

LOCAL DEMOCRACY TRENDS IN GEORGIA

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Abstract

Georgia is a country that gravitates towards Europe with strong tendencies to join the European Union. Since the early 1990-ties it has been undergoing the process of political reforms towards political pluralism and overall democratization, slowed by the civil war and war waged for its territorial integrity. The last period 2004-2014 is the one that promoted and speeded up the process of democratization especially at local level. These developmental trends were the subject of our analysis as concerning three very important areas: devolution of competencies or transfer of competencies from central to local authorities, fiscal decentralization and relations between central and local authorities. In this respect the research findings proved limited progress in respect to devolution of competencies and fiscal decentralization that provided some own revenues for local authorities and opportunities to freely dispose with some of the state grants as well as introducing criteria and supervisory procedures in exerting state administrative and financial control over local organs, but still the system is burdened by the centralistic tendencies, reaching the general conclusion that the Georgian local government in the last period (2004-2014) has made considerable developmental progress in comparison to the former periods but the system can be still characterized by fundamental restrictions in its functioning.

Keywords: Local Government, Georgia, Developmental Trends

Introduction

Georgia is a country that gravitates towards Europe with strong tendencies to join the European Union. Being a part of the USSR and gaining independence in the early 1990-ties it lacks democratic traditions, making efforts at the time being to democratize itself. In that respect Georgia signed the European Charter of Local Self-Government that speeded up its process of democratization at local and region level. These developmental trends are

the subject of our analysis as concerning three very important areas: devolution of competencies or transfer of competencies from central to local authorities, fiscal decentralization and relations between central and local authorities. The specific research methods applied are the historic and the comparative ones.

Recent historical developments

Georgia became a part of the Soviet Union in 1921 with communist government. Georgia was incorporated into the Transcaucasian SFSR uniting Georgia, Armenia and Azerbaijan. In 1936 Georgia became the Georgian SSR. In October 1990 there were elections for the national assembly held on a formal multi-party basis. On April 9, 1991, shortly before the collapse of the Soviet Union, Georgia declared independence. The country was involved in a civil war which lasted almost until 1995. At the same time, disputes within two regions of Georgia, Abkhazia and South Ossetia, between local separatists and the majority Georgian populations, erupted into wars. Supported by Russia, Abkhazia, and South Ossetia, with the exception of some "pockets" of territory, achieved *de facto* independence from Georgia.

State authorities in Georgia

Georgia is a democratic semi-presidential republic, with the President as the head of state, and Prime Minister as the head of government. Legislative authority is vested in the Parliament of Georgia. It is unicameral and has 150 members. The Supreme Court of Georgia is the highest cassation Court on the whole territory of Georgia. The Constitutional Court is the judicial body for constitutional review.

Political divisions on territorial basis

Georgia is divided into 9 regions, 2 autonomous republics and 1 city. The regions are further subdivided into 69 municipalities.

Local government organs

Local government is consisted of three organs: Council (Sakrebulo), as its representative and by function legislative organ, City Hall headed by Mayor, as its executive organ and local administration.

Local government trends

The contemporary local government developmental trends can be divided in three stages: the first is the period of socialism 1956 - 1990, the second period is 1990 - 2004, and the third period is from 2004 until present

The period of socialism (1956-1990) was characterized by

- a) Very small number of competencies mainly in the field of communal activities and urban planning
- b) Almost non-existent own revenues for local purposes
- c) High level of dependence of local bodies by central authorities (Mitkov, 1992)

The early period of independence (1990-2004)

Unlike many other socialist East European countries (Czech Republic, Poland, Hungary, etc) that started the democratic reforms in many social fields including the local government straight after the fall of Berlin Wall at the beginning of the 1990-ties, Georgia had some delay in this respect mainly due to its historical events (civil war and war for integration of its territory). In addition to these, Georgia did not have western type of democratic traditions like Poland, Czech Republic and some other middle European countries that slowed the process of democratization.

State of arts in the field of local government

The Georgian Constitution and Law on Local Self-Government produce the basic principles of functioning in the area of local government which are:

The principle of local self-government is stipulated in the Constitution but is defined as subordinate to the State authority and sovereignty without clear legal procedures how to resolve the possible conflicts of interests between state and local bodies.

The local government functions are few mainly in some fields of infrastructure and urban planning. The state bodies have various financial functions related to the processing of local government bodies like approval of and exercising control over the execution of local budget, introduction and abolishment of local taxes and duties in accordance with the Georgian legislation.

