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CITIZEN PARTICIPATION IN THE LOCAL GOVERNMENT IN ALBANIA

Arnaldo Bicoku

Abstract: *The purpose of Law 139/2015 was the creation of local self-government units and their respective bodies so that the service would be provided by bodies that are as close as possible to the citizens in relation to the principles of subsidiarity, decentralization and local autonomy. In this way, services can be better implemented and the interests of citizens can be better protected within the respective local units. This paper deals with the importance of citizens' voice in local government decision-making. It focuses on their participation during the meetings of the municipal council, on their right to give an opinion or suggestion in connection with the review and approval of the act, on their right of citizen initiative, etc. Their participation in local elections and local referendums has also been addressed. Part of the work is an analysis of their right to voice their opinion on the territorial administrative division of local self-government units.*

Keywords: *local unit; citizen; decision; local referendums; local elections.*

Introduction

The purpose of Law 139/2015 on Local Self-Government was the creation of local units and their respective bodies in such a way that the service would be provided by bodies that are as close as possible to the citizens, related to the principles of subsidiarity, decentralization and local autonomy. In this way, the services can be better realized and the interests of the citizens within the respective local units can be better protected. These principles are also defined in the Constitution of the Republic of Albania as the highest source of law in Albania. In its Art. 13, it is clearly defined that local government is established on the basis of the principle of decentralization, and that it is exercised according to the principle of local autonomy.

Indirect Participation of Citizens in Decision-Making

In the law on local self-government, a special chapter is dedicated to the rights of individuals in relation to local self-government units and their activities. Specifically, Chapter VI of this law is entitled "Transparency, Consultation, Citizen Participation." It is no coincidence that the legislator has listed the concepts in this way. They show the connection that the citizen has with the local government. It begins with the local government's obligation to be transparent about its activities, then continues with consultation as a tool that brings it even closer to the citizen, and culminates in the role it gives to the citizen in the decision-making process. One of the main rights that simultaneously constitutes an obligation of local government bodies is transparency regarding their activities. The local government will fulfil this obligation towards its citizens if it carries out the information process related to its actions. The right to information is a constitutional right as laid down in Art. 23, which provides that "The right to information is guaranteed. Everyone has the right, in accordance with the law, to receive information about the activities of state bodies, as well as persons exercising state functions. Everyone is given the opportunity to attend the meetings of the elected collective bodies." As we have noticed, the guarantee that the legislator has given to this right is at the constitutional level, and the limitation that is made to this right is of

the type that the information process must be in accordance with the relevant law. Also, the right to information is provided in the Code of Administrative Procedure, where it is defined as one of the main principles, on the basis of which the administrative activity of public bodies should be exercised. More specifically, in Art. 5 it is defined that "Public bodies exercise administrative activity in a transparent manner and in close cooperation with the natural and legal persons involved in it." Meanwhile, in Art. 6, the following is defined:

- "Every person has the right to request public information, related to the activity of the public body, without being obliged to explain the motives, in accordance with the legislation in force that regulates the right to information;
- In cases where the requested information is rejected, the public body takes a reasoned decision in writing, which also contains instructions for exercising the right to appeal and is immediately notified to the parties in the process."

What we noticed is that here, as in the case of the constitutional provision of this right, it is required that the request be in accordance with the legislation in force for the right to information. Moving on to the relevant law, Law 119/2014 on the Right to Information is the specific law that regulates the right to know the information that is produced or held by public authorities. It also aims to promote their integrity, transparency and accountability. What is worth emphasizing in this law, among other things, is that the public authority is required to implement an institutional programme of transparency, which defines the categories of information that are made public without a request and the way of making the information public. In Art. 7 of the Law, it is determined that every public authority, in accordance with this transparency programme, must prepare in advance, in easily understandable and accessible formats, and make publicly available certain categories of information without request.

