

FISCAL DECENTRALIZATION: A PERMANENT CHALLENGE OF LOCAL AUTONOMY IN ALBANIA

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ABSTRACT: *Albania has a relatively short history of decentralization of the local government, albeit rich in ups and downs. The fiscal legislation may be considered the most changeable part of the Albanian legislation. The conflict ridden relationship between the central government and the local one, especially over the last six years, has contributed extensively in this changeability of the legislation. In this work we will try to present some of the changes in the financial legislation that have significantly influenced the autonomy of the local governance, we will analyze the effects on the local finances and as a result also in the realization of the functions of the local governments, functions which derive from the Constitution of the Republic of Albania, the European Charter of Local Self-Government and of course from the responsibilities of Albania in its attempts to join the EU. To draw the conclusions of this work I have extensively made use of the data from the Ministry of Finances of the Republic of Albania and those of the Institute of Statistics. Through a thorough analysis of the fiscal reforms and based on the legislation in power, this work represents the personal point of view of the author.*

KEYWORDS: *fiscal decentralization, local finances, local autonomy, fiscal autonomy, local taxes*

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1. HISTORY OF THE ADMINISTRATIVE DIVISION IN ALBANIA

In a democratic system, the institutions of the local government are independent and the manner of its organization and functioning contribute to make the realization of the self-governance more effective, giving it the chance to handle problems that are usually defined as functions of a local character. Local governance means the right of the people, within the defined territorial community, to govern their own issues in an independent way, through the institutions that they have elected themselves or in a direct manner. The principle of decentralization is a basic principle on which local governance is raised and functions. It is exercised through the constitutional principle of local autonomy and it determines the existence of self-governing local government, according to the advanced

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concepts of the organization of democratic state. The manner of the organization and functioning of the local government depend, as well as the relationship that it has with the central power, on the constitutional and legal meaning that is given to decentralization of power, local autonomy and self-governance. Almost invariably, the road to greater fiscal decentralization is described as having “dangers” (Prud’homme 1994), “pitfalls” (Tanzi 2001) and in need of “rethinking” (Litvack, Ahmad, and Bird 1998). Decentralization is a process where authority and responsibility for select functions is transferred from the central power to the local government units. The principle of subsidiary stands at the roots of decentralization, according to which the exercise of the public responsibilities must, in a general way, rest more with the authorities that are closer to the citizens (Delcamp 1994). Decentralization has its own political, administrative and financial dimensions, which interact between them and basically represent the three components of power. Decentralization is political and it includes the transfer of political authority at the local level through a system of representation based on local political elections. Through the administrative decentralization the responsibility for matters of the administration of some central public functions, is transferred to the local units, while financial decentralization refers to the transfer of financial power close to the local level intending to vest it with greater authority in the administration of income and expenses. The Constitution of the Republic of Albania has adapted the concept of decentralization which refers to the restructuring or re-organizing of the power, and which produces the creation and functioning of a system of co-responsibility of the institutions of government at a central and local level, according to the principles of subsidiary. This concept better addresses the need for a substantial autonomy of the local government, its ability to relieve the central government as well as the convenience for the solution of its own problems. The nucleus of article 13 of the Constitution of the Republic of Albania is the principle of decentralization of power and the principle of local autonomy. What’s more, through the Constitution, the Republic of Albania has sanctioned with a constitutional status the local self-governance, guaranteeing its autonomy and the independence that is unconstrained by the central government. Even though we must admit that there can be no independence without control and support. The development of self-governance requires reforms in the procedures of control. There is no doubt that this control must be supported by laws and in proportion with the interests defended by this control.

The organization of the local government in Albania has been treated in different ways in different times. This changeability is strongly connected with the manner of organization and functioning of the Albanian state.

The administrative partition of Albania has its beginnings in the time when the country was under the Ottoman Empire, during the period when its control in Europe had been shaken. This administrative partition was dictated by the ottoman invader and reflected its policy. Albania was split into vilayets, sanjaks, kazas and nahiyes.

In 1913, the “Present Canon of the Civil Administration of Albania” undertakes a new territorial division and organization of the local administration in Albania. Prefectures and under prefectures were created, “which represented a visible partition of the sanjak and the kaza, Turkish administrative divisions” (Anastasi 2007). Albania was divided into prefectures, under prefectures and regions.

