

ALBANIAN DECENTRALIZATION PROGRESS REPORT 2001

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Objectives

The National Decentralization Strategy adopted officially by the Government of Albania in January 2000 calls for a continuing, factual, and objective evaluation of the progress of implementing the recommendations of that strategy. This report is the first annual evaluation of the process of decentralization in Albania. It covers the period up to the end of 2000 (with some comments on events in early 2001).

The report includes four key sections:

1. Present status of decentralization through the comparison with the European Charter of Local Self-Government (ECLSG);
2. Analysis of the indicators of fiscal decentralization;
3. The major benchmarks which have led to the present status; and,
4. The next steps of decentralization in 2001 and 2002.

Annexes to this report include:

- The full comparison of Albania's situation and conformance to the ECLSG (Annex A);
- The tables on fiscal decentralization (Annex B); and
- A status of progress of the decentralization strategy action plan (Annex C).

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Status of Decentralization

The legal framework and Government support for decentralization are based on the Constitution, the European Charter for Local Self-Government (ECLSG) and the National Decentralization Strategy, for which the year 2000 represents the first year of implementation.

Major Accomplishments in 2000

- ❖ Key legislation adopted by Parliament
 - Law on Organization and Functioning of Local Governments
 - Law on Territorial and Administrative Division of the Local Government Units
 - Law on Organization and Functioning of the Municipality of Tirana
- ❖ Albania now in compliance with nineteen (19) paragraphs of the Charter of Local Self Government – as compared to seven (7) under the prior legislation
- ❖ New functions assumed by local governments pursuant to new legislation
 - Key public services (local roads, public lighting, public transportation, parks, waste management)
 - Cultural and recreational functions
 - Small business development
 - Services in support of local economic development
 - Veterinary service
 - Social services including orphanages, day care, elderly homes, etc.

Activities Scheduled for 2000 and Delayed or Deferred to 2001 and Beyond

- ❖ Legislation
 - Law on Immovable State Property (adopted in 2001)
 - Law on Transfer of Immovable State Properties to Local Governments (adopted in 2001)
 - Law on Intergovernmental Relations (pending)
 - Legislation on local taxes and fees (pending – scheduled for 2002)
- ❖ New functions to have been assumed by local governments deferred
 - Issuance of construction permits
- ❖ Studies in preparation of the third phase of the decentralization process deferred¹
 - Delegated functions
 - Local public services
 - Local staffing requirements
 - Local police and civil protection

Status of Fiscal Decentralization as January 2001

- ❖ No change in the relative share of local expenditures in total public expenditures
- ❖ Continued high dependence of local governments on national sources for revenues (95 percent)
- ❖ Continued subjective allocation of transfers to local governments from the State budget
- ❖ Increase from 4 to 18 percent in the share of total expenditures over which local governments have full discretion

Background

Decentralization has been a focus of Government policy starting from 1998-1999. The first small steps were implemented principally in budget and fiscal areas and included:

- establishment of the block grant from the central government in 1999, giving discretion over sectoral allocation of operational expenditures;
- transfer of full revenue of the property tax on buildings to local governments, as well as the responsibility for collection and administration of this tax (effective from 1999); and,
- end of public expenditures limits and permission given to local governments to carry over unspent revenues of independent budgets and the block grant (effective in 1999).

Since these first steps, the decentralization reform has progressed steadily during 1999 and 2000 based on the Constitution (1998), the European Charter for Local Self-Government (ratified in November 1999) and the National Decentralization Strategy, adopted in January 2000². It is one of the major reforms in the country with important implications for other reforms, such as those in

¹ Due to insufficient funding from own sources and from foreign donors.