Furthermore, while analyzing the provisions of Chapter VI of Law 139/2015 on Local Self-Government, we noticed that their rights from the first to the last article are being strengthened and their proximity to the local government bodies is increasing. Thus, the first article provides for the transparency of local self-government bodies, as well as for the obligation of the bodies to publish the acts issued during their activity on the official website of the local unit and to post them in the specific places for public announcements. So, as it is expressly determined by the conjunction *and*, the entity must necessarily use both sources of notification – the official website and the public announcements. Another obligation that is provided for in terms of the local units is the appointment of the transparency coordinator and the approval of the transparency programme according to the rules and procedures defined in the Law on the Right to Information, which we talked about above, so that everyone has access, especially the lower classes of the community.

The other article provides for public consultation in local government units. What we noticed is that it provides for a more active participation of citizens than in the previous article when they played a passive role. By public consultation, we mean the collection of opinions and suggestions of interested parties on the content and improvement of the draft act, from the moment of its publication until its final approval. This article[1] stipulates that local bodies must guarantee public participation in the decision-making process. First, in relation to what we mean by public consultation, the guarantee of participation should not be limited only to physical participation in this process, but citizens should play an active role by giving different opinions and suggestions. Another obligation for local units is the appointment of a coordinator for public notification and consultation. Both in the case of appointing the coordinator of transparency and in the case of the coordinator for public notification and consultation, the main purpose of appointing this person is the coordination and general administration of the work to guarantee the rights mentioned above respectively.

One of the cases of citizen participation is their participation in municipal council meetings, which are open and which every citizen is allowed to attend according to the regulations of the respective council. However, this is not always allowed, as there are cases when the council meeting takes place behind closed doors. This procedure occurs when it is initiated at the request of the mayor or 1/5 of the members of the municipal

[1] Art. 2(5) of Law 115/2014 on Public Consultation.

council, and when no less than 3/5 of all its members have voted for it. In other cases, citizens not only participate in the meetings of the municipal or district council, but also have the right to express their opinions, suggestions or comments on the issue that is being discussed in the council. Thus, Art. 18 of the Law on Local Self-Government provides that, before reviewing and approving an act, the council must hold a consultation session with the respective community. In this regard, there are cases when the counselling session is mandatory or optional. The cases when the municipal or district council is obliged to consult with the community are when the council:

- elects the council commissions from its own composition and approves the internal regulation of its operation;
- approves the budget and its amendments. In the decision to approve the budget, it also approves the maximum number of employees of the municipality, as well as budget units and institutions depending on the municipality;
- approves giving ownership or use of property to third parties;
- decides on local taxes and fees according to this law and other legislation in force;
- approves norms, standards and criteria for the regulation and discipline of the functions given to it by law, as well as for the protection and guarantee of the public interest.

The necessary forms for the development of counselling sessions can be open meetings with residents and interest groups, meetings with specialists, interested institutions and non-profit organizations, or by taking the initiative to organize local referendums as provided for in Law 139/2015 on Local Self-Government.

However, the right of citizens is not limited to giving an opinion or suggestion for a certain act before its approval. Every citizen, even after the approval of the act or for any other issue related to the functions and powers of the local self-government units, has the right to voice requests, complaints or remarks, and the latter are obliged to respond within certain time limits defined in law.

Article 20 defines a very important right of citizens that has to do with their initiative. By the latter, we will understand the will to propose something that could serve not only an individual or a group of individuals but also the whole community. The conditions that must be met by the citizen initiative are the following ones:

- The entities that can present it to the council are the authorized representatives of the community or no less than one percent of the residents of the municipality;
- It must be presented for issues that are within the jurisdiction of the local unit;
- When these issues have a financial impact on the budget of the local unit, they cannot be approved without first obtaining the opinion of the head of the local self-government unit.

