

LEGAL REGULATION MODEL OF MUNICIPALITIES IN THE REPUBLIC OF KOSOVO FOR SUSTAINABLE ECONOMIC DEVELOPMENT THROUGH INTERNATIONAL COOPERATION

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Abstract

This paperwork aims to provide an optimal legal model that will orient the national and local government towards a sustainable economic development process through international cooperation to be implemented in the Municipalities of the Republic of Kosovo. Kosovo, although it has marked a success in terms of completing the legislation on regulation of municipal activities, still in large extent, especially in the field of economy, such units are dependent from central government. It is precisely the dominance of the centralized logic which is also imposed by "Ahtisaari's Plan" that are not feasible at all to the new needs related to the economic development, awarding of governmental grants, fiscal policies, self-government, municipal property, etc, which are necessary for the local social regulation. The constitution as the highest legal act creates a necessary space for the decentralization process to be implemented in compliance with the current international standards for a harmonious local development. Being well aware of socio-economic problems that the newest country in the world is facing, creation of an effective three dimensional strategy (legal, economical and political) in which the decentralization process is going to be deeply respected by strong principles of sustainable development, especially based on international cooperation, will be the road to success not only in local level but in national level as well.

Keywords: Legal model, local development, legislation, international, municipality, sustainable development.

Introduction

The municipal governments in the Republic of Kosovo are facing with the necessity to solve many socio-economical problems in one hand, and with limited and conditioned competences from the central government on the other hand. It is considered that for local government functionality our country is listed as one of the most centralized in Europe. Lack of governing experience and limited competences of municipal leaders according to researchers of circumstances are the basic elements that characterize the functionality of governing. Laws and regulations according to which municipal administration functions tighten the scope of municipals, therefore they cannot be more efficient in their job. In the employment aspect, municipal institutions can give only a solid support to businesses. Regarding the assertion of the social endangered level there are limitations because a considerable part of budget is used for capital investments, and the municipality is not able to fulfill the demands of citizens. The activity of local government is subject to a relatively strict monitoring of governmental authorities. According to this, municipalities in the region they cover do not have the right to administrate with the property they possess. They can engage only in cultural activities without consulting with the respective governmental authority. Their contribution even in this respect is considered as low due to little financial possibilities. The financial aspect of municipalities is considered as the most affected from the consequences of law on local government. Almost in all countries the current legislation for local governing is considered from the municipal leaders as a consequence of lack of institutional efforts to enable autonomous functioning of municipalities. Good researchers of this matter say that improvement of unit positions of local administration by no doubt should be proceeded by change and completion of law for territorial divide of the Republic of Kosovo. The ministry of Local Government in Kosovo has notified that they will engage for improvement of local governing position. Adjustment of local government in

Kosovo will be done according to European principles and standards. Respect of this norms means also carrying out state obligations after signing the international documents for development of reforms in local government field. The Ministry of Local Government should also urgently review the current legislation and orient in the scope of fulfilling and changing it for the local government, initially in governmental procedure and then in the Assembly.

☞ Institutional liability of municipalities for sustainable development

There is no clear unique and accepted definition for the concept of sustainable development. However, there is a wide consensus on the necessity to introduce this concept in the public and to make the competent subjects aware for the reasons of creating and implementing such a development. According to a definition, sustainable development is "the development which would fulfill the present necessities, but without compromising and decreasing the capacities and abilities of the future generations to fulfill their needs".¹

The viewpoints on sustainable development have been taken from the answers on the questions of: What is perceived as sustainable for a community? First of all, is all this socially accepted, and if yes, should everyone contribute in the social integration of community in order to enable economical growth according to the principle of sustainable development, including also all those who secure an economical and social growth rate coordinated with the environment –physical capacity (boarders) in a particular territory in a long-run, and in a clear projected time period. In practice, this means that all five components of socio-economical, social, cultural, environmental, and legislation development, which also are composed and support sustainable development, should be equally

¹ World Commission on Environment and Development, 27 February, Tokyo Japan 1987 .

important in the country and society, closely related and provided with due institutional bases.²