In 1923, under the government of Zogu, the administrative partition of the Parliamentary Republic of Albania was undertaken into:

- Prefectures 10
- Under prefectures 30
- Communes 181
- Villages 2584

The Constitution of the People's Republic of Albania of 1946 embarked on a new division into villages, localities, cities and regions. This partition changed in 1976, when Albania was declared a People's Socialist Republic.

The socialism period in Albania, just as in all the other former communist countries, was characterized by a complete centralization of all competencies. Local government, as a segment of central government exercised duties that were delegated to it by the center.

The administrative division in the years 1976-1991 transformed into:

- Regions 26
- Cities 39-66
- Villages 1701-3191

The year 1991 marks a deep turn in the history of Albania. The declaration of pluralism brought deep changes in the political life of the country. The political changes were followed by economic changes and the switch from the socialist way of the functioning of the state into the democratic way was also reflected in the organization of the local government. In July of 1992 the first elections for the local government were organized, where the heads of the local government units, the councils and the heads of the communes and municipalities were elected directly through the free vote. The administrative and territorial division was decided by the Council of Ministers in June 1992:

- Provosts 12
- Regions 36
- Communes 313
- Municipalities 44

In the year 2000 the administrative division faced a further change, whereas the institutions of the local government exercise their activity in compliance with the principle of local authority, maintaining relations with the central government.

The administrative division of the year 2000 is presented as such:

- Districts 12
- Municipalities 65
- Communes 309

The decentralization process received a crucial push at the end of the '90s. The Constitution of the Republic of Albania (1998) defined that the local government is based on the principle of the decentralization and the relations between the central government and the local one were based on autonomy, compliance to the law and cooperation. According to the Constitution, Albania is a unitary state, with two levels of local governance: municipality/commune, as a first level, and the council of the district as a higher level, but which functions as agent of the central government on the ground. The coming into power of the Constitution in 1998 was followed by a number of other decisions. The status of the local government started to change with the signing of the European Charter of Local Self Government, as an obligatory part of the Albanian

legislation. Just as in the other states that signed the Charter, Albania accepts, even in the Constitution, the existence of the municipalities/communes as territorial entities that are vested with some competencies and powers sanctioned by law.

In compliance with the Charter of Local Autonomy and on the basis of the experience gathered, in July 2000 the law nr. 8652 was approved "On the organization and functioning of the local government." This law defined the functions, principles, rights, competences and duties of the institutions of the local government. As a basic principle of the functioning of the local government stands local autonomy. For Albania, which for nearly five decades was politically, economically, financially and administratively organized based on the principles of centralized and planned leadership, the reform undertaken to assure the autonomy of the local government, including the financial autonomy, takes a critical importance. First, in order to give an impulse to the balanced development of the society and the economy of the country, through the establishment of a direct relationship between centralization and democracy. Secondly, for an optimal distribution of the economic and financial responsibilities through the levels of government. Thirdly, it is important for the road towards political, economic and financial integration to the EU.

2. FISCAL REFORM AND ITS EFFECTS IN THE YEARS 1998-2005

The history of the territorial division of Albania is long, while the history of the decentralization of the power is quite short. This decentralization is based on law nr. 8652 "On the organization and functioning of the local government," which was drawn in compliance with the European Charter of Local Self-Government. During these ten years, the decentralization process has had its ups and downs as a result of the clashes between the central power and the local one.

The fiscal system has doubtlessly evolved from the year 1992 to today, together with its new responsibilities and functions, in view of the local decentralization, part of which is also the fiscal system.

The first elements of the fiscal autonomy for the local government units have appeared during the year 1998, when the approval of the law nr. 8435, on 28.12.1998 "On the tax system" marked a step forward as far as the coverage of the local taxes was concerned.

For the first time, the cleaning tax turned into a cleaning tariff, and a factual division of the local duties into temporary taxes and tariffs was undertaken. Differently from what was expected in the previous law, the municipal/commune council now has the right to set temporary taxes for new services in the interest of the people who live in the community it covers. All of the income that is realized from local taxes goes into the municipal/commune budget, which means that the authorities of the local government have more room in which to act in the best interest of the citizens.

The Law of 1998, for the first time, recognizes the discretion of the units of local governance, according to which, the municipalities/communes are granted the right that within the amounts of the local taxes established by this law, they may make changes at a rate of +/- 20 percent.