² The national decentralization strategy was prepared during 1999 based on a comprehensive participatory approach. The National Decentralization Committee - composed of members of the Government and representatives of local governments (LGs) - was the political body that assumed the leadership in the preparation of the strategy. The Group of Experts for Decentralization was the technical body also composed of specialists from central institutions and local governments, as well as independent experts. A long process of consultation was organized around the country with stakeholders (Local Governments, NGOs, local communities, business communities, general public, etc.) to discuss the draft strategy, appropriate policies and principles, as well as to build consensus. The international community was fully supportive and engaged. The Strategy was finally discussed and adopted by all stakeholders present at the National Conference for Decentralization and Local Autonomy (November 1999) and adopted officially by the GoA in January 2000.

public finance, public administration, public services, education, health, and social assistance. The comprehensive consensus achieved to date and the high level of engagement suggests that there is a serious and solid political will to proceed with the implementation of the strategy.

The year 2000 is the first year of implementation of the strategy. The process of implementation followed the same participatory and consensus-building approach used successfully during the drafting of the strategy.³

Evaluation Of The Process Of Decentralization As Of 2000

1. Status of implementation of the European Charter for Local Self-Government.

The European Charter for Local Self-Government is a multi-lateral treaty of the Council of Europe which is an expression of the best principles of local government, and which can be adopted in a country-appropriate model. The Albanian Parliament ratified the full text of the Charter, without reserves, on 11 November, 1999.

The text of the Charter contains thirty (30) paragraphs, which define the principles of local self-government. Signatory countries must be in compliance with at least twenty (20) paragraphs, of which at least ten (10) must be from the fourteen core paragraphs.

A comparative analysis of the situation of local governments in Albania with the text of the ECLSG was prepared in April 1998 (when Albania began to discuss the signature and ratification of the ECLSG).⁴ It was concluded that Albania was then in compliance with 7 articles of which 4 were core articles.

The updated comparison of the status of decentralization as of the end of 2000 with that of 1998 is based on the new legal framework, including the following texts (and does not take account of their actual implementation)⁵:

- Constitution (28 November, 1998)
- Law on Organization and Functioning of Local Governments (No. 8652 of 31 July, 2000)
- Law on Territorial and Administrative Division of Local Governments in the Republic of Albania (No. 8653 of 31 July, 2000)
- Law on Organization and Functioning of Tirana Municipality (No. 8657 of 31 July, 2000)
- Law on Preparation and Execution of the State Budget of the Republic of Albania (No. 8379 of 29 July, 1998)
- Budget Laws of 1999, 2000 and 2001
- Law on Tax System of the Republic of Albania (No. 8435 of 28 December, 1998)
- Law on Tax Procedures in the Republic of Albania (No. 8560 of 22 December, 1999)
- Amendments to the Law on Property Tax in the Republic of Albania (No. 8344 of 13 May, 1998, which amends Law No. 7805 of 16 March, 1994)
- Electoral Code of the Republic of Albania (No. 8609 of 8 May, 2000)

Considering the overall framework established through the adoption of these laws, Albanian legislation can be considered to be currently in full compliance with 19 paragraphs of the European Charter. Of these, 11 are of the core required paragraphs. The main area in which Albanian legislation is to some extent, but not completely in compliance with ECLSG concerns Article 9,

³ The NDC and GED were re-confirmed by the Government, while regional and local consultations were organized for each of the draft laws prepared by the NDC/GED.

⁴ Pige, J. and C. Banks. *Republic of Albania: Opportunities and Issues for Municipal Reform*. January 1998, The Urban Institute.

⁵ This list is not comprehensive, and there are other laws, amendments and government decrees which complete the overall framework for functioning of local governments in Albania.

local finance issues. This stems in part from the fact that the relevant articles of Law No. 8652 will come into force in two phases, on January 1, 2001 and January 1, 2002.⁶

Although it is clear that the new legal framework which has been adopted since 1998 has started to bring Albanian legislation into compliance with the Charter, in practice, the implementation of the laws was only initiated from 2001. Therefore, actual compliance is in fact lower.

Issues which have not reached full compliance include⁷:

- mechanisms for consultation between central and local governments (Article 4.6 of ECLSG);
- administrative supervision to be carried out only to ensure compliance with law (Articles 8.1 and 8.2);
- key areas of financial autonomy defined by the Charter, such as adequate financial resources (9.1), resources commensurate with responsibilities (9.2), resources sufficiently diversified to keep pace with evolution of costs (9.4), equalization to protect financially weak local authorities (9.5), consultation on manner of resource redistribution (9.6), minimization of conditional grants (9.7), and authority to borrow (9.8).

