. Such partitioning of competences contradicts with a basic principle of the Charter according to which, competences of local governments should be full and exclusive. In general, the terminology used in the Albanian legislation is confusing because the terms "own" and "delegated" are used not only for "authority" but also for the "functions".

144. In practice, the Albanian model of territorial regulation and spatial planning is a vivid example of inconsistency with paragraph 4 of Article 4 of the Charter. This competence, defined as an own "function" of local authorities is, in fact, implemented by a parallel structure that is chaired by the Prime Minister where all decisions are taken within the strict administrative hierarchy. Such a fragmentation of LGU powers does not perfectly fit the requirements of paragraph 4 of Article 4 which stipulates that the powers of local authorities be full and exclusive.

145. The Organic Law also states that Albanian municipalities and communes have delegated functions. These are functions of the central government which are, by law or by a contractual agreement, assigned to LGUs. The law provides that the central government guarantee the necessary financial support for the execution of these functions. However, the law does not specify which functions may be delegated to local authorities; the delegation of power is essentially left to line ministries. Therefore, in the rapporteurs' opinion, it can be said that, in general, Albanian legislation on local government complies with paragraph 5 of Article 4; however delegated competences need to be clearly defined in Law No. 8652.

146. There are no clear regulations and rights for the involvement of the associations in the process of consultation with the central government agencies. No legal act of Albania stipulates what the specific obligations for the central government in process of consultation are. Although the right of LGUs to associate is guaranteed by the Constitution, the Rapporteurs would invite the Government to consider introducing a specific article in Law No. 8652 that will set up clear requirements for the central authorities to consult with LGUs on matters which concerns them directly, as required by paragraph 6 of Article 4 of the Charter and as reiterated in the Recommendation 171 (2005) on consultation of local authorities and Recommendation 328 (2012) on the right of local authorities to be consulted by other levels of government.

### **5.3 Article 5 – Protection of boundaries**

#### **Article 5 – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

147. Albanian Law No. 8652 (Chapter X) defines the procedures for boundary changes to LGUs. It stipulates clearly that a local council should express its opinion on any change to the boundary of its respective LGUs, but the law does not regulate the case when a local council is against such a change. It does not provide any possibility to the local council to oppose the decision of the government and apply to the court against the central government decision. Albanian legislation is not specific enough on the right of a local authority to oppose any changes to its borders, nor does it provide for the use the institution of referendum to validate public support for such changes, Albanian legislation only refers to a general affiliation to the "opinion of community expressed directly or indirectly by various interested subjects".

148. Such a wide interpretation of the requirement of Article 5 cannot be construed as an example of good practice in honouring the spirit and principles of the Charter. Therefore, in the rapporteurs' opinion, although Albanian legislation generally recognises the need for consultation with local communities as stipulated in Article 5 of the Charter, there is still need for a clear mechanism of

consultation (local referendums or equivalent means) with local communes on LGU boundary changes.

#### **5.4 Article 6 – Appropriate administrative structures and resources for the tasks of local authorities**

##### **Article 6 – Appropriate administrative structures and resources for the tasks of local authorities**

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

149. Law No. 8652 clearly stipulates that the elected bodies of communes and municipalities have the right to determine their internal structure. In practice, deliberative bodies of communes and municipalities adopt their statutes, which establish the internal structure for municipal administration. Thus, it can be said that both Albanian legislation and practice in this regard are in full compliance with paragraph 1 of Article 6 of the Charter.

150. As to paragraph 2 of Article 6, the Rapporteurs think that the Albanian system of local government and civil service is formally in compliance with the Charter. There is a need to create a more comprehensive legal framework for municipal public service, especially with regard to communes and regional councils, where conditions of service and employment are regulated by the labour code of Albania and not by the civil service code. It is critically important for Albania to develop a civil service code that will establish and regulate equal conditions of service in all LGUs of the country.

151. The rapporteurs have been informed that recently, Parliament has approved amendments to the Law on Civil Service, which is a positive development. However, the text not being available to them, the Rapporteurs would abstain from comment on its scope at this stage.

#### **5.5 Article 7 - Conditions under which responsibilities at local level are exercised**

##### **Article 7 – Conditions under which responsibilities at local level are exercised**

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

152. Article 27 of Law No. 8652 establishes the conditions of service for the elected local officials. Members of local deliberative bodies have the right to express their opinion freely, as well as the right to request any information needed for the execution of their mandate. Councillors have the right to receive compensation for the execution of their functions as determined by the legislation.

153. Their term of office is 4 years for all elected officials.

154. Conditions of service for appointed officials in municipalities are determined by the law on civil service, which sets up qualification requirements, procedures for hiring and firing of municipal servants, remuneration schemes and conditions for career development. The status and conditions of work for employees in the communes and regional councils are determined by the labour code of Albania and not by the law on public service. This differentiation between the staff of municipalities and communes is explained by the fact that municipalities (cities) have more qualified human resources than communes and that the application of civil service law to communes would result in a massive loss of personnel.

155. Albanian legislation regulates conditions of work as well as procedures for financial compensation and for avoiding of conflict of interest in a very efficient way, providing proper guarantees to the locally elected officials. The mandate of the mayor of a municipality/commune is

verified by a court; this can sometimes take a long period of time. As a conclusion, the rapporteurs would like to state that the Albanian system meets the requirements of Article 7 of the Charter but Albanian lawmakers should nevertheless be invited to think about simplifying the process of validation of credentials for the mayors of communes and municipalities.

## 5.6 Article 8 - Administrative supervision of local authorities' activities

### Article 8 – Administrative supervision of local authorities' activities

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
- 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

#### 5.6.1 Administrative supervision

156. Article 22 of Law No. 8652 establishes the general principle of control aimed at ensuring compliance with the legislation on finance and budgeting. The law on Prefects regulates the supervision of controls of legality for all local government acts.

157. Law No. 8927, dated 25 July 2002, "On the Prefect" as amended, establishes the Prefect's right of supervision over the legitimacy of decisions and regulations issued by LGUs, which are implemented on the basis of Article 33(6) of the Organic Law. The examination of local government acts by the Prefect does not necessarily lead to suspension of execution of the acts under scrutiny.