As a result of these legislative changes, a sensible increase of the level of the local incomes was observed. Looking at the data of table 1 it is quite clear that the income

from the local government in the year 2002 was of 5224 million Lek (or 0.6 percent of GDP) as compared to the year 1998 when this income only reached 1632 million Lek (or 0.28 percent of GDP).

The year 2002 brought substantial changes in the field of local finances hereby also creating a necessity for their good management. For the first time local taxes are regulated with a separate law, law nr. 8982, of 12.12.2002 "On the system of local taxes." The application of the local tax on the small enterprises and of the simplified duty on income brought the increase of the local income that is independent from the central budget.

This fiscal package re-organized the setting of the sources of income. Some of the taxes that were once considered national now were passed on in favor of the local government as local taxes (the tax of ownership of buildings and land, the small business tax, the annual vehicle registration tax). At the same time new local taxes and tariffs were created (the tax for the change of ownership, temporary taxes etc) and the existing taxes were re-classified. The transformation of some taxes from national to local brought the increase of the level of the local income, giving local governments more capabilities to be close to the community. Referring to the data from the Institute of Statistics we notice that the local income in the year 2005 reach 12019 million Lek (or 1.47 percent of GDP). This means that the fiscal reform had a positive influence on local finances.

3. THE FISCAL REFORM AND ITS EFFECTS IN THE YEARS 2005-2010

The political elections of 2005 were followed by changes in the fiscal policy of the country, which could not avoid affecting local finances.

The period starting from 2005 is generally characterized from significant interferences by the central government in the decision making process, the authority and the discretion of the municipal/commune councils in matters related to the level of the local taxes and tariffs as well as the establishment of limiting criteria on the discretion of these councils. In the field of government financial relations there is a lack of transparency in the distribution of the funds, as well as in the legal arrangements that are supposed to standardize these relations and produce the legal guarantees for the fair and transparent financing of the local units.

Regardless of the national programs on fiscal decentralization and the further continuation of the reforms on the increase of the alternative sources of income, this period has been characterized by flagrant interferences over the competencies and the fiscal discretions of the municipal/commune councils.

With the approval of law nr. 9432, of 13.10.2005, the basis of the taxes on small enterprises was lowered by 50 percent, against the will of the local units, at once and without an analysis, cutting by half the income sources of the local governments and what's more, this was done in the middle of the fiscal year. Such an action seriously risked to undermine the contracts that had been signed for public works. As a result the brittle fiscal security and the financial sources of income of the local governments were acutely stirred. At the same time the first precedent was established, of the intervention of the central government in matters of local governance, after five years of efforts to create and consolidate an autonomous local authority. And what is more, this intervention,

although realized by law, was not followed by the compensation of the missing financial income of the local units nor with the increase of the basis for other local income.

The year 2006 brought the approval of the present law that regulates the system of the local taxes, law nr. 9632, approved on 30.10.2006. For the first time all of the types of income that the budget of the local units gathers, were regulated by a single law, including the tax on small enterprises.

With the entry into power of this law, the communes and municipalities exercise this right of the setting and the administration of:

- Taxes for small enterprises;
- Taxes on real estate;
- Taxes on hotel boarding;
- Taxes on the influence of new constructions on the infrastructure;
- Taxes for the direct change of property on real estates;
- Taxes for the occupation of public spaces;
- Taxes on the annual registration of vehicles,
- Taxes for business signs;
- Other taxes of a temporary character.

The municipal and communal council are granted the right to approve more specific procedures for the municipal and commune taxes, in compliance with the procedures approved by law.

But very soon the law changed, seven times up to 2010. In particular, it seems as if during the year 2009 the legislative activity focused solely in respect of the local taxes. During this year alone, there were three interventions in the law nr. 9632, of 30.10.2006 "On the system of local taxes." Of course all of these changes were wrapped in an aura of the lowering of the fiscal burden, a well-known slogan of the central government, although unaccepted by the local government.

But what are these changes and what effects do they produce for the local budget?

At first, we notice a drop in the tax of the influence on the infrastructure. Up to January of 2009 this tax was between 1 – 3 percent of the investment values, while for the Municipality of Tirana it was 2 -4 percent. In 2009 this tax changes to 0.1 percent of the value of the investment for national infrastructure projects and to 0.5 of the value of constructions in the process of legalization.