A debatable issue in Albania has been Law 115/2014 on the Administrative Division of Local Government Units in the Republic of Albania. A group of deputies opposed this law at the Constitutional Court, requesting its declaration as incompatible with the Constitution of the Republic of Albania. One of the arguments against it was the non-fulfilment of the constitutional obligation of prior consultation with the population regarding the division or change of territorial administrative units. This obligation is defined in Art. 108(2) of the Constitution of the Republic of Albania: “2. Administrative-territorial divisions of local government units are determined by law on the basis of needs and common economic interests and historical tradition. Their borders cannot be changed without first taking the opinion of the population that lives in them.” The applicant shared the view that the only way of consultation for the change of administrative and territorial borders was the local referendum, since, according to him, only this form of consultation essentially fulfilled the constitutional obligation sanctioned in Art. 108(2). In his opinion, the legislator did not respect this criterion, as a result of which the new territorial division was unconstitutional.

Art. 67 of Law 8652 of 31 July 2000 on the Organization and Functioning of Local Government, in force at the time before the approval of the administrative reform and before the entry of the new law on local self-government into force, provides for the following:

“Argumentation and documentation of the reorganization by the proposer;”

“The proposal for the reorganization of one or more local government units, for each special case, is presented to the Assembly together with the following facts and arguments: ways of obtaining opinions in open meetings, public con-

sultation sessions, public hearings, opinion polls certified by competent bodies or position expressed through local referendum or in any other appropriate and reliable way…;"

"The court emphasizes that the legislator's decision-making regarding a new administrative-territorial division of the country must be subject to the proportionality test, which must weigh the different interests of all subjects affected by the reform. This test cannot give accurate results without the participation of all subjects. For this reason, the right of the community to be heard before the intervention of the legislator in the territorial boundaries of the administrative space where he lives, is not only the material content of the objective guarantee of local self-government, but also an element of the rule of law, which aims at the proper functioning of all state power. The court appreciates that regardless of the details, the hearing process should include as a minimum condition the formal participation of the residents affected by the reform in a discussion process, where not only the final variant to be approved is presented, but also it is open to possible changes according to the suggestions of the community (decision of the GJK of the Land of Brandenburg: VfGBbg 95/03, December 18, 2003)."

"Based on the standards expressed above, the Court finds that referring to Law 8652/2000, which provides for alternative methods of obtaining opinion: open meetings, public consultation sessions, public hearings, opinion polls certified by competent bodies or the position expressed through local referendum or in any other appropriate way and reliable, it is not necessary for the drafter of the law that these consultation methods are completed all at once, in order for this process to be called done. Of course, the more these methods are used, the more reliable and stable the result is."

"Based on the legal basis, as well as the materials brought to the trial by the subjects interested in this trial, the Court finds that the following methods were followed in order to carry out the public consultation process related to the new territorial-administrative reform:

– Informing the public about the progress of the administrative-territorial reform was carried out using several instruments, such as: open meetings and gatherings, public consultation sessions, public hearings, national survey, as well as visual and written media. The public consultation, as defined by Law 8652/2000, has been developed in several stages of the reform with 3 main groups."

Also, pursuant to Art. 68(1 and 3) of Law 8652/2000, the bodies of local government units have the right to give their official opinion in writing on the proposal for administrative-territorial reorganization within 60 days of receiving the request. In function of this process, the Special Parliamentary Committee, after approving the variant of the administrative-territorial division with 39/47 local government units on 22 May 2014, tasked the Minister of Local Affairs to request the official opinion on this variant from all the mayors, as well as from the councils of the municipalities. In total, 52.5% of the total representative and executive bodies of municipalities and communes in the country expressed their official opinion. From the detailed examination of the responses received, and after considering the opinions received by the commission, it results that: 160 mayors of municipalities and communes, as well as councils of municipalities and communes, returned positive responses (PRO) to the proposed variant of 39/47; 56 mayors of municipalities, as well as municipal councils, expressed themselves in favour of another division from the variant in question, giving concrete proposals for the reorganization of their local units.