The strategy of sustainable development is a comprehensive strategic plan for the development of a city or municipality which provides directives and incentives for future growth. It sets the sustainable development as a long-run oriented aim, a comprehensive and interactive process which impacts in all aspects of life (economical, social, environmental, and institutional). The strategy concentrates in creating a quality sustainable model to fulfill the socio-economical needs and the interests of citizens, while eliminating or significantly reducing the effects that threaten or damage the environment and natural resources. The strategy of sustainable development of Kosovo municipalities should be done by using and increasing the participation of interested parties. High participation of community (public and private sector, and NGOs) ensures quality improvement of approved decisions and impose for their implementation increases consequently. In other words, this approach provides: wider basic knowledge which allows the decision takers to do their best; big support for their decisions; adjustment of property issues; allows creation of future partnerships in project implementations. In the process of strategy compilation and implementation of sustainable development there are included all interested parties: local governments and utilities, public institutions, regional institutions, financial institutions, investors of the private sector.

☞ **Municipalities, associations, NGOs and the municipal Forum for sustainable development**

In order to create an efficient strategic plan for sustainable development we have to go through a careful process of selection by identifying the interested parties, respectively the persons who directly should participate in the development of a strategy. The local government should always be conscious to format this process through the approval of a legal act for the selection of the Municipal Forum/Forum Working Team/ Partner Strategy, in compliance with municipal regulations. Municipal Forums should be compiled of professional individuals, mainly of municipal administration, but also from other sectors.

☞ **National centers as initial institutions for sustainable development**

Efficient reaction to minimize the negative effects in the environment and creation of a strategy for local sustainable development with no doubt is an obligation and responsibility of state and local bodies. In order to implement this task successfully specialized institutional, national and local capacities should be created initially. The establishment of National Centers for Sustainable Development in the local level should be perceived as independent public institutions, impartial, with clear targets, available to provide advices, information services, education advices, by promoting the role and significance of sustainable development, which would be dedicated to the state institutions and the wide public. According to our

opinion, when dealing with countries of south-eastern Europe, these institutions on the initial reaction term, not only support in providing a sustainable development, but also they reflect such measures as to impact in decrease of poverty through the increase of environment attention.³

The objectives of such centers should be focused in collection, organization, and elaboration of information for sustainable development, or for situations/decrease of poverty of each locality. In addition, they should aim at identifying the conditions in the environment and giving accurate and reliable information to local and central governmental agencies, and to other interested institutions. Special attention should be given to the participation in compiling and implementing the assessment strategy, political measures, programs and projects which government considers for sustainable development. Ensuring technical and scientific assistance and focusing the programs alongside with the undertaken measures on the national, regional and international level are considered as crucial for efficient reaction. Issues dealing with the membership in the European Union should be treated with great significance. Objectives should be extended to distribution of knowledge and information for awareness increase on the importance of sustainable development and to overcome the current problems. All this can be achieved through educating and training public administration on the local and national level, but also by educating students and citizens interested on the issues of sustainable development. The activities of these centers should be focused in the compilation of sustainable development strategies through respective policies, measures, and activities. Establishment of institutions in these countries should be included through preparation of action plans, monitor and assessment of their implementation in a medium term and long term period for sustainable development. Scientific and operational supervision and review should be done through technical assistance for all ministries and other state institutions dealing with issues of sustainable development, or by decreasing poverty and living environment protection. We should confidently move to the function of supporting and increasing cooperation between ministries and other state institutions in the process of 'environment management', and increase of efficiency in the implementation of the poverty decrease strategy. Special attention should be given to monitoring and assessment of implementation of international conventions with the aim to provide a full picture of international activities in the field of sustainable development. These centers should be actively included in preparing the harmonization of national legislation with the EU legislation in all issues regarding sustainable development. They should be included in the harmonization process in the level of consultant-expert in the Integration Office with EU and of particular ministries whose activities are related to sustainable development; creation of regular mechanisms and indicators for environment sustainability;

² Same.

³ Carter Neil: The politics of the environment, Cambridge University Pres 2001

in identifying and recognition of quantitative indicators of sustainability, and their impact in sustainable development. Execution of these activities and collection of these information leads to the phenomenon of discrepancy of actual values, giving reasons for review and adjustment of policies which are currently being applied. Creation of facilities in the function of scientific and technical assistance for ministries and other state institutions to prepare measures, plans, programs, and activities emerging from the national, European legislation and international conventions is of great significance. Organization of education and training through programs related to issues or sustainable development, as well as preparation of publications, reports, analyses, researches, opinions, and recommendations of experts on written and electronic form create a very fruitful institutional system. Center publications, especially when dealing with implementation of legislation and its approximation with international acts plays an irreplaceable role in the environment for everyone.⁴