The principle of subsidiarity is formally recognized by the law on local self-government but is not legally elaborated. The present Law does not refer to consultations between the state and local authorities with exception in case of delegation of authorities from state to local bodies.

The law stipulates external supervision of local authorities' decisions to ensure their legality

As to the supervision of the delegated authorities, the law is in favor of the supervision limited to legality only The State authority and the President of Georgia are entitled to exercise a very wide and unconditional power of invalidating the decisions made by the self-government bodies. The supervisory procedures are not formulated in the law. The only revenue

available to the local government bodies comes from non-lucrative local taxes and charges; the local government bodies do not have their own assets. Local authorities have no influence on tax-collecting bodies which are part of the centralized fiscal system; Furthermore, the municipalities are apparently unable to dispose freely of their resources in order to exercise their powers.

Constitutional and legal developments in the third period 2004-2014

Since 2004 there were some very important developments in the constitutional treatment of the local self-government in Georgia. Many new laws as well as new amendments within the existing laws have been passed. The more important in this respect are the Constitutional amendments, Law of Georgia on State Supervision over Activities of Local Self-Government Bodies, Budgetary Code of Georgia, Election Code of Georgia, Law of Georgia of Activity of the Government of Georgia, Organic Law on Georgia on Citizen Participation, and the Organic Law of Georgia on Local Self-Government.

The constitutional and legal changes will be elaborated in the ensuing analysis of the share of competencies, state and local relations and fiscal decentralization issues.

Devolution of competencies

According to Article 15 of the Organic Law of Georgia there are two types of authorities - own and delegated. In Art.16 we have the list of the **own authorities**. The ones that regulate the local tasks and activities in specific social spheres are the following:

Economic activities

- a) Identification of investment directions, funds for the implementation of the own as well as joint programs and support to the investment in the self-governing unit
- b) Approval of programs of the municipality to support the employment;
- c) Establishment, reorganization and liquidation of the legal entities while exercising the authorities of the self-governing unit in accordance with the Law.
- d) Management and disposal of the land resources under the ownership of the self-governing unit.
- e) Management of forest and water resources of local importance.

Urban planning

- f) Land use planning, division of self-government unit territories by zones (planting, recreational, industrial, commercial and other special zones), demarcation and alteration of their borders;
- g) Planning of spatial-territorial arrangement and defining norms and rules of spatial-territorial planning; approval of the general plans of land use, building regulation rules; approval of the territorial arrangement and infrastructure development programs;
- h) Planning highways and traffics of the local importance on the territory of the self-governing unit;
- i) Issuance of permissions on constructions, supervision over the construction underway on the territory of the self-governing unit.

Infrastructure and communal activities

- j) Regulation of traffic and motor transportation, issue of the permits under the law and organization of passenger transport service of the population;
- k) Regulation of the outdoor trade and markets;
- l) Determining vehicle parking lots and the rules of the parking; cleaning and illumination of the streets of settlements, outdoor lighting, setting up floodwater, sewage and garbage dumping systems, planning and conducting collection and utilization works of the solid waste or organizing municipal purchases for their implementation; maintenance of cemeteries;
- m) Maintenance, construction and development of the roads of local importance;

Culture

- n) Organizing the work of the libraries, museums, theatres, galleries, sport-recreational objects of local importance;
- o) Creation of the municipal archives.

Education

- p) Establishment of pre-school and non-school educational institutions in the form of non-commercial legal entities and approval of their statutes.

Health Care and Social Care

- q) Mobilizing the municipal resources in the spheres of health and social care on the territory of self-governing unit, working out, implementing and informing the population about the appropriate events/actions, such as the creation of safety environment for

- people's health, the establishment of the wholesome manner of life and the identification of risk factors concerning the health;
- r) Ensuring municipal fire fighting and rescue activities of the self-governing unit;

Delegated authorities encompass the following specific tasks like: (i) recruitment of young men for the army; (ii) preventive healthcare, like vaccination in case of epidemics; (iii) funeral expenditures of IDPs, etc. The delegated authorities are exercised by the local governments with financial compensation from the state funds, since they are in the domain of central authorities.

