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### Analysis of the Albanian Legislation Related to the Representation of Citizens in the Local Government

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**Abstract:** This study analyzes the quality of citizen representation in local government in Albania. The territorial administrative map of Albania contains 61 municipalities and 12 regions. The territory of a municipality lies in urban, peri-urban and rural areas. In them coexist civic communities with different social, economic, cultural, ethnic characteristics, etc. The current legislation provides only the election of the mayor, every four years, according to the majority system with one round and the election of municipal council members according to the proportional system, with closed lists. The lists are proposed by political parties. Independent citizens also have the right to run for mayor or members of the municipal council. Apart from the municipality, for all other territorial-administrative levels, city, neighborhood, administrative unit, village, according to which the municipality is organized, the law on local self-government provides for the establishment of bodies responsible for the administration of local affairs appointed exclusively by the mayor of the municipality. The analysis of the level and quality of the representation of the citizens in the elected local bodies, shows that: (i) the representation in the Municipal Council of the communities living in the urban areas and the rural area is not proportional; (ii) civic communities belonging to marginalized groups are not qualitatively represented; (iii) the representation of national minorities, in particular the Roma and Egyptian minorities, is negligible. The analysis highlights the need for intervention in legislation in order to increase the level of representation and quality of service for local communities, through: (i) election of the administrator and the administration council of the administrative units, every four years, by the citizens; (ii) providing a proportional representation in the municipal council and the regional council of communities residing in urban and rural areas. (iii) providing for the establishment of representation quotas in local elected bodies of national minorities, in accordance with the law on national minorities. The revision of the legal package under which the last territorial-administrative and local selfgovernment reform was implemented, aiming at a comprehensive and consensual legislative process is an effective opportunity to increase the quality of local representative democracy.

Keywords: Representative democracy; Legislation; Local government

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### Introduction

Democracy is the system that regulates and determines the ways the political will of the citizen is institutionalized in the governance of a society and of a country. It is the set of principles and rules according to which the mechanisms and institutions must be built and function, through which the people exercise their sovereignty (Schmidt, 2008). Democracy is the path followed to elect the representatives of the people, the rule according to which the right to make laws and decisions and to implement them is delegated or authorized. Democracy is the possibility and the rule according to which the citizen manages to exercise political control over his elected representatives (Schmidt, 2008; Yetano 2011; Tasco 2011; Vasstrøm and Normann, 2019; Bino, et al. 2020).

Abraham Lincoln has defined the concept of democracy as "a system of government that emanates from the people, functions with the people and for the people." In this concept the two main constituent elements of democracy are brought together:

- (i) democracy as the way of behaving, organizing and decision-making for the realization of coexistence in human society which is based on the implementation of the political will of the majority of the people, *and*
- (ii) democracy as the opportunity for the realization of functional relations of the state with the people as the way to implement the will of the people (Malaj 2018).

Democracy, as a political institution, is not a perfect model. As such, it is in a constant process of development and perfection, as a result of the developments of society itself. The interdependence between democracy and social and economic developments is basically the main factor that influences its development but that, at the same time is among the important factors that condition the social and economic development of the country (Aziz, 2014; Kartal, et al 2015). On the one hand, democracy develops, changes and is perfected to adapt to the changes that occur in social and economic relations in society and, on the other hand, the development of the economy is influenced by the way society builds and develops institutions responsible and necessary for governance of the affairs, how and to what extent the political governing system reflects the relations between different social forces; how to solve problems conditioned by the characteristics and features of the constituent communities of society; how the institutions of superstructure should be implemented, how the decision-making and governance of the country will be functioned etc. (Zogaj, 2015).

In democratic societies, every citizen can participate in the processes of organization and good administration of affairs in the community where he lives. The following principles lies at the core of these societies:

- Every citizen is free and has the right to be informed about what is happening and what is being done in the place where he lives;
- Every citizen has the right to openly express his opinions on various public issues.
- Every citizen has the right to engage in work to achieve certain expectations in various spheres and social and economic activities, to make proposals for action or to submit requests for certain socio-economic developments;
- Every citizen has the right to aim to become part of the decision-making bodies or to elect the representatives he wants, etc. (Irvin & Stansbury, 2006).