Second, the tax for the business signs also underwent changes. Up until 2009, the law recognized the discretion of the local units within the border of plus/minus 30 percent of the basis established in the law. The changes in the law do not only touch the concept of discretion, but in fact they nullify it by setting fixed quotas for the business signs tax. The articles 32 and 32/1 contradict each other on this point, when the first defines the right of the local council to set the basis and the level for the sign tax, while in annex 7 (article 32/1) of the law fixed quotas are provided for the level of this very tax.

Third, the same thing may be said also on the taxes on small enterprises. The categories and the levels of the tax on small enterprises change from within the plus/minus 30 percent border where they were in 2009, to within the plus 10/ minus 30 percent borders. This change threatens the core of this tax. The transformation of this tax from a (national) due on the small enterprises to a (local) tax on small enterprises aimed to increase local

incomes and improve the services to the citizens, happened exactly because this institution of power stands closer to the community. The limitation of the margins of the tax levels severely lowers the income of the local government while at the same time it deteriorates the services to the community.

Fourth, the income from the sale of property for purposes of legalization also undergoes changes, from 20 percent of the value that went in favor of the local unit; this percentage has now turned into 0 Lek.

Fifth, the temporary taxes and tariffs were left to be set at the discretion of the local council, while after the legal changes these taxes were limited to up to 10 percent of the small business tax.

What are the effects of these changes on the local budgets:

- the fiscal discretion of the local government units is reduced;
- the income from the temporary local taxes and tariffs are limited up to 10 percent of the tax on small enterprises;
- the income that was gathered from the influence on the infrastructure of objects in the process of legalization is wholly eliminated.

The negative effects are notable not only as far as the unwinding back of reform, where the discretion is not only not increased and followed by the expansion of the fiscal autonomy, but quite the contrary, steps backwards are made. Such a situation influenced and severely limited what the local governments were granted in the years 2002 – 2003, over the years 2005-2009. These acts threaten the fiscal authority of the local units because they limit the local income and the local sources of financing. By significantly lowering the local income, at the same time the competencies that are derived from the exercise of the local power are limited, which means that the public services from this power are also limited.

At the same time, the authoritative and one sided stance of the central government as it makes decisions against the local government is troubling, right in the middle of the fiscal year and without any cooperation with it. Such an action is wholly against the interests of the local governments, because it interrupts the local projects and it puts them at risk in the middle of the fiscal year. This clearly illustrates that at present the local governments are absolutely exposed to the central one, and that the legal guarantees of the principle of financial autonomy are either missing or have been disregarded.

Another fact that “helps” in clash is also the lack of a law regulating the intergovernmental financial relations. Although the legal framework dictates the necessity of such a law, we still do not have legal regulation which would guarantee the minimum standard procedures of the financial sources of the local government against the one sided behavior of the central power.

The limitation in the exercise of local functions and public services in general is considered a breach of the local authority, which is at its core the right and the effective ability of the local communities to regulate and to lead, within the law, under their responsibility and for the best interests of their population a good portion of the public issues.

The breach of the principle of local authority constitutes a clear breach of the Constitution of the Republic of Albania (articles 13 and 113) and of the European Charter of Local Autonomy (articles 4 and 9.).

The autonomy is such a legal regime, where the institutions of the local government operate in independence to produce solutions for those issues which the Constitution and the laws have trusted in their competences.

The autonomy of the local government expresses its most visible aspect in the division of competences, which has to do with the initiative that the institutions of the local government have or must have, based on the Constitution and the law, to decide themselves on the issues that are part of their jurisdiction, including the level of taxation (article 113 of the Constitution of the Republic of Albania). Self-governing local units may not be blocked nor diminished in their legal competences by the central government, because they have their own field of activity according to the Constitution. Because of the character and the role that it has in the division and balance of power, local self-government constitutes a key basis for democracy and the rule of law.

Although according to the Constitution of Albania, the combination of the constitutional rule with the parliamentary devolution is a characteristic of the local governments, in fact it is the existence of constitutional competences for the local government that raises it at the level of the self-governing unit, by not conceiving it simply as a self-administrating unit.

The difference in numbers between the concepts “self-administrating” and “self-governing” can be pointed out in two steps:

- First, as financial independence from the central government, so as a percentage of the independent income compared to the other incomes (in percentage of GDP);
- Secondly, as a discretion and liberty on the regulatory policy, be it in the fiscal field for different part of the territory and/or different categories of taxpayers by relieving a category compared to another. But with a discretion of 10 percent no possibilities can be created to realize effective policies on the local economy.