The analysis of the list of own responsibilities contained in Article 16 of the above Law shows that the local governments regulate and manage some public affairs under their responsibility, taking into consideration that in their responsibility there are some competencies in the fields of local physical infrastructure or communal activities, local economic development, urban planning, culture, sport, pre-school education. But, many other competencies, that for comparison are the local ones in the developed countries such as those in the fields of primary and secondary education, many fields of social care and protection (homeless children, aged persons, handicapped, alcoholics, drug addicts), primary and secondary health care, some of them in the field of environmental protection, etc. are not in the domain of local competencies at the time being. Therefore, still the Georgian local government can be characterized with a limited number of local competencies. We already mentioned that the **delegated authorities** are exercised by the local governments with financial compensation provided from the state funds, since they are in the domain of central authorities.

Financial resources

Each local self-government body shall have its own independent budget and property.

Sources of revenues

The Budget Code of Georgia stipulates it very strictly and clearly that Georgian LG units have following revenues:

- a) Tax income
 - a.1 Property tax
- b) Non-tax income

They include b.1. Service fees and tuition for services; b.2. Operation of property; b.3. Operation of financial assets; b.4 Administrative fines and penalties; b.5. Licensing and tender fees.

Rates of the local taxes and fees are determined by the council.

c) Financial assistance from central government

They encompass the Equalization grants, Specific transfers for delegated responsibilities and Earmarked transfers.

c1) Equalization grants

These are funds that the State government gives to the municipalities for various projects with which the local governments can dispose freely to some extent. The fiscal equalization funds and procedures exist in the Georgian legislation and they help the poorer municipalities get external resources. In this context, the bodies of the State authority shall be liable to hold consultations in advance with the non-commercial legal entities representing more than half of the self-governing units of the country on their demand.

c2) Specific transfers for delegated responsibilities

Specific transfer is cost for implementation of delegated functions from central government. Municipalities are not free to decide spending priorities for this transfer. The purpose of this transfer is defined by specific legislation or by an agreement between specific municipality and central government. Central government may perform audit of spending for this transfer

c3) Earmarked transfers

These are funds for implementation of specific projects on rehabilitation of municipal infrastructure. Municipalities have right to spend this money according to the rehabilitation project endorsed by the minister on regional development and infrastructure. The Ministry has right to request audit for spending of these funds. Earmarked transfers are funds for implementation of specific infrastructure projects, such as rehabilitation of water supply systems, construction of roads etc. Unlike equalization grant municipalities shall use specific and earmarked transfers according to its purpose. Collection of the local tax in the budgets of the self-government bodies is provided by the central tax authorities and collection of other revenues and revenues from the non-financial assets – by relevant agencies of the local self-government bodies.

d) Funds from foreign donors

There are many projects providing grants or loans to local government units in Georgia including EU-Tacis, EU-Instrument for Stability Program 1&2, funds from Norway, Czech Republic, etc.

e) Sufficiency and autonomy of disposal with local revenues

The local authorities in Georgia do not have adequate financial sources of their own or commensurate with the liabilities provided for by the constitution. This is due to several reasons. Georgia has a relatively low GDP per capita (US\$ 2,690 in 2010) which cannot be sufficient to meet the modern requirements both in relation to central and local authorities'

competencies, especially the latter, taking into consideration that from the overall financial capacity of the country depends the functioning of all public services. Next, Georgia has faced many wars during the period of transition and unsettled territorial issues and these circumstances aggravate the financial conditions of the country with a tendency of allocating more public funds in the hands of central authorities to cope with these national problems including diplomatic activities, providing existence for the refugees etc. Third, local governments are deprived by the most lucrative sources like Value Added Tax (VAT), Personal Income Tax (PIT), etc. in favor of the state bodies. In Georgian fiscal system about 60% of the revenues in the most of the municipalities are resources that can be used by their own discretion (revenues that derive from local sources are less than 20% and equalization grants are about 40%) and about 40 % are earmarked transfers (Malua,2010). Therefore, this system has some advantages on one hand and some disadvantages on the other because earmarked transfers that are about 40% of the total revenues are a limiting factor of a local government democracy.

3.3. Relations between central and local authorities

The relations between central and local authorities are based upon several principles, share of responsibilities and guaranteed status in the political system of Georgia.

The first set of responsibilities is that the bodies of the State authority shall provide the necessary legal, organizational, material and financial conditions for the development of self-governance, and assist Georgian citizens in exercising their right of self-governance.