The history of economic and social development shows that, in order to effectively enable the above principles, the society must be committed to develop processes and to establish appropriate representative and executive institutions. Citizen participation in the formation of these institutions and in their activity is essential for the development of democracy (Chetwynd & Chetwynd 2001; Schmidt, 2008; Michels, De Graaf, 2010; Malaj, 2018; Bino, et al. 2020).

# Albanian Legal Framework that Supports the Development of Representative Democracy

### Constitution of the Republic of Albania

Article 2 of the Albanian Constitution stipulates "sovereignty in the Republic of Albania belongs to the people" and that "the people exercise sovereignty through its representatives or directly". This constitutional definition is the legal basis that conditions the quality of the legitimacy of power, according to which the exercise of functions assigned to the organs of power, legislative, administrative or judicial, has its source in the people. State bodies and especially constitutional bodies are sovereign because, in fact, they are the instruments by which the people exercise sovereignty that belongs only to them.

The exercise of sovereignty through its representative it is realized through voting in an electoral process. The Constitution stipulates that in Albania "Governance is based on a system of free, equal, general and periodic elections".

The Constitution of the Republic of Albania sanctions the freedoms and rights of citizens, in full compliance with international documents - the UN Convention on Fundamental Human Rights, the Convention on Freedoms and Political Rights, etc. The Constitution stipulates that every citizen who has reached the age of eighteen, even on election day, has the right to vote and to stand for election. The vote is personal, equal, free and secret. In accordance with international standards but also responding to concrete conditions and the stage of democratic development of society, the Constitution provides for cases where the citizen is excluded from the right to vote and to be elected<sup>1</sup>.

Through voting, in electoral processes, for which the Constitutions sets out the obligation to meet the standards of the Copenhagen Document and the OSCE commitments, citizens elect their representatives to govern at the central and local levels.

Elections for the Albanian Parliament, which consists of 140 deputies, usually take place every four years. For these elections, the Constitution defines the regional proportional system, with a national threshold. The constitution gives voters the right to vote in favor of multi-name list candidates.

For local self-government, the Constitution stipulates that "Self-government in local units is exercised through their elected bodies and local referendums." Article 109 of the Constitution states that:

- The representative bodies of the basic units of local government are the councils, which are elected every four years by general, direct elections and by secret ballot;
- The executive body of the municipality is the mayor, who is directly elected by the people every four years by general, direct and secret ballot elections.

and

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<sup>&</sup>lt;sup>1</sup> Citizens declared by a final court decision as mentally incompetent are excluded from the right to vote. 3. Citizens who have been sentenced to imprisonment, with a final decision, for committing a crime, are excluded from the right to be elected, according to the rules determined by law approved by three-fifths of all members of the Assembly. In exceptional and justified cases, the law may provide for restrictions on the right to vote of citizens serving a custodial sentence, or the right to vote before a final decision is made or when citizens have been expelled for a crime. or for a very serious and serious breach of public safety."

The right to elect and to be elected as the member of municipality councils and the mayor have only citizens who are permanently resident in the territory of the respective local unit.

The Constitution clearly states the fact that local government units are legal entities, to which it gives the right:

- a. independently regulate and administer local affairs within their jurisdiction;
- b. exercise property rights, independently administer the generated income, and have the right to exercise economic activity;
- c. to collect and spend the income that is necessary for the exercise of their functions;
- d. to decide, in accordance with the law, local taxes and their level;
- e. to determine the rules for their organization and functioning in accordance with the law:
- f. create local government symbols as well as local honorary titles;
- g. take initiatives on local issues before bodies designated by law.

The Constitution of the Republic, its letter and spirit emphasize the need to build a legislative framework, which will facilitate the carried out of the basic mission of local government units - the implementation of a government at the level as close as possible and in the best possible way to complement citizen's interests. (IDRA, 2020; Haxhimali et al. 2021) The Constitution states that the fulfillment of this major constitutional objective could be possible when the bodies and local government function in accordance with the requirements of representative democracy, when elected local bodies are the fulfilment of the will of local communities, expressed by vote, in democratic electoral processes. This definition is in line with the standards and practices applied by countries with developed democracies (Harold 1976; Schmidt, 2008; Böckenförde, 2011; Yetano, 2011).

The implementation of the constitutional provisions that regulate issues of the functioning of representative democracy in local self-government, is realized through the implementation of the law "Electoral Code in the Republic of Albania" and the law "On local self-government in the Republic of Albania".