Such a situation runs counter to the idea of the reform of decentralization, the principles widely accepted, as well as the responsibilities that rise from the framework of the ratification of the Local Autonomy Charter by the Albanian Parliament. The actions undertaken have been unstable in time, thus reflecting the lack of clear and long term national policy. There were also many different cases of quick and inconsistent linear changes on the line of previous actions, creating strong constitutional contradictions and continuing the breach of the autonomy and the limitation of the local discretion.

4. FINANCIAL/FISCAL IMPLICATIONS THAT THREATEN LOCAL AUTONOMY

Based on article 13 of the Constitution of the Republic of Albania, the local government is created based on the principle of the decentralization of the power and it is exercised according to the principle of local autonomy.

Fiscal decentralization is the transfer from the central to the local government of special functions with the respective administrative authority and the fiscal income to carry out these functions.

The fiscal decentralization may be materialized in different forms, for example:

- self-financing or coverage of the costs of the users’ requests;

- co-financing or cooperation agreements, in which the users take part in the assurance of the services and the infrastructure through monetary contributions and work;
- the increase of local income through the taxes of ownership or sales, as well as indirect taxes;
- intergovernmental transfers that transfer the income from the collected taxes from the central government to the local one for specific tasks;
- the authorization for taking a local loan and the mobilization of other local or national sources of income through guarantee loans.

Based on law nr. 8652, of 31.07.2000 "On the reorganization and functioning of the local government", article 15, the units of the local government are financed by the income that is gathered from taxes, tariffs and other local income, from the funds transferred by the central government and the funds that come directly to them from the division of national taxes.

According to the same law, the unconditioned transfers from the State's Budget, in favor of the local units, are awarded according to criteria defined by law, based on the individual functions and competences, or on the joints functions, of communes and municipalities, as well as to ensure the equality of the sources between the different units of the local government as compared with their ability to generate the necessary income.

This means that the government's grants in favor of the local budget bear a great importance. But on the other hand this importance grows at the moment when the level of the own income of these local units is threatened as a result of the interventions in the legal framework. But has the lowering of the local taxes been followed by an increase of the grants by the central government?

Table 3 shows the progression of local budgets of the units of local government and their composition in concrete amounts and as percentage of GDP. If we analyze the sources of financing during the years 2000-2006 we notice a significant improvement as far as the increase of the independent income of the local government units, with the objective of the improvement of their decision-making discretion, moving from the balance of 0.57 percent in the year 2000, to about 1.25 percent in the year 2006, and a drop in the conditional transfers from 3.52 in the year 2000, to about 0.37 percent in the year 2006. If we analyze the reallocation of the independent sources of income to the local government units further, we will notice that when the tax for small enterprises, the tax for the annual registration of vehicles and the tax for the transfer of the right of ownership were adjusted as local taxes, the increase of these sources was paralleled by the lowering of the transfers from the government's budget.

If we analyze the year 2003, which is the first year in which the new income of the local government were reflected, we will observe that there is an increase of the budget of 0.3 percent, a completely normal growth within the normal limits of the economic growth and the inflation markers. The increase of the independent sources for the local government units of 2699 million Lek was followed by a significant lowering of the unconditional transfer of 2446 million Lek and a normal increase of 1323 million Lek for the conditional transfer, which is mostly connected with the payment of the teachers in the pre-university educational system on a national scale and with the payment of the economic welfare and the disability payment. So, as can be discerned, the percentage of the income of the local government as part of the total income and as a percentage of GDP

still does not play a major role, even though it came with the transfer of new responsibilities to the local authorities, in accordance with the organic law of the local government of the year 2002.

Continuing even further with the analysis of table 3, we note that the increase of the level of the own income of the local government has evolved in a gradual way up to the year 2005, the year in which begun the fiscal reforms that influenced the local budgets as well. From this year onwards, we see a drop in the level of the own income of the local government while at the same time, there is no increase in the unconditional transfer, which in fact should have happened. On the other hand we also see a drop in the conditional transfer from the year 2005 to the year 2006, while in the following years this item of the local budgets is 0 percent, to give its place to the competitive grant, the new instrument that started to be applied from the year 2006 and which does not follow step by step the drop in the level of the own income of the budget of the local units, thus bringing the drop in the ability of these units to realize their functions in fulfilling the needs of the citizens.