158. Each LGU sends all normative acts to the Prefect for supervision within 7 days after adoption. The Prefect examines the legal act during 10 days and if the act corresponds to the legislation, an official notification is sent to the respective LGU. If the Prefect observes a legal inconsistency, the act is sent back to the respective LGU with recommendations to amend the act. A revised version is sent to the Prefect in 7 days and, if irregularities are observed again, the Prefect applies to court for a judicial review and sends notification thereof to the LGU. The law on Prefects stipulates that the Prefect can request a local government only once to revise their legal act. However, Article 14, para. 2, line "c" thereof gives the Prefect the right to send additional recommendations to LGUs on acts that are already before a court. Neither Law No. 8652 nor Law No. 8927 give local authorities the right to apply to the court against the Prefect's decisions. Moreover, Law No. 8927 stipulates clearly that, based on the recommendation from the Prefect, "the local government organ revises the act" (Article 14, para. 2, line "b"). The Rapporteurs draw attention to the fact that this is an imperative statement which obliges LGUs to revise their act according to the recommendations provided by the Prefect.

159. Albanian legislation does not differentiate between regimes of supervision for own and delegated functions, the procedure being the same for both. In addition, the Prefect enjoys the right to examine citizens' appeals on the legality of normative and individual acts by LGUs. The Prefect has the right to conduct audits on all normative and individual acts adopted by LGUs every 6 months. If a specific act has not been submitted for supervision by the LGU to the Prefect, the latter requests from the court the invalidation of that act, regardless of its compliance with the national legislation (Law No. 8927, Article 15, para.2).

160. The rapporteurs are of the opinion that, formally, the system of administrative supervision is in compliance with the requirements of the Charter. However, there are some key issues that need clarity and better regulation, namely:

a) It is difficult to understand what type of supervision (*a priori* or *a posteriori*) is used as regards the own functions of LGUs. The legislation stipulates that the examination of an act by a Prefect does not lead to suspension of its legal power. However, if the normative act has not been submitted to the Prefect (i.e. it is not registered with the Prefect's chancellery), the Prefect has the right to request its annulment by the court. Taking into account that Article 14, para.2, line "b" of Law No. 8927 imperatively obliges LGUs "to revise the local act" according to the recommendation of the Prefect, the rapporteurs conclude that the Albanian system of administrative supervision is closer to an *a priori*

than to *posteriori* supervision, To avoid such a wide interpretation, the Rapporteurs would recommend that Albania introduce, for local acts, the kind of provision the Constitution provides for national legislative acts (Article 117, para.1), when these acts enter into force after their publication in the official journal.

b) Albania uses the same regime of supervision for both delegated and own functions, while the Charter (Article 8, para.2) maintains that supervision over the expediency of decisions must be used for delegated functions. Albanian legislation does not specify a regime for supervision over expediency as it only recognises legal supervision over the decision of local governments. Taking into account that Albanian LGUs have a wide range of delegated and shared functions, it is clear for the Rapporteurs that the country needs to have a clear and applicable regime for supervision with regard to the expediency of decisions taken by communes and municipalities regarding delegated and shared functions.

c) Albanian legislation allows Prefects to examine citizens' appeals on the illegality of LGU acts. This provision may be viewed as an impediment for local authorities, as it allows a higher administrative body to examine local acts that have already been supervised (as, *inter alia*, these acts are already in force). Normally, such appeals should be examined by a civil court and not by Prefects.

d) The rapporteurs would also draw attention to a translation issue: Law No. 8927 dated 25 July, 2002 "On the Prefect" as translated, states that the "... prefect checks the realisation of the functions and competences delegated by the central government and the use of the funds contemplated for them, both when they are contemplated by law and when they have been set by joint agreement between a central institution and an organ of local government." The difficulty lies in the translation of the word '*kontrol*' from Albanian. This may be rendered as "audit", "check" or "control" which all signify different degrees of involvement and some of which may indeed involve a 'control of opportunity' by the Prefect rather than a simple control of legality. This may indeed lead to a direct interference by the Prefect in the exercise of the local authority's "functions and competences". So, it would be important to use the proper terminology of the law in official translation.

### 5.6.2 Audit and financial control

161. Article 21 of the Law No. 8652 establishes the conditions for the internal control of LGUs. Each council sets up a finance committee for controlling the local budget during the mandate of the council. Local executives are obliged to report to the finance committee on the execution of the local budget and public expenditure. The committee has free and full access to all financial documents. In case of necessity finance, it may request an external audit.

162. Law No. 8652 stipulates that external audits in LGUs should be conducted by the Supreme State Control, which checks the legality of spending public funds. Additional financial control is carried out by relevant line ministries, such as the Ministry of the Interior and the Ministry of Finance. During the monitoring visit, the delegation has been informed by the representatives of communes and municipalities that the Ministry of Finance performs financial audits regularly according to an adopted calendar. Communes are audited once every two years while municipalities are checked on an annual basis. Municipalities and communes are also audited by the Ministry of the Interior. The 65 municipalities are divided into 6 groups (10 municipalities in each group) and each group is audited once every 2 years. Communes are divided into groups (20 or 25 communes in each group) and each group is audited according to the specific calendar adopted by the Ministry.

## 5.7 Article 9 - Financial resources of local authorities

### Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

- |   |   |
|---|---|
| 5 | The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility. |
| 6 | Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.  |
| 7 | As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.   |
| 8 | For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.   |

Paragraphs 1, 2, 3 and 4: adequate, commensurate, local and diversified financial resources

163. Municipalities and communes have two main sources of local revenue: own revenues (local taxes and fees) and conditional and unconditional transfers from the central government. Based on Law no. 8652 (31 July 2000) "For the organisation and functioning of Local Government" and Law no. 9632 (30 October 2006) "On the system of local taxes", and also on the annual budget laws, LGU income stems from the State budget (unconditional and conditional transfers), revenues from local taxes and fees and local borrowings and revenues from foreign financing and donors.

164. When local government was first established in Albania after the transition to democracy, its fiscal autonomy was almost non-existent. This can be seen from the fact that transfers from central government constituted almost the entire source of local government revenues (96.30% in 1999) and 86.6% of all revenues were in the form of conditional transfers, that is, where local government had little or no discretion in their use.

165. The share of own revenues in total local budgets has increased dramatically in recent years and constitutes more than 50% thereof. During the global financial crisis of 2008, 47% of local revenues came from the State budget and 53% from taxes and fees. In the 2012 budget, 54% came from local taxes and fees<sup>20</sup> and 46% from the state budget (as an unconditional transfer).