### Electoral Code of the Republic of Albania

Electoral Code of the Republic of Albania approved by Law no. 10 019, dated 29.12.2008, amended by Laws no. 74/2012, dated 19.07.2012, no. 31/2015, dated 02.04.2015, no. 101/2020, dated 23.7.2020, no. 118/2020, dated 5.10.2020, in article 3 "General principles" reconfirms the constitutional principle according to which "Every Albanian citizen, who has reached the age of 18, even on election day, regardless of race, ethnicity, gender, language, political conviction, belief, physical ability or economic status has the right to choose and be elected in accordance with the rules provided in this Code. "In this way, the legislation creates the necessary legal basis that serves the citizens to exercise the right of sovereign, according to the definition made in the Constitution. Formulated in this way, this legal basis conditions the obligation that any body that exercises power on behalf of the people and for the people, should be only a product of the will of the citizens expressed by vote, in a democratic electoral process.

The Electoral Code sets out the conditions, requirements and procedures to be followed for the election of local government bodies - the mayor and the municipal council.

The law recognizes the right of political parties to nominate candidates for mayor or members of the municipal council. The right to run for mayor or for a member of the municipal council also belongs to every citizen with the right to vote, residing in the respective local unit, who is registered as an independent candidate. In order to register as an independent candidate, the law requires the support of no less than 1% of the voters registered in the voter list in the respective municipality, for this candidacy.

The Electoral Code in Chapter II "Electoral system for local government bodies" article 165 stipulates that:

- Mayors and municipal councils are elected by direct vote by voters residing in the territory of the municipality;
- The members of the municipal councils are elected on the basis of multiname lists submitted by political parties, coalitions, or candidacies proposed by the voters;
- Electoral coalitions present only one joint candidate for mayor and a list of candidates for the municipal council.

As can be seen, the mayor of the local unit is elected according to the majority system, with one round, while the members of the Municipal Council are elected according to the proportional system, with closed lists<sup>1</sup>.

## Comment on the Legislation on the Election of local Government Bodies - Electoral Code

For local government bodies, the Electoral Code provides for the election by the citizens' only of the mayor and the members of municipal council. For other local government bodies, monocratic or collegial, that are set up and function at the local level, the Electoral Code is silent. The establishment of these bodies is subject of the Law no. 139/2015 "On local self-government". In any case, these bodies are not directly elected by the community of voters of the respective municipality.

The election of the mayor through majority voting creates supportive conditions for the effective functioning of representative democracy at the local level. However, it should be noted that the definition in the Electoral Code of the election of the Mayor, in a one-round election process, significantly reduces the effect that this way of election has on the quality of representation. The placement in the Electoral Code of the condition the *first wins* rule brings consequences in the quality of this representation.

The election of members of the municipal council through voting for candidates of a closed list submitted by the electoral subject, significantly reduces the quality of representation of citizens in the municipal council. The voter has the opportunity to choose only the subject, party or coalition of political parties. With his vote he has no opportunity to express himself for the candidate or candidates whom he wants to delegate the power to decide on his behalf (Malaj, 2018; Haxhimali et. al., 2021).

Restriction in the Electoral Code through a periodic electoral process, only for the mayor and the municipal council, generates undesirable effects on the quality of representation of citizens in local government bodies (Malaj, 2018; IDRA, 2020, Haxhimali et al.; 2021).

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<sup>&</sup>lt;sup>1</sup> Article 166 "Election of local government bodies". 3. The mandates of the local councils are distributed among the electoral subjects by the CEC on the basis of the proportional system, according to the same procedures provided in article 162 of this Code. Nominal seats of local councils are divided based on the list of candidates in descending order, starting from ordinal number one.