☞ **Local diplomacy for sustainable development in the function of legislative harmonization**

The main problem for the implementation of a sustainable strategy is that extreme degradation and uncontrollable exploit of natural resources are not meeting any national or international limits. Due to exactly this quality, countries have started to develop joint activities which have created the conditions for a special form of coordination known as local environment diplomacy. The concern about environment disorder and the necessity for implementation of sustainable development strategy are recently making use of environment strategy. This kind of diplomacy led by local institutions in the international plan is not only vulnerable but also it is easily proved as successful e.g. such as the case of joint approval of Kyoto Protocol, The United Nation Convention for Climate Change, Agenda 21 for municipalities, etc. We have to admit that currently environment diplomacy is a specific, complex and necessary activity to be implemented considering also the circumstances of the globalization process. Therefore, this diplomatic reaction should not be ignored from municipalities in south-eastern European countries, but it should be advanced regardless of the specifics of the legislative system of each country of this European part. This guarantees joint interstate reaction not only to respect and implement international legal acts, but also rule of law in the environmental scope.⁵

We have in mind that state institutional liability should not be understood only for execution of commitments related to environment protection, because this is considered as difficult to be implemented if it is not created and executed alongside with a strategy which would successfully coordinate both international cooperation and community partnership. This means that creation and use of environment diplomacy mechanisms would firstly create the possibility to join a series of multilateral agreements in the

region of south-eastern Europe, which then, in a particular instance, in the governmental and non-governmental mechanisms, in the form of common policies would be coordinated and executed successfully. Bilateral agreements signed between ministries, respectively competent departments for environment protection, even though they are of the political character in their nature, they are with no doubts preconditions to solve environment issues with efficiency.

Therefore, new forms recognized as environment diplomacy or 'green' diplomacy should be developed in maximum rapidity in all region countries. Indeed, environment diplomacy first of all could not be only an incentive instrument for international cooperation on environment issues, but also it could turn out into a very efficient tool to mitigate current crises in a particular region. Environment diplomacy has the potential to become a support of preventive policies for environment protection and policies for an awareness cooperative approach between people.⁶

☞ **Inter-municipal and international cooperation - legal basis**

Modern local governing, in the economical aspect in particular, should be open to neighboring countries, specific regions and particular international territories. Precisely for this necessity, it is expected in the future that the European Union will increase funds for local and international cooperation. Therefore, it is necessary to begin as soon as possible to strengthen and develop the existing but also new contacts. Cooperation is referred to several levels: cooperation of local governing with other municipalities, and cities in the country and abroad, as well as cooperation with NGOs, businesses and institutions in the country and abroad. The purpose of cooperation is: experience exchange, monitor of growth trends, development of joint projects for the execution of sustainable development Strategy, and application for various funds (local and abroad), personnel exchange, etc.

Municipalities of Dugagjini region should reach an active cooperation with all municipalities in Albania and Monte Negro through compilation and execution of joint projects, known with the word '*cross-border cooperation*', where they would have the possibility to exchange experiences in the field of local self-governing function and to improve working conditions of municipal administration. Experience from this cooperation would be useful for future activities for the execution of specific strategies from sustainable local development strategies, in particular those dealing with the promotion of tourism, infrastructure, supply and environment protection.

⁴ Same.

⁵ <http://www.un.org/esa/dsd/agenda21/>

⁶ G. Papandreu, former minister of foreign affairs of Greece in the International Conference 'Sustainable development for permanent peace' Athine 6 – 7 May 2003

☞ **Legal competences that should be guaranteed to the Local Government**

In the highest legal acts of countries several dispositions should be included which would clarify the competences of local government bodies such as Municipal Assemblies, Municipal Mayer Offices, and other municipal institutions. If competences of the local government would be stipulated in the Constitution, they would be guaranteed and could not be removed from the government, Parliament, or even the courts themselves. This would give the local government a sustainable independence from the central government. If competences of the local government would not be specified then it remains only to the parliament to decide whether it will give any competences to be carried out by the local government. Every new Parliament will try to change, limit, or even eliminate the competences of local government. Currently, in these countries many subjects have it unclear regarding competences of the local government bodies. It is not clear whether the local government has special governing competences such as the competence to increase incomes, budget administration of the local government, or to enact local regulations. If the constitution would not foresee anything about this problem then it would not be clear also whether local governing bodies have the competences to carry out simple tasks as keeping bank accounts or binding contracts. The new Albanian constitution should foresee and guarantee in specific all, or at least some of these competences to the local government bodies. Competences of the local government have been discussed in details in two following sessions: 'Competences that belong to the legal person' and 'specific governmental competences'.⁷