One of the twists of the scheme of financing of the local government during the last few years has to do with the transformation and the application of competitive grants. These have nothing in common with grants, because they are funds limited by the function, but also at the discretion of four ministers of the central government. The local government units must compete with projects for their own functions like public infrastructure, aqueducts, or even for joint functions, like pre-university education or health care.

The organic law of the local government clearly defines the obligation for financing for these functions, guaranteeing transparency, objectivity and equality in the distribution thereby also aiming to bridge the regional inequalities of the present. While the legal reform has had influence on the drop of the income of the local government, the rhythms of the growth of the unconditional transfer are presented in table 3. The significant growth by 30 percent in 2006 is evident. In fact about 1.6 billion Lek were the investments that were distributed by the ministries and that were included in the unconditional transfer from this year, while the real growth does not top 9.7 percent. Today local governments have less financial sources at their disposal for the financing of local public functions, creating, year after year, underfinanced mandates, lowering the ability for good management of the local public works.

As a conclusion we may say that the transfer of new functions, in different fields, in favor of the local government units, is followed by the phenomenon of “unfinanced mandates,” creating real financial strains for these units. One such was the administration of the small enterprises or the Construction Inspectorate of Urban Development, without transferring any funds for their management. This means that the right of the local units for self-government has been breached. On the basis of an analysis between the given responsibilities for the local units and the respective sources of financing to ensure their exercise, the calendar set in the articles 71, 72 and 73 of the organic law of the local government, assured a considerable vertical financial balance, by setting the respective timelines for the transfer of the rights of the local units and their full competencies. According to a balanced analysis, the way and the timeline of the transfer of the different functions were set, for which the local units would be wholly responsible (the allocation of the financial sources from the taxes divided from 01.01.2002 was also included here).

But counter to this vertical balance, drawn since 2000, the legal changes of the year 2009, are not only not vertically balanced nor have they undertaken an analysis of such character, but on the contrary, the only product of these changes are unfinanced mandates. This because for the same responsibilities in the exercise of their own exclusive functions and competencies, the sources of financing of the local units have been thoroughly reduced, without pledging any compensation from the central government. Without the means and without the fiscal/financial sources, the exercise of the functions is not autonomy in governing, but a responsibility that has been passed on to local units and which remains unfulfilled because of this void. The central government, through these interferences for public and unconstitutional reasons, intends to hurl the local units through a very public “failure” before the community, on the fulfillment of its responsibilities.

5. THE NEED FOR THE INTERPRETATION OF SOME ARTICLES OF THE CONSTITUTION

Only during the 10 months of the year 2009, five acts have been approved with fiscal effects that breach local autonomy, and as a result the constitutional principles. For this reason it is essential for the Constitutional Court to interpret the articles of the Constitution that deal with the fiscal sources of financing (taxes and tariffs) of the local units, to eliminate future conflicts of competencies and/or other laws that breach the financial autonomy of the local governments, therefore providing a final decision that is abiding to all government institutions and to orient for the future, the legislative activity in full compliance of the constitutional principles.

In the present commotion of the relations between the central government and the local one in the Republic of Albania, I observe that a constitutional interpretation is necessary for point 1, letter a, c and ç of article 113 of the Constitution.

Article 113, point 1, letter “a” of the Constitution says that the commune, municipal and district councils: “regulate and administer in an independent manner the local issues within their jurisdiction.”

This means that based on the Constitution, the administration of the independent issues/functions belongs with the local units and for this purpose they must have independent or untouchable sources by ensuring them a measurable minimum by the central government. But what catches the eye is that there isn’t a law which defines a measuring index of the relations between the two powers, which measures the level of the funds that the central government gives to the local government, there is no mechanism that is proportional between the income given by the central government and the functions that are implemented with this income.

Article 113, point 1, letter “c” of the Constitution says that the municipal, commune and district councils: “have the right to collect and spend the income as necessary for the exercise of their functions.”