Significant changes made in the organization and territorial-administrative divisions of the country, with the approval of Law no. 115/2014 "On the territorialadministrative division of the Republic of Albania", according to which from 65 municipalities and 309 communes, the country was divided into 61 municipalities, brought negative consequences in the quality of representation of citizens in elected local government bodies. The real possibilities of representation in these bodies turned out to be not the same for all communities that make up the population of the municipality. In particular, differences in the opportunities to be represented, with members in municipal councils, have been identified between communities in rural areas compared to communities of citizens living in urban areas (IDRA, 2020; Haxhimali et al. 2021). Prior to territorial-administrative reform, communities in rural areas were represented in local government through their elected representatives, as mayor and members of the municipal council. The reform abolished the commune as a local unit and replaced it with an administrative unit, as part of the organizational structure of the municipality. For this structure, in the Electoral Code there is no provision regarding the election of its governing bodies. This issue has been regulated in the current legislation through the relevant provisions in Law no. 139/2015 "On local self-government". In this way, the structure that is closest to the community, the structure that has the best and real opportunities to recognize the problems and demands of their community, especially in rural areas, is just an executive structure, which is built on the basis of the will and by decision-making of the Mayor. The Electoral Code, by not treating as its object and duty the legal regulation necessary for the quality functioning of the representative democracy even for such communities, has created spaces for action, with a strong political connotation, of the Mayor. The consequence of this is the creation of fragile relations of subordination between the elected Mayor and the local statesmen appointed by him, who are at the same time the main responsible for the administration of affairs in the interest and service of the community.

### Law "On Local Self-Government"

Law no. 139/2015 "On local self-government" is the legislative act that regulates the organization and functioning of local self-government units in the Republic of Albania. This law defines their functions, competencies, rights and duties and all other executive bodies at local level.

Article 5 of the law defines the content of the concept of "local self-government unit". According to this provision, the units of local self-government are municipalities and regions.

The municipality is the basic unit of local self-government. It represents an administrative-territorial unit and a community of inhabitants.

The region is a unit of the second level of local self-government. It represents an administrative-territorial unit, composed of several municipalities that have geographical links, similar cultural and social characteristics, common interests for sustainable economic and social development.

In order to better administer the work in the service of communities, to create opportunities for services to be as close as possible to the citizens and as much as possible in accordance with their interests, the law provides for each municipality to be divided into several administrative units. The division, in any case, must be made taking into account the traditional, historical, economic and social ties of the communities residing in the territory of the unit as well as the extension in the territory of the areas included within the administrative unit.

The implementation of the territorial-administrative reform have as consequence the creation of municipalities, with an extension in the territory, in most cases, much more than the previous one. The hight level of economic, social and cultural diversity within the municipality, conditioned the need to find solutions to reduce, as much as possible, their negative effects on the quality of citizen representation in elected local bodies and to the quality of service that these bodies should provide for the communities. Law "On local self-government", addresses this problem in Chapter XI—"Management and functioning of administrative structures of the municipality".

Article 65 of this law stipulates that an administration should be established in each administrative unit, under the direction of an administrator. The structure and staff of the administration of the administrative units are part of the structure and staff of the administration of the municipality. The administrator is appointed and dismissed by the mayor. He is the employee who is accountable to the mayor for the functioning and activity of the administration in the respective administrative unit.

Law no. 139/2015 "On local self-government" provides for the establishment and functioning of the "Neighborhood Community Council" in cities that are part of a municipality. The "Neighborhood Community Council" establishment is based on civic initiative. These citizens' structures are organized and operate on the basis of and in compliance with the rules set by the Municipal Council.

Article 70 deals with issues of establishment and functioning of community structures in the village. According to this provision, the village is headed by the Reeve and the village council. The village council is an advisory body to the Reeve. The members of the village council are elected in the village meetings, where not less than half of the eligible residents participate. The number of members of the village council is determined by the Municipal council based on the number of inhabitants of the village and its constituent neighborhoods. The Reeve of the village is elected by the village council from among the members of the village council.

The provision requires that the elections of the village council be held once in four years, after the elections for the Municipal council and not later than three months after these elections. In case of non-compliance with this deadline, until the election of the village council, the mayor temporarily appoints the Reeve of the village.

The election process and the activity of the village council are overseen by the municipal council.

According to the requirements provided in article 71, the Reeve and the village council perform and support the self-governing functions of the municipality in their village. They take care of local economic development, use of shared resources and ensure social harmony. The mayor may charge the Reeve or the village council with other duties as well<sup>1</sup>.

### Comments on the Law "On Local Self-Government"

The constitutional principle according to which self-government in local units is exercised through their representative bodies and local referendums is a legal definition which requires that the legislation shpuld use all possible spaces to guarantee the establishment and functioning of local bodies based on the principles of representative and direct democracy.

<sup>&</sup>lt;sup>1</sup> a) care for the prevention of illegal interventions in the network of drinking water supply and sewerage of white water and wastewater, of the protective canals of the inhabited areas, as well as the network of tertiary irrigation and drainage canals;

b) taking care to prevent illegal interference and any damage to roads, sidewalks and public squares in the village;

c) administration of the village cemetery;

d) care for the preservation of forests and pastures, as well as natural resources.