166. Unconditional transfers are given to LGUs from the State budget in grant form, without destination, without interest and without the right to return. This grant is used by the decision of local councils to cover local expenditure for their functions. The conditional transfer is given under the conditional right to cover the costs for delegated functions and shared with the central government, as prescribed in Law No. 8652. These funds are to be used only for the purpose for which they are approved, for example those from the Ministry of Labour for social protection, those from the Ministry of Economy for current expenditure for employees of the National Licensing Centre etc.

167. The council of the municipality or the commune decides for the types of fees, their rate as well as the basic rules for their collection and administration, and determines whether the fees are collected by the municipality and commune structures or by the agent. If it is the agent, the council decides for the basic rules for the agent to use and the mayor or the chairman of the commune selects the agent and signs the contract.

168. A positive development to underline is that the "Regional Development Fund" has been instrumental for financing competitive grants in communes or municipalities to reduce the disparities between various LGUs. The system proved its stability during the world financial crisis. In spite of the fact that unconditional grants were reduced by 15% in 2010 and local government income went from 20.1 million Albanian Lek (ALL) down to 19.5 million ALL, local services were kept at a satisfactory level with only a 3% decrease.

169. In the rapporteurs' opinion, this should be recognised as a success of the decentralisation policy in Albania. Also taking into account the diversity of local government revenues, it can be said that the financial situation of local authorities in Albania is in line with the requirements of paragraphs 1, 3 and 4 of Article 9 of the Charter.

170. During the visit to Albania, the rapporteurs heard numerous times that, although local authorities enjoy a wide range of own competences, these competences are not always accompanied with

<sup>20</sup> Based on current local government legislation (Law No. 9632) the local taxes are small business tax, immovable property tax, which includes the building and agricultural land taxes; hotel tax; new construction infrastructure impact tax; immovable property right transfer tax; vehicle annual registration tax; tax on occupation of public spaces; table tax; temporary tax.

adequate financial resources. The share of LGU expenditure in the total public spending in Albania constituted only 7.2% thereof in 2011 and this is one of the lowest figures recorded in Europe. The same is true for the share of LGU expenditure in GDP that fell to 2.1% in 2011. Comparison of this data with the list of LGU functions makes it clear that many functions are unfunded or only partly funded. The substantial part of LGU spending goes to general public services; then come salaries and wages. Capital expenditure reached 42% in 2009 and dropped during the financial crisis.<sup>21</sup>

171. The share of local government spending within total public expenditure remains relatively low and it can be argued (as indeed many local elected officials do) that local revenues are not commensurate with the own and shared functions of local authorities. Such disproportion between the scope of power and available financial resources is in contradiction with the requirements of paragraph 2 of Article 9.

*Paragraph 5: financial equalisation and policy discretion*

172. Albanian legislation uses unconditional transfers for mitigation of financial disparities between LGUs. Such transfers are made from the State budget in grant form, without destination, without interest and without the right to return. They are used by the decision of local councils to cover local expenditure for their functions, as defined in Law No. 8652.

173. In the context of the consolidation of the decentralisation reform in 2002, the State Budget included for the first time the concept of giving unconditional transfers to local governments through a formula. This formula balances the need for objective criteria related to the costs of local services and provides a measure for equalisation to help the poorest LGUs. The main results of the formula had to do with improving fairness, creating a greater connection between the size of area, population number, and amount of funds received, and providing some equalisation effect. For the first time transfers to LGUs from the State budget became transparent and predictable, which improved the management of budget by local officials. The effects of formula have been evaluated positively under the proportionality criteria, fairness and equalisation (balance) in the distribution of funds.

174. The size of the unconditional transfer is based on the functions transferred to local governments, the respective funds for them and the specific regulations on an annual basis based on the transfer of taxes. The total amount of the unconditional transfer is distributed among LGUs (municipalities, communes and counties); it is based on several criteria and a process involving several steps. The basic steps and criteria of the distribution of the unconditional transfer are explained below.

175. The grant pool is first divided into three sub-pools: a share to the municipalities and communes, one share to the regions, and a reserve in the form of "compensation fund". The share of the municipalities and communes is then divided into two sub-pools: a general grant to be distributed according to a specific formula and another "compensation fund" reserved for municipalities and communes. The formula for the distribution of the unconditional transfer to municipalities and communes is based on the size of the population of the relevant unit and the area of the communes.

176. The formula takes into account the potential fiscal capacity of LGUs which means that units with limited opportunities for generating income from taxes and fees are financed more through unconditional transfers. Part of the unconditional transfers for the regional councils is divided into two sub-pools: the total grant distributed based on a specific formula and ii) the "compensation fund" reserved for regions.

177. The formula for the regions is based on an equal share for all regions, population, geographical indicators for counties (field, hilly and mountainous) and the length of rural roads.

178. Fiscal capacity is calculated only on small business tax (SBT) and on vehicle registration tax. A first adaptation of this allocation is done in accordance with the coefficient of fiscal capacity. Each municipality and commune with revenues per capita higher than the national average contributes 25% of the fiscal equalisation difference, divided with its population. This sum is subtracted from the initial calculation of the grant. Each municipality and commune that is below national average is compensated with 25% of this difference, divided by its population; this sum is added to the initial calculation of the grant.

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<sup>21</sup> PLGP White Paper on Fiscal Decentralization in Albania (USAID).

179. The gross amount of the equalisation fund as well as the specific sum to be transferred to each LGU is calculated on an annual basis and adopted by the Parliament as an appendix to the State budget law. When preparing the draft budget, every municipality and commune can estimate in advance for the following year the amount that it will receive from the State budget in the form of unconditional transfer. However, many representatives of Albanian communes and municipalities expressed concern over the variability, over time, of the formula used for the unconditional grants, making budget planning difficult and uncertain. For a detailed account of the formula used to distribute unconditional transfers, see Appendix III.

180. To promote the socio-economic development of communes and municipalities, the Albanian government uses competitive grants which are managed by the line ministries and given to communes and municipalities on a competitive basis. The total amount of this grant comes from the line ministry fund invested in LGUs and is accumulated in the "Regional Development Fund", which is an integral part of the State budget. The Fund aims to identify the problems related to local and regional development and to combat poverty through development policies and consists of competitive grants for local infrastructure, basic education, health, cultural facilities, water supply, building agro-food markets, irrigation and drainage and forestation.

181. Selection criteria for successful project applications are based on two basic factors: the project's social impact and the financial feasibility of public expenditure. A special committee led by the Prime Minister of Albania and composed of representatives of line ministries and local government associations awards these grants.