"From the above, the Court came to the conclusion that the process of obtaining the opinion was carried out through the use of most of the methods provided by Law 8652/2000. In this sense, the Court assessed that the constitutional criterion of obtaining an opinion, according to Art. 108(2) of the Constitution, has not been violated."

Direct Participation of Citizens in Decision-Making

The two most important forms of direct citizen participation in decision-making are local elections and local referendums. Through local elections, citizens have the opportunity to choose representatives who will transmit their will. The principle of local self-government is exercised through representative bodies and local referendums. The Albanian Constitution as a new constitution has been able to gather the most advanced constitutional experience and has implemented the conditions defined in the European

Charter of Local Autonomy, expressly establishing as a constitutional requirement the universal voting for both representative bodies and their executive bodies. Besides the general principles of elections that are affirmed in the first part of the Constitution, where it is determined that the government is based on a system of free, equal, general and periodic elections, it expressly sanctions general, direct and secret elections for local bodies, not leaving any freedom to the legislator to change these principles. In fact, before, only the elections of the central bodies could be classified as political elections, while those for the local bodies were considered elections with a simple administrative character. Today, in many countries, this panorama has changed. In France, for example, with a decision of the French Constitutional Council in 1982, the elections of local councillors were also classified as political elections. The reasons why elections are considered political and not administrative are:

- The voter who participates in them is considered a member of the political body of citizens and not just an individual of the local unit where he/she lives;
- Local elections are related to the exercise of the people's sovereignty, although not directly;
- Elections are held on the basis of the provisions of the Electoral Code and ensure a pluralistic composition of local government bodies.

Stopping at the latter, we should mention the fact that even the organic law for local self-government specifically refers to the Electoral Code when considering the methods of electing local bodies.

Art. 165 of the Code reads as follows:

- "The mayors and the councils of the municipalities 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 multi-name lists submitted by political parties, coalitions, or of candidacies proposed by voters;
- Electoral coalitions present only one common candidate for mayor and a list of candidates for the municipal council."

Meanwhile, in Art. 166, the Code expressly defines:

- "Mayor is elected the candidate who wins the largest number of valid votes of voters who voted in the relevant local unit;
- In the event that two or more candidates receive an equal number of votes, then a draw is made between them. The draw is organized by the CEC (Central Election Commission) in a public session with the participation of the candidates. The CEC defines the rules for organizing the draw;
- The mandates of the local councils are allocated by the CEC based on the proportional system, according to the same procedures provided for in Article 162 of this Code. The nominal mandates of the local councils are allocated based on the list of candidates in descending order, starting with the ordinal number one."

Another form of citizen participation is the local referendum. By referendum, we will understand the direct exercise of the people's sovereignty, through voting, on an issue or a certain law according to Articles 108(4), 150, 151, 152 and 177 of the Constitution. Regarding the legal basis for conducting referendums, we emphasize that the amended Law 10019 of 29 December 2008 on the Electoral Code of the Republic of Albania does not deal with the part of referendums and the procedure for conducting them. The corresponding explanation in relation to this part is made in Art. 185(2) of the Law, which states: "Regardless of the provisions made in point 1 of this article, the ninth part 'Referendums' of Law 9087 dated 19 June 2003 on the Electoral Code of the Republic of Albania, repealed, as well as any part of its provisions that are related to it, remains in force until the adoption of the new law on general and local referendums. The administration of the referendum process and the extraction of their results are done in accordance with this Code."

As it is expressly defined, to explain the local referendum, we must refer to the old repealed law as the relevant and applicable law until the release of the organic law for general and local referendums.

Moving on to this law in a more concrete way, Art. 132 defines:

- "Ten percent of voters registered in the voter lists of the municipality or 20 thousand of them, whichever number is smaller, have the right to a local referendum on a local government issue in the respective municipality or commune;
- A number of municipal or commune councils, representing no less than one-third of the population of a district, have the right to re-

quest the holding of a referendum on a local government issue at the district level;

• Referendum on the same issue cannot be repeated in the same local government unit without three years from its development."