This definition does not exclude but significantly narrows the space for local self-government through and by local bodies that are appointed and not directly elected by local communities.

The administration process of the former communes, currently named Administrative units of the municipality, as a responsibility of the persons appointed by the Mayor and not by bodies elected, significantly affects the quality of this administration process. Appointed by the Mayor, the administrators have no decision-making rights. They only implement the decisions of the Municipal Council and the orders and instructions of the Mayor. As a result, the space for cooperation with the communities they administer and for decision-making with the participation of citizens to solve their local problems, has been significantly reduced. In addition, as shown by the local government elections, 2015 and 2019, this situation is exacerbated by the fact that the chances of electing representatives from the communities belonging to rural areas in the municipal council are small (IDRA, 2020; Haxhimali et al. 2021).

To reduce the negative effect brought by the implementation of the law "On territorial-administrative division of the Republic of Albania (2015), in the quality of implementation of the principle of local self-government, especially in relatively large municipalities, Law" On local self-government in the Republic of Albania "has envisaged the establishment and functioning of community councils in cities and the village council and Reeve in rural areas.

Community councils are set up in the city, based on civic initiatives, for each neighborhood. Article 6 of the law stipulates that a neighborhood, as a rule, can be created only in territories with over 20 thousand inhabitants. Community council members are self-proclaimed neighborhood residents. As a rule, the composition of this council is an extension of the Municipal Council. The main object of the work of these councils is the support of the governing functions of the municipality, the implementation of the decisions of the Mayor and the Municipal Council, in the respective neighborhood. The community council, in fact, is a body with insensitive effects on local self-government.

The Reeve and the village council are bodies elected by the community. There is no provision in the Electoral Code for their election. The Municipal council is the body that approves the regulation and procedures for their election. This makes the electoral process for them easily influenced by the preferences and political behavior of the party to which the Mayor belongs or the party that has the majority in the

Municipal Council. In addition, referring to the responsibilities, duties and rights provided for these two bodies, in reality they are bodies that only implement and support the self-governing functions of the municipality, the Mayor and the Municipal Council. Although these are bodies to be elected, the law does not grant them any decision-making rights. Their main role is the connection, for various executive issues, that they establish between the community in the village and the municipality. This makes the quality of representation of different communities in these bodies and their effectiveness in local self government, very low.

### **Conclusions**

The Constitution of the Republic of Albania deals with the right to represent citizens in local self-government bodies in accordance with the requirements of international documents and conventions on fundamental human rights and freedoms and their political rights. The Constitution stipulates that self-government in local units is exercised through their representative bodies and local referendums.

In letter and spirit, the Constitution of the Republic emphasizes the need to draft a legislative framework, which will guarantee the construction of local representative bodies capable of a government as close as possible and in the best possible fulfillment of the interests of all local communities.

The Electoral Code of the Republic of Albania supports the basic constitutional principles that underlie the operation of representative democracy at the local level. The closed list proportional electoral system, which applies to the election of members of the municipal council, significantly reduces the right of voters to elect, by their vote, the representatives in the municipal council.

The growth in the territory of municipalities, the variability and significant economic, social, cultural, behavioral and traditions differences that characterize the communities belonging to the same municipality, condition the need for intervention in the legislation that addresses issues of formation and functioning of local government bodies.

In the treatment that the current legislation makes for the local self-government and for the bodies responsible for its realization, more weight is given to the construction and the way of functioning of executive bodies that are not directly elected by the local community.

The Electoral Code and the law on local self-government provide for the election, through four-year periodic electoral processes, only for the Mayor and the Municipal Council.

The "distance" between the Mayor, the Municipal Council and the communities, especially those living in rural areas, is not reduced through the establishment of executive bodies, the administrator of the administrative unit. These bodies, only as an extensions of the mayor, have reduced the possibility to serve as self-governing bodies, in accordance with the interests of the communities they administer.

Legal solutions that address issues related to the implementation and effective functioning of representative democracy at the local level are not fully in line with the spirit of the Constitution.

Intervention in the legal framework to resize the bodies elected for local government, in accordance with the current reality arising from the implementation of territorial-administrative reform, in order to increase the quality of community representation in local elected bodies is a matter of time.

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