The competencies of the State authority in the sphere of local self-governance are as follows:

- to adopt laws related to local self-governance, make amendments, and oversee their implementation;
- to approve and implement State programs aimed at developing and assisting local self-governance;
- to ensure fulfillment of State liabilities established by legislation, and related to local self-governance;
- to define and provide the minimum State social standards ;
- to regulate the relations between State and self-governing unit budgets, as well as to define and ensure equalizing transfer; etc.

The second set of responsibilities is that state bodies shall exert control over the local government activities, and exercise sanctions in case the local governments disobey the rules of the constitutional and other legal regulations. In this respect there are two types of control – administrative and financial.

Administrative supervision

The Georgian legislation strictly defines the procedures and cases of exerting administrative supervision over the local authorities. The Law of Georgia on State Supervision over Activities of Local Self-Government Bodies first provides definition and forms of State Supervision. In this context State Supervision is an activity carried out by State bodies, which aims to provide legitimacy and expediency to the activities of local self-government bodies and local officials. The State Supervisory Bodies in this context are:

1. The State Trustees – Governors that can exert state supervision over the activities of local self-government bodies
2. The Government of Georgia can issue a Statement authorizing another body or official to exercise State supervision in exceptional cases,.
3. The administrative body that will exercise State supervision over the activities of local authorities created in the Autonomous Republics of Abkhazia and Adjara and Tbilisi city shall be defined by the Statement of the Government of Georgia.

As concerning the forms of State supervision According to Article 2 paragraph 2 and 3 of the above Georgian law they are – legal supervision and supervision over implementation of delegated competencies. Legal Supervision is a type of State supervision which aims to provide compliance of normative acts of local self-government bodies and local officials with the Georgian legislation. Supervision over implementation of delegated competencies is expedience-motivated supervision, which ensures the implementation of delegated competences of a local self-governing unit according to the interests of the State, and in conformity with the guidelines issued by the delegating body.

Supervision over the own competencies shall be conducted on a posteriori basis. Subject of that supervision shall be a normative act promulgated by the self-government. After the promulgation of a normative act, and depending on conclusion of the Ministry of Justice, the supervisory body may apply to the self-governing body with request on amendment or abolition of the act. In case of non agreement of the self-governing body with the decision of the supervisory body, the latter may apply to the court for suspension of the act. In case the court decides to annul or abolish the act the self-governing body has the right to appeal to a court of higher instance.

The similar procedure exists in the case of delegated competencies considering that the supervisory body assesses in the case both legality and expediency of the acts. The Article 5 of the Law on Georgia on State Supervision over Activities of Local Self-Government Bodies provides compensation of damages caused to local self-government bodies due to the use of illegal measure of supervision.

- a) Supervision shall be exercised only with the purpose of ensuring protection of the law;
- b) Supervision over legal compliance of the both own (exclusive) and delegated competencies shall be conducted on posteriori basis;
- c) The ultimate instance for exercising supervision over the own (exclusive) competencies of the local self-government is a court;
- d) In course of supervising of both the own (exclusive) and delegated competencies the self-government has the right to disagree with the conclusions of the supervisory body and apply to the court.

Financial control

The Organic Law on Local Self-Government (Art.57) provides two forms of financial control of local self-governments' financial management (1) audit and (2) financial inspection.

Audit (external audit) is an inspection of the financial documentation of local self-government bodies, which may be conducted by an invited (professional) auditor not more than once a year, based on a written demand on one third of the Council members.

The law stipulates that the audit report and conclusion shall be submitted to the chairman of local council who will then present it to the local council. At the same time, the invited auditor is obliged to send a report and conclusion to the Georgia Chamber of Control which might be considered as an external public auditor, as opposed to the external invited auditor. The Chamber of Control supervises the application of state funds and other material resources and controls the legality, purposefulness and effectiveness of the utilization of such funds / resources.

State - local relations in operational activities of local governments

It is a democratic right the local government authorities in its operation phase to have full and exclusive powers. Some provisions of the Georgian Organic Law on Local Government are in compliance with this right by introducing the basic principles of exercising local self-governance, i.e. the state and local self-government to be segregated that implies non-interference of the state organs into the performance of the local duties by the local authorities. But the other legislation shows some limitations in this respect by providing obligation the local government to work together with the regional authority – the governor in respect of determination of their priorities, which otherwise should be an exclusive right for the local governments, because they know the best what should be of the greatest importance in the local processing for them.

Protection of local government

The state provides protection of the local authorities through the Constitutional Court or the courts of general jurisprudence.