182. One of the issues is the structure of local budget revenues. The government declares that the majority of LGU revenues are unconditional. However, the conditional grants are the biggest source of funding, and if you add to this the grants provided by various ministries, it becomes obvious that unconditional funds in the local budgets are far less than 50%.

183. The table below makes it evident that LGUs are heavily dependent on financial assistance from the State budget. This, in the rapporteurs' opinion, should be viewed as a main obstacle to the development of local autonomy in Albania.

<b>1. Total LG Revenues in 2009 (in ALL)</b>		<b>49,042,763</b>	<b>100%</b>
<b>1.1</b>	<b>Own Revenues</b>	<b>27,036,821</b>	<b>100%</b>
1.1.1	Tax Revenues	12,610,987	46.8%
1.1.2	Non tax revenues	1,502,834	5.5%
1.1.2	Unconditional Grant	12,923,000	47.7%
<b>1.2</b>	<b>Conditional Grants</b>	<b>22,005,942</b>	<b>--</b>
<b>Source of funds by origin of generation</b>			
<b>I</b>	<b>Collected locally</b>	<b>14,113,821</b>	<b>28.7%</b>
<b>II</b>	<b>Received from the central government*</b>	<b>34,928,942</b>	<b>71.3%</b>
* Does not include competitive grants from the Line ministries			
Source: Assessment of the State of Local Democracy in Albania, CoE/SDC. 2012			

184. Furthermore, the rapporteurs were informed that the central government resorts to the practice of cutting unconditional grants in certain cases. This is a violation of Albanian legislation, which recognises the power of discretion LGUs have over the use of unconditional grants. In the Rapporteurs' opinion, it also contradicts paragraph 5 of Article 9.

#### Paragraph 6: consultation

185. The Ministry of Finance organises consultations with the Associations of Local Authorities on the allocation of equalisation grants and specific transfers. The associations also participate in the decision-making process on the competitive grants scheme for communes and municipalities. However, consultations on resources allocated to local authorities have a formal nature, lacking any real influence on the decision-making. Many municipalities and communes complain against the competitive grants scheme but the associations have never officially challenged the fairness and transparency of this scheme. In general, direct consultation with communes and municipalities can be considered rather weak (especially with those controlled by the opposition party), based on the recurrent remarks the Rapporteurs heard from interlocutors during the visit. This raises an issue

under paragraph 6 of Article 9 and there is need for establishing more balanced instruments for consultations with local authorities.

Paragraph 7: earmarking of grants and discretion in their use

186. The transfer of unconditional grants to communes and municipalities is also an issue. It happens on a quarterly basis, based on the spending needs for the quarter and availability of own funds (own tax and non-tax revenues) for that quarter. Such a practice increases the danger of direct administrative intervention in local affairs, as well as limiting the discretion of local financial offices to manage their funds independently and under their own responsibility. In the majority of Council of Europe member States, equalisation grants (the equivalent of the Albanian unconditional transfer) are allocated to LGUs, *mutatis mutandis*, in equal instalments with a sequence defined in national legislation. In the Rapporteurs' opinion, such an approach would give LGUs more decision-making power on financial matters.

187. The practice of payment of membership fees from the unconditional grant to regional budgets needs more clarity and better legal justification. Regions are not inter-municipal entities owned by municipalities and communes, but a level of sub-national administration *per se*. Furthermore, Albanian legislation defines the *qark* as a second tier of local government, which means that:

- a. municipalities and communes are territorial administrative units of *qarks* as defined by the law on territorial-administrative arrangement of Albania;
- b. whereas the inclusion of LGUs into *qarks* is based on public law and not on the free will to associate, the term "membership fee" cannot be applied here;
- c. a fee is based, *inter alia*, on a *quid pro quo* while revenues of regional budgets are for implementation of public functions exclusively assigned to the regional level of Governance.

188. Thus, based on above listed arguments, it is difficult to understand what category of LGU expenditure these membership fees fall into and what the expediency of such a contribution is, from the perspective of local autonomy. The current practice (i.e. fees are deducted from the unconditional grants and transferred to regions by the Ministry of Finance, leaving municipalities/communes without the right to set conditions or discuss the rate of deduction which was -8.5% in 2011, provides good evidence for the judgment that whereas *de jure* fiscal decentralisation and autonomy is guaranteed in Albania, *de facto* financial management is still highly centralised and LGUs have limited rights vis-à-vis the Ministry of Finance when it comes to decision-making and fiscal policy. This goes against the requirements of paragraph 7 of Article 9.

189. The efficiency of Small Business Tax (SBT) is also a topic for future consideration. The subject of this tax are companies with less than 2 million ALL turnover. Once a company's profits exceed this margin, they become subject to the corporate income tax (CIT) and contribute to the State budget of Albania. Under the current regulations, the SBT cannot be viewed as an efficient fiscal instrument due to the very low margin of annual turnover (equivalent to 14,300 euros) which does not allow municipalities to generate substantial income. Moreover, municipalities lose any incentive they may have to implement a proactive policy for small business development.

190. The vast majority of the local officials interviewed by the delegation made it clear that they would prefer to receive a share of the CIT rather than collect SBT which has a huge administrative cost. Sharing the CIT between the central and local governments might be good solution for guaranteeing local financial autonomy, especially, since Albania has recourse to shared functions between local and central levels. It is quite common in Council of Europe member countries that, if and when shared competences are in place, central and local budgets share the income from personal income tax (PIT) and CIT in proportion to the shared functions assigned to each level.

Paragraph 8: local government borrowing

191. The Law on Local Government Borrowing No. 9869, dated 4 February 2008, aims to expand LGUs' financial autonomy. This law allows LGUs to borrow for cash flow and investment purposes from the capital market (financial institutions and banks) and on the domestic and international markets. It can therefore be said that the legislation is in line with paragraph 8 of Article 9.

192. Nevertheless, loans are a limited instrument in local government hands for securing revenues. If LGUs are given broader fiscal autonomy and more competences are transferred to them, loans would significantly strengthen LGU's financial and economic capacities.

193. Based on the law on borrowing, municipalities' debt service due in any year on all long-term debt should not exceed 20% of the average total actual revenues of the local government from the unconditional transfer, shared taxes, and local taxes and fees of the last three fiscal years<sup>22</sup>. However, in January 2010, the Public Debt Department of the Ministry of Finance imposed a limit on drawdowns on local borrowing to the equivalent of 5% of 2009 expenditures. As this was applied individually to each local government, it severely constrained the amount of the drawdowns in that year.