As we noticed in the first point, the legislator has provided two alternative ways for taking the initiative, with the positive condition that any number is smaller than these two. One of the initiatives has provided for ten percent of the voters registered in the voter lists of the municipality or commune, and the other initiative is for twenty thousand voters. Another characteristic of this first point is that the development of the referendum will be done only for local government issues in the respective municipality or commune.

Meanwhile, Point Two of this provision does not directly define the natural person, the citizen as the initiator of the local referendum, but the local bodies such as municipal councils, with the condition that they represent no less than one third of the population of a district. Both of these types of referendums must be subject to the three-year limitation for repeating the same referendum issue.

Besides determining the total number of voters, the Electoral Code also defines as a condition an initial number of initiators to make the request to start the procedures. Art. 126 reads as follows:

"The request for the start of the referendum procedures is submitted to the CEC (Central Elections Commission) by a group of no less than 12 initiators, who are registered voters in the National Register of Voters."

Meanwhile, for referendums on an issue of special importance, the legislator provides that this request must clearly describe the issue being raised, its importance, the attitude of the initiators in relation to it, as well as be formulated in such a clear, complete and unequivocal manner that voters can answer with *YES* or *NO*. The body that verifies the signatures and correctness of voter identification documents is the CEC. After making the relevant verifications, the CEC decides on the acceptance or rejection of the request within 90 days from the date of its submission, basing the decision only on the regularity of the submitted documentation and immediately notifying the initiators. If the CEC decides to reject the request, it must clearly define the reasons for the rejection. Within five days from the announcement of the decision, the initiator group can declare to the CEC that it is ready to correct the observed irregularities. In this case, the CEC sets a deadline of up to 30 days for the resubmission of the request, deciding within 10 days to accept the resubmitted request or not and immediately notifying the initiators.

Conclusions

Until today, no local referendums have been held in the Republic of Albania, despite the fact that there have been several attempts, especially in terms of the environmental problem. Only a few important, general referendums have been held, such as the one for the approval of the new Constitution in 1998, as well as the referendum on the forms of government in the country, where the majority of voters chose the *republic* form. The new amendments to the Electoral Code of 2021 have left the same transitional provision, which provides for the implementation of the provisions of the old Electoral Code of 2003 until the release of the Law on General and Local Referendums. I appreciate that the political actors did not make efforts towards a new law. So far, no initiative has been taken on their part to propose a law on referendums.

In Art. 18 of Law 139/2015 on Local Self-Government, entitled "Counselling Sessions with the Municipality," the local referendum is simply mentioned as a means of consultation with the municipality without a detailed description of the procedures to be followed, the criteria to be met for its development, etc. I think this is the deficiency of the law, because it has not given the importance it deserves to the local referendum, creating ambiguity and lack of information for the citizens on how they should use this important tool. The only solution to put an end to problems of this type is the release of the organic law on general and local referendums as soon as possible. What is important is the implementation of the counselling sessions with the citizens. Art. 18 of Law 139/2015 also provides that the municipal council is obliged to conduct counselling sessions with citizens in the case of:

• election of council commissions;

• approval of the internal regulation;

• approval of the budget;

• approval of giving ownership or use of property to third parties;

- determination of local taxes and fees;
- approval of the norms, standards and criteria for the regulation and discipline of the functions given to this council.

Unfortunately, regardless of this detailed provision, we do not have an application of it in practice for all the cases listed above. The only case that municipalities generally apply to listen to citizens is that of budget approval. This process is called *participatory budgeting*, where citizens actively participate in decision-making for the distribution of public financial resources. In all other mandatory cases, the citizen's voice is not heard as provided by law. As I mentioned above, political will is needed from political actors to justify the trust that citizens have given to represent them and to be their voice for various community problems.

REFERENCES

Code of Administrative Procedure of the Republic of Albania

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Law 119/2014 on the Right to Information

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