The area where Albanian legislation is not in compliance concerns only one aspect of administrative supervision (Article 8.3) of the ECLSG.

Some of the changes to be made in 2002 will begin to address these shortcomings.

2. Indicators of Fiscal Decentralization

Tables 1 to 5 attached to this report provide data on the process of fiscal decentralization from 1998 to 2001. The tables include 2001 to show the impact of the State budget law for 2001⁸, adopted in 2000 after passage of the Law on Organization and Functioning of Local Government.

Table 1 shows that the relative weight of local expenditures in overall public expenditures has changed very little from 1998 to 2000. It is expected to remain at similar levels in 2001. This is consistent with the fact that local governments did not assume in 2001 many of the exclusive functions assigned to them in the new legislation (see Section 4 of this report, below).

Table 2 shows that local governments relied on national sources for 93-96 percent of their total revenues from 1998 to 2000. The figures for 2001 do not reflect a change in this pattern. This is consistent with the fact noted in Section 4, below, that the new local authority over taxes and fees provided for in Law No. 8652 will not be implemented in that year. This table also illustrates that the largest cities in Albania (Tirana, Durrës, Elbasan, Fier, Korçë, Shkodër, and Vlorë⁹) are able to mobilize a higher share of their budget from locally generated revenues and that they have made a consistent effort over this period to increase own revenue collection (to account for from 8 to 16 percent of total revenues in Tirana and from 4 to 6 percent in other large urban areas).

Table 3 shows that the local governments have had little basis on which to plan or anticipate the level of transfers they will receive, as both the amount of the total transfer pool and the allocation to the individual local governments has followed ad hoc procedures. The State budget law for 2001 maintains this practice.

⁶ The details of compliance per each paragraph of the Charter is included in Annex A.

⁷ The scoring method does not give the possibility of a more in-depth analysis of the extent to which Albanian legislation and especially the related by-laws and regulations are in greater or lesser extent of compliance. Some of the cases mentioned here have greater problems of compliance than others.

⁸ This is the source of the data for 2001.

⁹ Cities with greater than 50,000 inhabitants.

Table 4 shows that local governments in the aggregate had control over only 5 percent of their expenditures in 1998, increasing to 15-18 percent full or partial control of their expenditures from 1999 to 2000. The change in 1999 is due to the implementation of the block grant, which gives some local discretion for the sectoral allocation of operating expenditures. There is another change in 2001, based on the provisions of the State budget law for that year. Table 4 does show, that in 2001, the local governments now have full control over the 18 percent of their expenditures coming from the unconditional transfers and their own revenues. A provision in the State budget law for 2001 gives local governments full discretion in the management and use of block grant, including the possibility to allocate these funds for personnel and/or investment expenditures. This is a small but important step forward, consistent with the provisions of Law No. 8652.

Table 5 shows that from 1999, the share of local expenditures allocated to investment has increased by 4-5 percentage points.¹⁰ Here the figures for 2001 are not fully relevant as they were developed by applying to that year the shares of expenditures by economic classification of 2000.

3. Benchmarks in adopting the Legal Framework for Decentralization

The legal framework is the top priority in the implementation plan of the strategy. This has been the area of major progress in the decentralization reform in 2000. The most important law prepared and approved was Law on the Organization and Functioning of Local Government, No. 8652 of 31 July, 2000. Following the development of a draft of this law by the GED, twelve regional meetings were organized to discuss the draft law with all stakeholders at the local level. The law was approved by Parliament in July 2000 and came into force after the local elections of October 1, 2000. The law sanctions the rights and authorities of the local governments units in conformity with the Constitution and the European Charter for Local Self-Government.