▶ *Competences of the Legal Person*

State constitutions can give the competences of legal person to the local government bodies. The competence of the legal person is simply the competence to perform general duties which could be carried out by any private persons or society. For example, random citizens and societies have the competence to have bank accounts, to purchase and sell goods, to bind contracts, to let lands for rent or other properties, to form legal entities, and other similar ones. We call these legal person competences because all legal persons can perform these duties. If the local government is not given legal person competences, then it will have very little authority to perform even the simplest tasks.

▶ *Specific government competences that should be transferred to the local government*

In addition to the legal person competences, most part of local governments have specific competences to fulfill

several governing duties. If the new Albanian Constitution would give specific competences to the local government bodies, these competences would be guaranteed for local government and cannot be removed from the central government, the parliament, or courts. These specific competences can include the competence to impose local taxes, to increase incomes by issuing bonds; the competence for budget administration of the local government and use of local government funds; the competence to undertake educational and cultural programs; the competence to distribute, plan, and administrate communities; the competence to enact laws and local directives; and the competence to execute laws and local regulations through local police bodies. Each of these specific competences is briefly discussed below.

Competences to Impose Local Taxes. Local government needs funds to pay for their projects. In many countries local government bodies have the competence that allows them to impose local taxes. These taxes can be imposed on incomes, on sales of goods, value of real estate, use of roads, or similar ones. Not having this competence the local government will have to rely solely on funds coming from the central government. This makes local government dependent on the central government. The Competence to Issue Bonds. Another way that the local government can pursue in order to increase funds is to issue bonds. Same as the central government in Albania, local governments in several countries sell bonds to individuals to support their projects financially. When the local government sells bonds it has to pay to the investor the amount together with the interest. Local government will pay bonds and interest with the money collected from taxes and other incomes. The Competence for Budget Administration of Local Government and Use of Local Government Funds. The Constitution can specify that the local government has the power and independence to decide the way of spending their funds. With lack of this disposition central government will make effort to dictate the local government on the way of how to use funds. If this occurs, local government can become just a marionette in hands of central government.⁸

The Competence to Undertake Educational and Cultural Programs. The Constitution can specify also the fact that local government has the competence to undertake educational and cultural programs. If local government has real independence in spending their funds, then local government can use these funds for educational programs, or for any other legal reasons. The competence to distribute, plan, and administrate communities. Local bodies are usually more appropriate to plan community growth and development. In Albania as well as in other countries, land can be planed for a special exploitation way, for example, for agriculture, business, residential constructions, or other uses. Constitution in specific can decide whether local government bodies have the power to distribute, plan, and administrate communities. The Competence to Enact Laws and Local Directives. In many countries, local government has the necessary competences to enact laws, regulations, and local

⁷ Economic Decentralization and Local Government, The United States Agency for International Development Local Government Reform Project Croatia, Zagreb

⁸ <http://www.lga.gov.uk/lga/core/page.do?pageId=1>

directives. Usually these are of a very local character and deal with issues such as restrictions in car parking, regulation of distribution, planning, and administration of communities as discussed above, directives dealing with noise, and other similar ones. However, the competence to enact local laws is unlimited. If a local law is in contradiction with a valid law for the entire Republic territory, then the local law is usually considered as invalid.

The Competence to Impose Execution of Local Laws and Regulations and to Impose some National Laws. If local government has the power to enact local laws and regulations, it is also necessary to have the power to execute them. Otherwise they would exist only on books and would not be applied and executed. In addition, local municipality can reasonably see the necessity for a more efficient execution of national laws. For example, a local government could see it as necessary to impose execution of several laws on criminal issues for the community to feel safer. The Constitution can give the competence to the local government bodies to form local bodies such as: police departments, local courts, and other mechanisms that impose law execution. If local government has not the power to impose execution of laws and regulations, they both could easily be ignored by individuals or by the local government.