The income that is transferred in favor of the local budget is made up of local taxes, dues and tariffs. The tariffs, defined as obligations for the public services offered, seem to be a free source, there is no legal limitation for them and the local government units must be free to create/collect independent income through the sources that are not covered by legislation. Thus local units have legal space to set tariffs for every local

service according to the level which they deem reasonable, based on the calculations they do for the cost of the service. Only the cases of the tariffs defined in the national laws for all institutions are exempted. In case the laws interfere with limitations, except these cases, then we are in the conditions of the breach of the Constitution of the Republic of Albania. This means that law nr. 10117, of 23.04.2009, which limits the discretion of the local government in deciding the level of the tariffs clashes with the Constitution.

Article 113, point 1, letter “ç” of the Constitution says that the municipal, commune and district councils: “have the right to set, in accordance with the law, local taxes, as well as their level.” According to this definition it seems that the rules and the sources of taxation are set by the law, but the parameters/level and the types are set by the local units. This is because taxes may be in different levels in different municipalities/communes, depending on the calculations that they do in their own system of income and expenses. So the law does not delimit the level of the taxes, because the Constitution states that it is the councils – the competent authority for the delimitation of the level of the local taxes in compliance with the law, which means in compliance with the principles, procedures, methodology, form, and with the minimum national standards set by the law.

The Constitutional Court of the Republic of Albania declares that the delimitation of the local competencies directly from the Constitution represents a special importance, because such a solution would make the government drive to change the laws at any given time, powerless. Of course such a solution guarantees the stability of the competencies of the local government and makes the political pressure of the government that may be exercised at any time powerless.

This is the model of the local government that was chosen by the Constitution of Albania. The local government is presented with a constitutional standard and its independence is guaranteed through it. This independence lays in the right that the citizens have to form representative institutions and to exercise the functions of self-governing ; in the organizational independence of the local institutions (article 113 of the Constitution); in the exercise of the works within their jurisdiction, without the interference of the organs of the central government (article 113 of the Constitution); in the existence of the financial means and other means, which it controls in an independent manner (articles 111, 113/b,c,ç of the Constitution); in the existence of the independent administration and without the interference of the central organs of the government; in the existence of the legal norms for the functioning of the local self-governance and constitutional protection of the self-governance rights (articles 113/2,3 of the Constitution).

6. CONCLUSIONS

It is now a clear reality, and has been so for some years, that the situation associated with the decentralization reform has not only failed to progress, but on the contrary several initiatives have been undertaken which have brought regressive effects on the ability for autonomous “survival” of the units of the local government. This is not simply an acknowledgment, but also a proven fact, even by edicts of the Constitutional Court in favor of the local government, or by the recommendations of international institutions, such as the Council of Europe, the Congress of Local and Regional Authorities.

As a result of the analysis undertaken above we can conclude that:

- the fiscal reforms realized over the past few years have threatened the fiscal authority, because they limit the income and the local sources of financing;
- the limitation of the fiscal authority through the reduction of the instruments brings the limitation of the local competencies;
- the limitation of the local competencies, bring the limitation of the exercise of the public services and functions from the local authorities;
- the limitation of the exercise of the local functions and of the public services breaches local autonomy;
- the breaching of the principle of local autonomy constitutes a breach of the Constitution of the Republic of Albania and of the Local Autonomy Carte;

The issues at risk here are not only the autonomy and the local self-government, but also issues that are much more important, such as the principle of the rule of law: lawfulness and equality before the law, because on one side laws are approved which significantly limit the financial autonomy of the local units, which breach their discretion, limit the real opportunities to fulfill their own functions, while on the other hand laws are approved which increase the level of taxes (through the increase of the sources and the levels of financing) for the central government.

In the field of fiscal and financial sources autonomy, the last legal changes have brought the limitation of the financial, fiscal and regulatory instruments – which enable an autonomous and real exercise of the functions. Such an occurrence can be seen as in the limitation of the competencies in the fulfillment of the functions, so in the limitation/reduction of the financial sources. The local government today has less local authority in the exercise of its functions and less financial sources than it had in the year 2005.

The issues that have still to find a solution in our country are:

- the lack of dialogue between the central government and the local one. In fact this absence appears from time to time as an important key problem, which is missing in the debate between the interested subjects of the local government, allowing the solution to the problems to often be in the hands of the will of the political power which is in power;
- the manner of the distribution of the financial sources. Even though there are attempts to go towards a more transparent and clearly defined path, as is the case of the unconditional grants through the formula, still the manner and the amount of the distribution is not defined in the medium and long term plans of the government;
- proportionality in the administrative control, seeking to avoid the control for reasons of political belonging (as was the case in 2009 for the control exercised by the Albanian Assembly on the Municipality of Tirana).