194. The National Commercial Bank (BKT) reports that they have responded to 16 loan requests, mainly from municipalities, but also from 3 communes. The LGPA/USAID funded program has assisted the municipalities of Fushë Krujë, Elbasan, Korçë and Lezhë with their applications, while 12 other units have already applied to the second level banks for a long term loan, of which 7 have been successful<sup>23</sup>. Loans taken by successful municipalities have been used essentially for local road improvements. Since the debt of local governments is part of the public debt, limitations have been imposed on local government borrowing by the Ministry of Finance.

Conclusions as regards Article 9

195. The rapporteurs conclude with a positive assessment of issues covered by paragraphs 1, 3, 4, 8 of Article 9 of the Charter and consider that there are a number of areas under paragraphs 2, 5, 6, 7, and especially fiscal decentralisation, which raise issues of compliance with the Charter and need further improvements.

5.7.1 Regional finances

196. Article 18 of Law No. 8652 identifies the following revenues for regional budgets:

- unconditional grants, including fees deducted from unconditional grants assigned to communes and municipalities. The percentage is set up by the Ministry of Finance and, for the last three years, it has been fixed at 8.5% of the total pool of unconditional grants;
- conditional transfers received from the central government of Albania;
- fees from services provided by the regions;
- funds received as competitive grant from line ministries.

197. Spending priorities of regional budgets are defined by the State through delegated functions and by the regional council via shares from unconditional grants (membership fees). Regional budgets mainly finance general administrative expenditure, vocational education, environment and agriculture.

198. The *qark* is recognised as a second tier of local government and in this sense, its power and financial resources should be defined in compliance with the Charter. Article 9 paras.1, 2 and 3 stipulate clearly that each and every level of local self-government should have its own financial resources that are commensurate with the responsibilities provided by the law and that a substantial part of these financial resources should derive from taxes. Where regional budgets are concerned, it is the rapporteurs' opinion that none of the above listed provisions of the Charter is in place. Consideration should be given to reforming the system of regional finances as a critical part of the overall decentralisation strategy.

<sup>22</sup> Assessment of the State of Local Democracy in Albania, CoE/SDC. 2012.

<sup>23</sup> Assessment of the State of Local Democracy in Albania, CoE/SDC. 2012.

199. The financial viability of the regions is another issue. Albanian regions are relatively small compared to European model (NUTS II) and they lack proper economy of scale. The rapporteurs would recommend the Albanian government to consider the consolidation of regions as a promising solution to increase their financial sustainability.

#### 5.7.2 *Relationship between the Treasury Office and local government units*

200. Under Article 8 of Law 9936, dated 26 June 2008 "On budgetary management system in the Republic of Albania", the LGU receipts and payments are made through the unified treasury account that is held in the Bank of Albania. The Treasury System consists of the Treasury Department in the Ministry of Finance and district Treasury branches. The latter are located in 36 districts. Each LGU has its own account in these branches. LGUs are entitled to benefit from the interest of their monetary assets, temporarily free, in the unified treasury account.

201. Funds allocated to local government units, immediately upon receipt, are deposited in the treasury accounts, according to the rules and procedures as defined in Article 8 of Law no. 9936. Local budget revenues that are left in the treasury accounts from local taxes, unconditional transfers from the State budget and other resources that are not used during the fiscal year, are carried over for the next budget year. Commitments for paying the costs of local government units have to be authorised by the Treasury Branches after all documents have been inspected and approved. Before making a payment, the treasury system checks the existence of the commitment, the basic documentary evidence of the service performed and whether there is sufficient cash for payment.

#### 5.7.3 *Public Private Partnership (PPP)*

202. PPPs are based on agreements for commercial activity between a local government entity and the private sector with the aim of providing services and public investments. The agreement is sanctioned by Law No. 8652, the civil code and other supporting legislation, which allow LGUs to take part in the agreement with their own capital in the form of assets, while the private sector takes the risk of investment and manages the service.

203. Simple traditional forms of PPPs consist of contracts with third parties for the management of services such as cleaning and waste collection street lighting, etc., or lease contracts giving the management of LGU own assets to a private operator, who is in charge of performing key elements of the public service, etc. Most of LGUs have examples of PPPs.

### 5.8 **Article 10 - Local authorities' right to associate**

#### **Article 10 – Local authorities' right to associate**

Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

204. Article 109 of the Constitution gives LGUs the right to form associations as well as to establish links with similar local authorities in other countries. They may also be represented in international organisations of local authorities. This right has been affirmed in Article 8, Chapter V of the Law no. 8652.

205. Currently, there are three such associations in Albania: the National Association of Municipalities, the National Association of Communes and the National Association of Regions. There is, in addition, a group of Socialist Mayors who split from the Association of Municipalities and established a new organisation named the Association of Local Autonomy in Albania.

206. The rapporteurs welcome the fact that these associations have been consulted by the central authorities in matters concerning local affairs. Associations are involved in the process of allocation of competitive grants, as well as in the process of calculation of conditional grants for communes and municipalities. The rapporteurs would recommend that these consultations become part of an institutional mechanism.

207. However, the local government associations in Albania appear fragmented, without a unified voice for Albanian local authorities at the local level. There is little coordination among the associations and in fact, they appear to be playing a supplementary role to the central government rather than taking a strong stance vis-à-vis the central government, as an active mobiliser of LGUs for the protection of their legitimate interests. The rapporteurs have been informed that such a dialogue involving elected representatives from both political alliances and all associations has been initiated within the framework of the project “Building a sustainable, pluralistic and unified platform of dialogue for local government in Albania”, implemented by the Congress.

208. The rapporteurs have taken note of the partisan approach which appears to mark the relations among local elected representatives and cannot underline enough that these substantially reduce the efficacy of local government associations, given that the consultation process is largely dominated by party politics. The socialist mayors accuse the leadership of the associations of favouritism toward the ruling political party, while the leadership of the associations blame socialist mayors for adopting a partisan approach and sabotaging the work of the associations. Domination of party politics over the institutional interest of local self-government renders the associations weak and gives the process of consultations with LGUs an essentially formal nature.

209. The rapporteurs call on all elected representatives in Albania to take a strong stance in favour of local government interests and to convince their leaders to aim for a unified position, perhaps under an umbrella organisation, in order to defend their interests and raise awareness of the independence of local government issues from national politics.