The new law defines the functions of local governments (own, shared and delegated). For the first time municipalities and communes are clearly entitled to have substantial autonomy over a large list of functions in the areas of public services, economic development, social and culture activities, public order and protection. In exercising their own functions, local government units possess full administrative, service, investment and regulatory authority.

The law regulates other key points of the functions, organization and finances of local governments, such as:

- the local governments will share, with the national government, responsibility in areas of education, health and social protection, subject to a more specific definition of the role of each in future legislation;
- the internal organization and relations of local governments, defining clearly the role of the mayor and the local council;
- local financing and budgeting issues, opening the way for a comprehensive fiscal decentralization reform;
- opportunities for inter-communal cooperation; and,
- the definition of the role of the Region Council as the second level of local government.

An innovative feature of this law is that it contains clear deadlines over a period of two years for preparing and adopting other, more specific laws and regulations to implement the transfer of power and financial resources to local governments. In this sense, the law creates clear pressure to complete the missing details of the process of decentralization. On the other hand the two year time frame allows for a continued analysis of policy and technical options and for ample and continued dialog with all stakeholders. This process is occupying much of the attention and resources of the NDC and GED in 2001.

¹⁰ Note that these numbers do not include special funds from other donors, such as the Albanian Development Fund, which are recorded as extra-budgetary funds. They also exclude donation of equipment and other durable goods. These funds may also have increased in 1999-2000.

The preparation of the Laws on Immovable State Property and on Transfer of Immovable State Properties to Local Governments was the other major task during 2000. The first law regulates the state immovable property rights and management. The second defines:

- the immovable properties to be transferred in property or in use to the local governments;
- the regime of property rights; and,
- the administrative process of property identification, listing, claiming and transfer and the deadlines for the various steps in the process.

As a rule immovable properties linked with own functions will be transferred as property to the local governments. The draft laws were discussed in regional/local meetings with all stakeholders.¹¹

The Law on Territorial and Administrative Division of Local Governments, which defines the borders of each municipality, commune, district and region, was also adopted in 2000. The specific law on the Organization and Functioning of the Municipality of Tirana was also prepared, discussed and approved by the Parliament at the same time as the Law on Local Government.

Finally, during 2000 the GED completed the study on fiscal decentralization as the basis for drafting a law that will regulate intergovernmental relations, those in the area of public finances.¹² The fiscal decentralization study provides an objective basis for looking at both the national and local implications of the implementation of the revisions to the system of local taxes and fees and intergovernmental transfers recommended by the National Decentralization Strategy.

4. Progress in the Transfer of Functions and of Financial and Other Resources

The Law No. 8652 “On the Organization and Functioning of Local Government” was adopted in July 2000, and was followed by local elections in October of the same year. Very little time remained to prepare the regulations and adopt the measures for an effective transfer of functions and financial resources to local governments on January 1, 2001.¹³

Except for water supply/sewerage and urban land management, which will become own functions on January 1, 2002, all other own functions defined by the Law No. 8652 should have been transferred as exclusive functions from January 2001 (such as local roads, solid waste, culture and economic development). The lack of discretion is encountered mainly in the exercise of investment and regulatory authority of the local governments.¹⁴

All the local governments (municipalities, communes and regions) adopted their budget as well as their program for the year 2001, following the same budget preparation process and methodology that had been in force prior to the adoption of Law No. 8652. The local budgets still include the old division between an independent and conditional budget although the new law defines a unified local budget.¹⁵ Also LGs should have had the authority to implement new local taxes and fees as of January 1, 2001. However, this required additional, specialized legislation that was not ready.¹⁶

¹¹ Both laws were approved by Parliament in February 2001, while the government adopted the necessary by-laws in August 2001. The process of transferring the immovable properties to LGs has already started.

¹² The draft law which is under preparation will regulate the relations between the central and local government, in areas of functions, finances, consultations and dispute resolution.

¹³ During 2001, the GED is working to adopt the necessary regulations.

¹⁴ E.g. The law establishes that the LGs are authorized to issue construction permits but many LGs have not begun to issue permits. Their hesitation results from the apparent mismatch of the LG Law with the urban land regulations following the abolishment of the former urban commissions at district level.