The laws and the sublegal acts approved lately show that fiscal decentralization has made steps backwards, because, besides the reduction of the financing sources for the local units, their fiscal regulatory authority or discretion has also been touched. These laws were approved without implementing a national transparent policy to reason out the causes and to financially cover the effects and backlash.

In the meantime the organic law of the local government clearly expresses that the Council of Minister is in charge of drafting legal and sublegal acts, but “through a

process of cooperation and counseling with the representatives of the local government units, local communities and the civil society in general” (article 74).

7. RECOMANDATIONS

Local government must be given the legal guarantees of the principle of financial autonomy, because they almost wholly missing at present or even the ones that exist have been violated. Thus, in this direction, we are facing the necessity of a law that regulates the financial relations between the two powers, the intergovernmental financial relations, because regardless of the fact that the legal framework requires it, there is still no specific legal regulation to guarantee the minimum standard procedures of the financial sources of the local government against the one-sided behavior of the central government.

Through the legal reform in the field of local government such effects must be avoided:

- The significant drop in income;
- The cutting of the expenses and investments for public services and functions;
- The limitation of the authority for regulatory fiscal policy;
- The limitation of the freedom for the drafting of local policy;
- The limitation of the exercise of the self-governing rights;

In this direction, an undisputable guarantee would be the final interpretation of article 113 of the Constitution of the Republic of Albania, which deals with the fiscal resources of financing (taxes and tariffs) of the local units, with the purpose to eliminate in the future other conflicts of competencies or even law in violation of the principles of local autonomy.

It should be emphasized that local governance has a constitutional status and its independence is guaranteed through the Constitution. Of course the competencies given by the lawmakers to the institutions of the local government may be modified or pulled back from them, according to their political evaluation, but the Constitution presents its reservations on the basic competencies defined in part six, which may not be touched by the lawmaker, because every violation thereof is controlled by the Constitutional Court (Decision nr. 29/2006 of the Constitutional Court).

Table 1 Local government income in the years 1997-2002

Year	1997	1998	1999	2000	2001	2002
Income from the local government (in million Lek)	1013	1632	2072	2957	4012	5224
As a percentage of GDP	0,19	0,28	0,33	0,43	0,53	0,64

Source: [http://www.instat.gov.al/graphics/doc/tabelat/TreguesitEkonomik/Statistikat/Fiskale te Qeverise/SFQ2008/t2.xls](http://www.instat.gov.al/graphics/doc/tabelat/TreguesitEkonomik/Statistikat/Fiskale%20te%20Qeverise/SFQ2008/t2.xls)

Table 2: The breakdown of the local income in million Lek and as a percentage of GDP

In million Lek										
Heading	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
The income of the local government	25989	26419	28722	30298	36053	25117	24517	21991	22708	33271
Own income	2957	4012	5224	7923	9613	12019	11112	9366	8724	14848
Local Taxes	1315	2038	2676	4979	5553	8226	8486	7134	7138	11114
Taxes on small enterprises	1641	1974	2548	2944	4060	3793	2626	2232	1586	3734
Unconditional transfer	4595	4943	9073	6627	6617	7516	9800	10725	12330	12923
Competitive grant							300	1900	1654	5500
Conditional transfer	18437	17464	14425	15748	19823	5582	3305			
As a percentage of the GDP	4,97	4,53	4,62	4,36	4,80	3,07	2,75	2,25	2,09	2,83
Own income	0,57	0,69	0,84	1,14	1,28	1,47	1,25	0,96	0,80	1,26
Unconditional transfer	0,88	0,85	1,46	0,95	0,88	0,92	1,10	1,10	1,14	1,10
Competitive grant	0,00	0,00	0,00	0,00	0,00	0,00	0,03	0,19	0,15	0,47
The conditional transfer	3,52	2,99	2,32	2,27	2,64	0,68	0,37	0,00	0,00	0,00

Source: Ministry of Finance and INSTAT

Table 3 Unconditional transfers for the years 2005-2009

Year	2005	2006	2007	2008	2009
Unconditional transfer (in million Lek)	7,516	9,800	10,725	12,330	12,923
Growth in percentage	14	30	9	15	5

Source: Ministry of Finance and INSTAT

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