### **5.9 Article 11 - Legal protection of local self-government**

#### **Article 11 – Legal protection of local self-government**

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

210. Local authorities in Albania have the status of a legal person (entity of public law) and have the full right to represent their interests, to enter into agreements, and to have assets and liabilities. Local authorities have their own and delegated functions, financial resources and property. They have the right to apply to civil courts and to the Constitutional Court of Albania for the protection of their interests.

211. Albanian local authorities use legal instruments for the protection of their interests very rarely. Mayors encountered during the visit have told the rapporteurs that legal cases take several months in the Albanian courts and cannot be considered to be an effective legal remedy for the protection of local authorities.

212. The Constitutional Court of Albania exercises overall supervision over the Constitution of Albania and scrutinizes issues related to the protection of constitutional rights and provisions. The Congress delegation learned during the visit that there had been no appeals from the municipalities to the Constitutional Court of Albania.

213. The principles of local self-government are enshrined in the Constitution (Part VI) and in the domestic legislation of Albania. The Charter is recognised as an integral part of Albanian legislation. Local authorities have access to the judiciary for the protection of their rights, including the Constitutional Court of Albania. There have been cases where local authorities have applied to courts to protect their interests. The rapporteurs have heard various comments during the visit to conclude that, although judgments take a long time to be processed, the courts are considered to be an effective mechanism for the legal protection of local authorities by a vast majority of Albanian local representatives. They consider therefore that the legal protection of local authorities in Albania is in compliance with the Charter.

## 6. CONCLUSIONS

214. Albania has successfully made the transition to a democratic society, and decentralisation of the state power and the establishment of local democracy is a major component of this democratisation. The process of devolution started in the late 1990s and has continued up to now. Albania's membership to the Council of Europe and the ratification of the Charter gave it the right momentum and direction for decentralisation.

215. The establishment of viable and efficient local and regional authorities is one of the conditions for Albania's accession to the EU. Fully cognizant of the need and the importance of efficient local and regional government, Albanian authorities have adopted a strategy for decentralisation that is a roadmap for more local and regional development in Albania. The rapporteurs recognise that a big step forward has been taken especially in the establishment of multi-level governance and electoral democracy in the country.

216. The Albanian system of local and regional self-government, in general, corresponds to the spirit and principles of the Charter. Nevertheless, there are number of critical issues that need to be paid proper attention; the Rapporteurs call on Albanian authorities to intensify the decentralisation process in light of the Charter and the recommendations provided by the Congress.

217. Albania needs a comprehensive and intensive fiscal and tax reform, as one of the highest priorities of its decentralisation programme. The system should move from the current model of dividing tax revenues between central and local government toward a model of sharing income from certain taxes (e.g. corporate profit tax). For example, the tax on small businesses (by economic classification it belongs to a group of corporate profit tax) is assigned to the local governments while corporate income tax from bigger companies entirely goes to the central budget. Such an approach kills any incentive local governments may have to promote local economy and create favourable conditions for growth of local companies. The rapporteurs recommend introducing a special legal act on long-term coefficients for distribution of shared tax revenue among local and central government to ensure that a percentage from shared tax income which goes to local budgets is aligned with the competences of local governments and not with the political targets of the central government.

218. As regards competences, the Albanian legal system (and specifically Law no. 8652) uses a very complex classification of LGU responsibilities (rights, powers, functions, authority, joint power authority) which creates confusion and leaves space for wide interpretation. According to the Charter, LGU "responsibilities" should be full and exclusive. "Exclusive" means that local authorities should have discretion to make decisions independently, without any interference and guidance from other levels of government. "Full" means that LGUs' own responsibility, *per se*, includes multidimensional (regulatory, service, investment, administrative etc.) authority avoiding any tendency toward a progressive dilution of responsibilities. Moreover, Albanian lawmakers should not differentiate between "delegated function" (i.e. responsibilities) and "delegated authority", since as soon as responsibilities are delegated, authority accompanies the responsibilities. Therefore, in the Rapporteurs' opinion, Articles 2, 7, 8, 9 and 10 of Law no. 8652 need to be amended in the light of Article 4 of the Charter (and its explanatory memorandum) to avoid a progressive dilution of the responsibilities of local authorities in Albania. Moreover, more competences need to be assigned to LGUs in public service areas, decentralising public and municipal services such as potable water supply, solid waste and sewage systems. The transfer of adequate companies and utilities to the full ownership and discretion of local authorities should also be considered.

219. As regards Article 3 of the Charter, the Rapporteurs are of the opinion that a revision of the procedure for the designation of *qark* councils and the introduction of, *mutatis mutandis*, direct elections for their deliberative bodies based on universal, free and secret ballot would be a timely development.

220. There is a vivid need for a territorial reform in order to rethink the current scope of local self-government in Albania. Small units do not necessarily provide a proper economy of scale and they are unable to implement a substantial share of public functions in an effective and efficient manner. The Government of Albania may wish to establish a sound and justified policy for merging small communes and municipalities into bigger units with more power, and more financial and human resources. The Associations should play driving role in this process.

221. As regards Article 4 of the Charter, a reorganisation of the system of territorial regulation and urban planning seems to be in order, to guarantee that responsibilities of local authorities in spatial development of their territories and urban planning are exclusive and full. For this purpose the Rapporteurs would recommend the following:

a. to eliminate regulations that give right to the National Territorial Regulation Agency to make decisions on areas and physical structures (city centers, recreation areas, land over 20 ha etc.) that are under the ownership of local authorities. This may not prevent national Agencies to set up standards and regulations for spatial and territorial planning;

b. to replace the Construction Police by a planning inspectorate independent of the central government whose task would be to control the implementation of technical standards on the territory and under the authority of local government;

c. to give the control of legality of decisions (now made by the Council of Territorial Regulation and local Territorial Adjustment Councils) to an independent judiciary power;

d. to take initiatives to improve the Laws on Urban Planning and Construction Police with the aim at making this legislation compatible with the provisions of the Charter and also Law N° 8652 "On the Organisation and Functioning of Local Government" of 2000;

e. to clearly define the functions and responsibilities of village boards and administrative quarters of municipalities based on the principle of subsidiarity and uniformity of administrative structure;

f. to clearly define the role and responsibility of the *qark* and to identify own and delegated functions for regional councils. Distinction of responsibilities between the first and second level of local governments needs to be clearly stipulated in the legislation;

g. to amend Article 10 of the Albanian Urban Planning Law which allows an organ of the central executive to interfere in local decisions ("where the implementation of governmental programs is hindered") which goes beyond the control of legality and is a means for control of expediency over local authorities' own responsibilities that contradicts the Charter;

h. to introduce institutional mechanisms for consultation with local authorities and not limit this process to a formal participation of the associations in various committees or panels, making the process of consultation result-oriented. This would mean specific articles in the legislation which obliges the central government to organise consultations on the matters that directly affect local authorities in due time and in an appropriate manner;

i. to improve legal status of the capital city of Tirana and its integration into the system of regional government by recognizing Tirana as a city-region. This would constitute a solution in the interest of cooperation between the capital and the region, while allowing for a possible extension of the city boundaries.