¹⁵ MoLG has adopted new instructions for preparation of the 2002 budget, based on concepts and standards of the Law No. 8652.

¹⁶ E.g. The tax on small business is still a national tax although all revenues of the tax are transferred to LGs as unconditional transfers; a minimal amount is guaranteed and any additional tax collected above this amount will be transferred to the local governments. Another example is the tax on agriculture land that was suspended in 1996. During 2001, the GED is working to adopt the respective draft laws and related regulations.

As a result, the collection and administration of local taxes remained the same in 2001. There are also a number of inconsistencies in the various laws dealing with local finances.¹⁷

During the last three months of 2000, a major effort for information and dissemination of the provisions and the implications of the new legal framework was carried out through a series of seminars for the new local officials elected in October.

In the last three months of 2000, the new regional councils also were set up. During this period, the NDC/GED continued to work regularly, to address the issues discussed above.

Progress in 2001 and plans for 2002

In early 2001, a Government decree extended the mandate of the National Decentralization Committee and the Task Force for an indefinite period. They have adopted an ambitious work program for 2001, the implementation of which has been slightly delayed by the national elections and to a certain extent by the insufficient coordination with, and level of technical assistance and support from the donor community.

Parliament approved the laws on state immovable properties and transfer of immovable state properties to the local governments. The Council of Ministers adopted the implementing regulations for the transfer procedures and the transfer process is underway.

A draft Prefect Law was proposed in February 2001, and discussed with local government officials, prefects, NGOs and international experts. A final draft was adopted by the Council of Ministers and will likely be taken up by the new Parliament.

A large number of activities have taken place in the domain of local budgets and finance. A policy paper on fiscal decentralization was prepared for the Medium-Term Expenditure Framework 2002-2004 (MTEF). This note identified the exclusive functions which should have been included in the unconditional transfer in 2001, but which in fact, remained part of the conditional budget. The unconditional transfer for 2002 will be adjusted to account for these exclusive functions. The local government section of the 2002 budget circular (distributed by the MoF in early July) confirmed these changes. The budget instructions also included for the first time the requirement for local governments to present a consolidated local budget, including all sources of revenues and expenditures in one table.

Also under preparation is a formula to distribute the unconditional transfer to local governments, on the basis of objective, transparent criteria which will be published in the 2002 budget law. In addition, part of the transfer will be allocated as equalization funds, based on some more defined criteria, in compliance with the Growth and Poverty Reduction Strategy (GPRS).

The process of drafting the GPRS has been largely engaging local governments, as well as contributing to highlight the need for alternatives and further clarification of the functions of local governments in areas such as education, health care, social protection, urban and rural development, environmental protection, infrastructure development, etc. Decentralization is considered as one of the key cross-cutting areas as well as an instrument to improve the effectiveness and efficiency of public service delivery.

The imminent deadline for transfer of water and sewerage services as local government own functions on 1 January, 2002 has led to the discussion by an expanded working group of the Task

¹⁷ E.g. While the Law No. 8652 defines the payment for solid waste as a tariff ("tarife" in Albanian) which implies full discretion of the LG, the Law on the Tax System defines the solid waste payment as a public charge ("taksa" in Albanian) which only gives LGs the authority to add or subtract 20% to the nationally defined rate. As a result, LGs hesitate to set the local solid waste rate based on the rules of cost recovery.

Force, following the principles and methodology used for the Decentralization Strategy and Law No. 8652.

The donors conference on decentralization (September 2001) is expected to provide an opportunity for the NDC/GED to:

- Clarify the needs arising from implementation of the Strategy on Decentralization considering that this strategy is ambitious, substantive and a great challenge;
- Obtain the commitment and support of donors to assist the GoA and the local governments in implementing the strategy and in improving it;
- Identify the ways and means of the participation and coordination of all stakeholders, Albanians and foreigners, in support for implementation of the strategy; and,
- Harmonize the various programs affected by or affecting decentralization.