Sanctions over the activities of the local government bodies

All types of control lead to imposing sanction of the state over the local government bodies. As a result of supervision of the normative acts of the legislative bodies of the local government units, the court may annul or abolish the act. The most radical measure in this context is the dissolution of the local government bodies.

Thus, the Governor submits to the President of Georgia proposal for suspension or dismissal of the local government representative body, and the President of Georgia, with the consent of the Parliament, is entitled to suspend the activity of the institutions of self-government or other representative bodies of territorial units or dismiss them if their activity endangers the sovereignty, territorial integrity of the country or the exercise of constitutional authority of state bodies (Constitution of Georgia Art.73);

In case of failure to approve the budget of local self-government unit within the period of three months after the approval of the state budget, the President of Georgia shall be authorized to terminate the powers of the representative body (Budgetary Code Art. 28).

Conclusion

The analysis of the legislation passed in the period between 2004-2014 shows that considerable progress is made in regulation of the local self-government status and functioning in the Republic of Georgia. In this respect many new laws as well as new amendments within the existing laws have been passed. New regulation covers all areas of local government functioning. They regulate issues dealing with the principle of local self-government, concept of local self-government, scope of local self-government, protection of local boundaries, administrative structuring, administrative and financial supervision, financial resources of local authorities, etc.

The most important issues are that the citizens of Georgia shall regulate the matters of local importance through local self-government without the prejudice to the state sovereignty. The office of the superiors of the executive bodies and a representative office of local self-government shall be electoral. The procedure of the creation of the bodies of local self-government, their authority and relation with state bodies shall be determined by the Organic Law. By the former provisions it is evident that the local government as a concept has obtained much more important legal status that is a basis for further democratization.

In the field of the share of responsibilities between the state and local authorities considerable progress is achieved in respect to devolution of competencies so that much more local competencies are now stipulated in the respective legislation including some in the fields of local physical infrastructure or communal activities, local economic development, urban planning, culture, sport, pre-school education. But, still many other competencies that represent local interests, as such in the fields of primary and secondary education, fields of social care and protection, primary and secondary health care, environmental protection, etc. are not in the domain of local competencies at the time being. Therefore, from this point of view the Georgian local government can be characterized with a rather limited level of devolution of competencies.

In respect to the financial sufficiency and autonomy the third period (2004-2014) provided considerable positive changes. First, it is recognized the right of the local authorities to have assets and freely dispose with a part of their revenues by which they increase their efficacy and the level of their democratization, so that now about 15-20% of their revenues come from their own sources that enable free disposition. Some other 40% of the total amounts of revenues come from the state funds but they can dispose with them freely to some extent. Next and the local authorities have the power, in some cases within the limitations of the law, sometimes without any limitations, to determine the rates of their own sources by themselves. And they have the right to collect them. These are the achievements of this period. On the other side, the Georgian local governments face considerable setbacks. The local authorities in Georgia cannot have adequate financial sources of their own or commensurate with the liabilities provided by the legislation first due to the low financial capacity of Georgia as a country, and next due to the imbalance between state and local authorities to the disadvantage of the latter so that the most lucrative financial sources, those related to economic activities such as VAT (value added tax), PIT (personal income tax) etc. are not on disposal of the local governments. Third, the collection of taxes is mainly in the hands of the state authorities. Therefore, the fiscal decentralization can provide some, but limited results.

In respect to the state - local relations this period (2004-2014) brings very positive changes. The superior State authority and the President of Georgia with a very a very wide and unconditional power from the period (1990 - 2004) in invalidating the decisions taken by the self-government bodies is replaced by criteria that enable state action in specific cases to protect the sovereignty and integrity of the country; the supervisory procedures are stipulated in the regulation and it is the Court which finally decides about many issues, providing in some situation protection of local authorities against inappropriate decisions of the central authorities. Yet,

there are some differences between the Western and Georgian local government to the disadvantage of the latter that the state organs in exerting both administrative and financial control have the right to consider not only legality but the expediency or purposefulness of the acts and activities of the local organs which make them more dependent on the state organs as compared with their Western counterparts. In addition, the participation of the state body in setting their local priorities is another obstacle in the autonomy they should enjoy. The general conclusion is that the Georgian local government in the third local government period (2004-2014) has made considerable developmental progress in comparison to the former periods but the system can be still characterized as one with fundamental restrictions in its functioning.

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