222. As regards Articles 6 and 7 of the Charter, the rapporteurs invite the Albanian authorities to consider the following as possible solutions:

a. to give equal legal status and career opportunities to employees in municipalities and communes. The employment regime and condition of work for commune officials should be regulated by public service law and not by the labour code;

b. to abolish the rule that allows for the validation of the mandate of the members of regional councils; to ensure that mandates given by the deliberative bodies of communes and municipalities are not challenged by administrative organs but only by court authorities;

c. to assign regional councils a clear mandate to determine structure of regional executive power, including not only the secretariat but also the heads of regional departments and district authorities.

d. As regards the upper limit set by the Ministry of Finance for administrative costs in communal and municipal budgets (40%) which is quite low in absolute figures for the communes whose budgets are small and cannot hire highly qualified staff, to allow the LGUs to set up their administrative costs

independently and under their own responsibility or to define the percentage of administrative costs according to the size of local budgets. If budget is small than it should be more that 40%.

223. With regard to administrative supervision of local authorities (Article 8 of the charter) and external audit, the Rapporteurs would recommend the following:

- a. to review the prefectural system and the status of Prefects to prevent political interference in local and regional affairs through the exercise of their supervisory function and that the role of the prefect be confined to a posteriori control of legality and to give LGUs the right to avoid recommendations provided by the Prefect if need be;
- b. to limit the supervision of local authorities to ensuring compliance with the law and exclude any supervision of the expediency of actions that fall within local authorities' own areas of responsibility; to ensure that the principles of subsidiarity and proportionality remain key aspects of any administrative supervision by higher-level authorities;
- c. to introduce a reasonable time frame for completing appeals from local authorities to avoid long court procedures in the process of administrative supervision;
- d. to limit the involvement of Prefects in the formation of regional councils (example: Fier Region);
- e. to clarify the respective roles of the Prefect and the regional council in order to avoid overlap, confining the role of the prefect to a posteriori control of legality and ensuring that the prefect does not politically intervene in the workings of the regional council. There should be a clear separation of the regional and prefectural administrations.

224. With regard to Article 9 of the Charter on financial issues, the rapporteurs recommend the following:

- a. to counteract the discrepancy between the responsibilities allocated to local authorities and the financial resources necessary for carrying out these responsibilities by ensuring concomitant financing;
- b. to increase own tax revenues of local authorities and ensure a fairer implementation of shared taxes as personal income tax and corporate income tax;
- c. to launch consultations between the central government and the local authorities on the sufficiency of own local taxes such as small business tax, simplified profit tax and hotel tax, in order to ensure adequate financial resources of local authorities and efficient exercise of this fiscal competence at the local level;
- d. to introduce a new practice of allocation of unconditional transfers to local authorities by dividing this transfer into four equal installments on a quarterly basis, rather than calculating the actual balance of local budgets and filling the deficit between projected income and revenues collected locally;
- e. to develop clear and measurable criteria for awarding competitive grants to municipalities and communes, employee efficient mechanisms for transparency and openness of the process of decision-making on these grants;
- f. as regards the efficiency of competitive grants delivered by the various line ministries, to introduce a more optimal system of management of regional development projects based on principles of efficiency, transparency and adequacy to local needs;
- g. to review the equalisation formula in order to achieve a more balanced financial equalisation in the country;
- h. to reform the fiscal system and allocate own tax revenues to *qark* budgets (which are at the moment entirely based on conditional grants from the central government and financial contributions from communes and municipalities);

*i.* to review the current system of membership fee paid by communes and municipalities to the regional governments in order to ensure that local budgets of all levels are self-sufficient and independent;

*j.* to involve Albanian LGUs and their associations in the process of decision-making on transfers and grants, to improve the present consultation procedure which is formal and limited to providing of information;

*k.* to organise data collection and analyses for identification of income disparities between municipalities and communes and to elaborate an efficient policy on local socio-economic development.

225. With regards to the rights of LGUs to associate (Article 10 of the Charter), the rapporteurs conclude that it is necessary:

*a.* to work with local government associations to establish the practice and procedure of institutional consultations, including but not limited to a formalized partnership with the Parliament by giving the first the right to present a legal conclusion on all draft laws that have direct effect on LGUs;

*b.* to invite the government and the international organisations involved in Albania to work with all existing associations to promote cooperation and ensure the establishment of a unified voice for local authorities for stronger local self-government;

*c.* to invite the Socialist Party of Albania and the Democratic Party of Albania, as well as all political actors, to work together for strengthening the associations and to put the institutional interests of local authorities above of party politics

*d.* to invite all elected representatives of the municipalities and communes of Albania to contribute more in the institutional strength and financial independence of their associations.

226. The rapporteurs have taken note of (and indeed welcome) the coordination mechanism for local elected representatives that is currently under construction within the framework of the Congress project "Building a sustainable, pluralist and unified platform of dialogue for local government in Albania".

227. With regard to the institutional capacity of regional self-government, the rapporteurs invite the Albanian authorities to consider:

*a.* giving regional councils more clear functions, responsibilities in drafting policy on health and education, greater financial autonomy, and adequate administrative staff.

*b.* clarifying the definition of the region's competences which should include (in line with regional competences exercised elsewhere in Europe) public transport, the environment, training, cultural affairs, socio-economic development, environmental development, spatial development, urban and rural policy co-ordination, etc.; and in case the Albanian authorities wish to opt for a policy for promoting regionalism in Albania, to invite them to take into account the Reference Framework for Regional Democracy.