☞ **Concrete form of decentralization to enable local harmonious development**

The crucial basis of this article is the theoretical aspect, practice importance, and positive and negative sides of decentralization process in Balkan countries in general. The main reason to face the scientific and practical aspect of the decentralization process in this paper work is to initiate this process in Balkan territory. Interest in the development of this process in this part of Europe is greater than in other countries. The reasons for this great interest on the decentralization process are: current high rate of centralization process; Impose of decentralization process model from the international factor without studying well the local circumstances and contexts; continuous insistence of central governments to impose a particular decentralization form which has in focus its own interests.

The above mentioned reasons have caused for the decentralization to be experienced as a barrier and not helpful for efficient organization and functioning of state bodies and institutions of all levels. Decentralization can and should be defined as a responsibility transfer for planning, management, increase of funds, and their allocation from national governments and their agencies to lower levels of government. Decentralization started as a necessity to delegate responsibilities from the central level to the local level. Transfer of these responsibilities and competences in most of the cases has impacted on: efficiency increase of government, rate increase of democracy, distribution of responsibilities, bringing citizens closer to decision-taking. Decentralization does not give the same effects in all cases. Decentralization process often impacts on: increase of expenses of bureaucracy apparatus, and increase of possibility to neglect work and different misuses. In the so far practice, three kinds of decentralizations are known: political decentralization, administrative decentralization, and

fiscal decentralization, which must be executed if we wish to have local economical development. Political decentralization is referred to situations when competences and political authority is transferred from the central government to lower levels of governments. The purpose of political decentralization is leveling the competences and responsibilities, as well as clear definition of responsibilities. In the central level political responsibility is two-dimensional: vertical and horizontal. Vertical responsibility is expressed through free elections which give legitimacy to the government. Horizontal responsibility refers to the power divide into, legislative, executive, and legal. Administrative decentralization aims at transferring the authority for decision-taking, resources, and responsibility for particular public services from the central level to lower levels of government, agencies, representatives, etc. Fiscal decentralization is the most comprehensive and quantifiable form of decentralization and directly connected to the budget. Fiscal decentralization deals with reallocation of funds from central institutions to lower levels of government.

Conclusion

The end of the last century marks an optimistic quality in the minds of people and governmental policies in terms of environment protection at both national and international level, due to serious concerns on degradation and high pollution occurring to the global system. Now we have reasons to be more optimistic because institutional reaction is more serious by reflecting through multidimensional state programs on the environment protection and sustainable development, not only to consider the formal plan as a priority issue, but also to be feasible and practical. There is no dilemma that people need to preserve, promote and protect the environment.

In the theoretical and scientific term, regionalization and decentralization of government are considered as important factors of local socio-economical development. Western countries have applied decentralization because this process enables them to reduce expenses for public services. Developing countries consider decentralization as the most efficient form of governing. To post-communist countries decentralization serves to democratize and apply market economy. African countries in decentralization find the support to move from monism to pluralism and to mitigate poverty. In Asiatic decentralized countries, civil society and the individual are empowered, local governments have changed their traditional governing form. In Latin America, decentralization has helped to replace military dictatorship with parliamentary democracy.

Currently in the world it is being researched on: Which is the border between of what can and cannot be decentralized? What are the advantages of decentralized governing? How to increase government efficiency and transparency? What are the necessary reforms that the decentralization process requires? How to increase participation of citizens in development processes? How to increase participation of citizens in decision-taking? How to increase the responsibility of government towards citizens?

Comparable international researches have proved that decentralization results depend mainly on political relations

between central and local governments. Similar decentralization schemes often can give completely different results. Researches have proved that decentralization is not a simple process of one side transformation of government and finances from center to localities, but work coordination between central and local government. The most important conclusion taken out from this study proves that decentralization in some countries has helped to be successful in mitigating poverty. In achieving this success, close cooperation of central institutions with local ones has had an impact. For local development we get the result that decentralization should be a flexible process that allows development of central and local level dynamics; For a successful decentralization process it is needed a great participation of institutions and

citizens; Functions of the central level, being important for the country, should not be decentralized; Decentralization should be financially supported.

Each country should compile decentralization documents which should rely on a legislation that means Law for Local Government, Law for local elections, law for local finances, law for local referendums, law for emergencies, etc. Importance of the decentralization process, different motives of initiating this process, time contest, chances and risks that decentralization process offers should now increase the curiosity not only to institutions, but also to individuals in order to deal with this issue and to make efforts to contribute through: Newspaper writings, organization of debates, compilation of projects, etc.

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