**Appendix 1 – Programme of the Congress Monitoring visit to Albania (12-14 December 2012)**

**CONGRESS MONITORING VISIT TO ALBANIA  
Tirana (12-14 December 2012)**

**PROGRAMME**

**Congress delegation:**

Rapporteurs:

Mr Zdenek BROZ

Rapporteur on Local Democracy  
Chamber of Local Authorities, ECR<sup>24</sup>  
Member of the Monitoring Committee of the Congress,  
Mayor of Šumperk (Czech Republic)

Mr Ake SVENSSON

Rapporteur on Regional Democracy  
Chamber of Regions, SOC<sup>25</sup>  
Member of the Monitoring Committee of the Congress,  
Chairman of the Regional Executive Board of Gotland  
(Sweden)

Expert:

Mr David MELUA

Consultant, Member of the Group of Independent Experts on  
the European Charter of Local Self-Government of the  
Congress (Georgia)

Congress Secretariat:

Ms Sedef CANKOÇAK

Co-secretary of the Monitoring Committee of the Congress

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<sup>24</sup> ECR: European Conservatives and Reformists Group

<sup>25</sup> SOC: Socialist Group of the Congress

**Wednesday, 12 December 2012**

**Albanian Delegation to the Congress:**

Lulzim BASHA,  
Flamur BALLIU,  
Niko PELESHI,  
Eglantina BEGTESHI,  
Tahsim MEMA,  
Luljeta CAKA,  
Lumturi HOXHA

Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Albanian Association of Communes:**

Mr Fatbardh PLAKU, Chairman, and members  
Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Albanian Association of Municipalities:**

Mr Lulzim BASHA, Chairman, and members  
Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Association of Albanian Regional Councils:**

Mr Tahsim MEMA, Chairman, and members  
Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Meeting with:**

Mr Vangjush DAKO, Mayor of Durrës,  
Mr Artan SHKEMBI, Mayor of Pogradec,  
Mr Niko PELESHI, Mayor of Korçë,  
Mrs Lindita NIKOLLI, Chair of the Municipal Unit no.1, Tirana,  
Mr Qazim SEJDINI, Mayor of Elbasan,  
Mr Shpetim GJIKA, Mayor of Vlorë,  
Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Parliament of Albania:**

**Legal Issues, Public Administration and Human Rights Committee**

Mr Ilir RUSMALI, Chairman, and members of the Committee

**Economy and Finance Committee:**

Mr Edmond SPAHO, Chairman, and members of the Committee

**European Union Delegation to Albania:**

Mr Clive RUMBOLD, Head of the Political section of the EU Delegation to Albania

**Swiss Cooperation Office:**

Mr Holger TAUSCH, Country Director for Swiss Cooperation Office in Tirana  
Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Thursday, 13 December 2012**

**Ministry of the Interior:**

Mr Ferdinand PONI, Deputy Minister responsible for local self-government  
and the Directors of Policy Development & Integration, Local Government Policies, Financial Policy  
and Public Administration departments

**Ministry of Finance:**

Ms Mimosë DHEMBI, Director General of Budget  
Mr Fran BRAHIMI

**Representative of USAID:**

Mr Peter CLAVELLE, Chief of Party, Planning and Local Governance Project (PLGP) in Albania  
Mr Ardian DHIMA, Senior Project Officer for the Council of Europe in Tirana

**Constitutional Court:**

Mr Bashkim DEDJA, President of the Constitutional Court

**State Supreme Audit Control:**

Mr Robert GJINI, Director General

**Meeting with the Ombudsman:**

Mr Z. Igli TOTOZANI, Ombudsman

**Meeting with Experts:**

Mr Edlir VOKAPOLA, member of the GIE  
Ms Alba DAKOLI WILSON

**Friday, 14 December 2012**

**City of Tirana:**

Mr Lulzim BASHA, Mayor, and members of the City Council

**City of Pogradec:**

Mr Artan SHKEMBI, Mayor, and members of the City Council

**City of Elbasan:**

Mr Qazim SEJDINI, Mayor, and members of the City Council

**Regional Council of Elbasan:**

Mr Eugen ISAJ, Chairman, and members of the Regional Council

**Appendix II - Formula used to distribute the unconditional transfer, 2002–2011**

<b>Formula Used to Distribute the Unconditional Transfer, 2002 – 2011</b>										
Distribution of Total Pool	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Regions	10%	19%	15%	9%	8.5%	9%	9%	8.5%	8.5%	8.5%
Municipalities/Communes	86%	79%	83%	91%	91.5%	91%	91%	91.5%	91.5%	91.5%
Compensation Fund	4%	2%	2%	-	-	-	-			
<b>Distribution of Municipal &amp; Commune Share</b>										
By Formula	95%	88%	94%	100%	100%	100%	100%	100%	100%	100%
Compensation Fund	5%	12%	6%	-	-	-	-	-		
<b>Municipal &amp; Commune Formula</b>										
Equal Shares	3.5%	3.5%	4%	-	-	-	-			
Population	62.5%	62.5%	62.5%	73%	70%	70%	70%	70%	70%	70%
Area of Communes	4%	4%	9%	12%	15%	15%	15%	15%	15%	15%
Urban Services <sup>26</sup>	20.5%	20.5%	18%	15%	15%	15%	15%	15%	15%	15%
Tirana Share	9.5%	9.5%	6.5%	-	-	-	-			
Tax Capacity Adjustment	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Further Adjustments	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Distribution of Regional Share</b>										
By Formula	100%	85%	97%	98%	98%	98%	98%	98%	99%	99%
Regional Compensation Fund	-	15%	3%	2%	2%	2%	2%	2%	1%	1%
<b>Regional Formula</b>										
Equal Shares	30%	25%	25%	15%	15%	10%	10%	10%	10%	10%
Population	15%	15%	15%	25%	25%	28%	28%	28%	28%	28%
Geographic Indicator <sup>27</sup>	30%	30%	30%	30%	30%	30%	30%	30%	30%	30%
Area of Region/Length of Roads <sup>28</sup>	25%	30%	30%	30%	30%	32%	32%	32%	32%	32%

Source: Ministry of Finance of the Republic of Albania

<sup>26</sup> This amount (2002-2005) was distributed among municipalities other than Tirana on the basis of the relative populations of these municipalities, in 2005-on going; Tirana Municipality is included to Urban Services criteria.

<sup>27</sup> This is an indicator which takes on the value 1, 3, or 5 with 1 indicating that the terrain of the region (e.g. flat plain) as well as other comparative advantages of the region whereas a 5 would indicate a mountainous region with few comparative advantages

<sup>28</sup> In 2003 the area factor was changed to km. of roads in the region; road length continued to be used in 2004.