

LEGAL PERSONALITY AT LOCAL LEVEL:

ALBANIA Country Case



Centre of Expertise for Good Governance
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Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present report was prepared by the Council of Europe’s Centre of Expertise for Good Governance in the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”, based on contributions from its expert Mr Charalampos Koutalakis. The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

ALBANIA

1	Population	2.878 millions
2	Size	27 400 km ²
3	National Day	28 November
4	Form of state government	Parliamentary Republic
5	Administrative-territorial system, quantity of municipalities	Unitary 12 regions, 61 municipalities
6	Parliament, quantity of Members of Parliament, term	Unicameral parliament: 140 MPs (for 4 years)
7	GDP (USD)	14 647 millions ¹
8	Human Development Index	0.795

PRELIMINARY REMARK

The Albanian Constitution includes detailed provisions for local governments that are founded upon the basis of the principle of decentralisation of power and are exercised according to the principle of local autonomy (Art. 13). The Constitution provides discretion to the Parliament to define with a law approved with a qualified majority of 3/5 of deputies the administrative divisions of the republic (Art. 81). The Constitution provides for two tiers of local authorities, the communes or municipalities (Art. 108) and regions (Art. 110). After several territorial consolidation reforms in the post-war period, Albania has consolidated its local government system in 2014. The Law on Territorial Administrative Reform was adopted replacing 373 LGU with 61 municipalities and 12 Regions.

¹ Source : <https://unctadstat.unctad.org/countryprofile/GeneralProfile/en-GB/300/index.html>

1. ***Who has legal personality (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country at local level, the community (or “administrative territorial unit”) or the authority (council, executive...)?***

According to the Albanian Constitution, regions and municipalities are judicial persons (Art. 111). Art. 4 of Law 139/2015 also stipulates that municipalities and regions are public legal entities. The municipal councils and the regional councils are represented in front of public authorities and the courts by the mayors and the presidents of regional councils respectively.

According to the Albanian legal tradition, municipalities have the right to define their administrative-territorial subdivisions. Law 139/2015 provides for the creation of two types of municipal sub-units:

a) Community structure in the city (neighbourhoods) (Art. 68). In cities, based on civic initiative, community councils are established and function. Neighbourhood councils are made up of neighbourhood residents and are organized on a voluntary basis. Municipal councils determine the general rules of organisation and functioning of community councils of the neighbourhoods and the relations they have with the municipality and its structures. The city council can decide on a neighbourhood to create more than two community councils or merge councils of two or more neighbourhoods. The neighbourhood councils elect their leader.

b) Community structure in the villages (Art. 70). In municipalities that include several villages, community councils are established, headed by a head. The municipal councils have also the right to define the number and the rules for their election.

According to Art. 69 and 70, these municipal sub-divisions have only an advisory role. The municipal council has the right to delegate functions to them but it retains monitoring and controlling competencies. Therefore, only municipalities have legal personality. At the regional level, there are no subdivisions since regional councils are comprised by representatives of the municipalities.

2. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), does the State possess a similar legal status?***

Yes. According to the Albanian Constitution, local authorities have practically the same legal personality as the State.

3. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, sub-region, county...)?***

Regions have legal personality. The regional council is represented by the president. The decentralised bodies of the state are the Prefects, which act as the representatives of the central government in a certain administrative unit.

4. ***In case intermediate-level communities (regions, sub-regions, counties...) are not granted legal entity status, which authority has such a status at these levels?***

N/A.

5. **Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.**

a) Art. 111 of the Albanian Constitution. An English version can be found here: <https://www.osce.org/files/f/documents/3/2/41888.pdf>

b) Art. 4 of Law 115/2014 On Administrative-Territorial Division of Local Government Units in the Republic of Albania (PËR NDARJEN ADMINISTRATIVO-TERRITORIALE TË NJËSIVE TË QEVERISJES VENDORE NË REPUBLIKËN E SHQIPËRISË). It can be found in Albanian here: https://aam.org.al/wp-content/uploads/2018/11/Ligj_115-2014_31.07.2014.pdf?fbclid=IwAR3fIykpgRIs-nZfMsl7Y8kBM5bz6cGOOji-HS5C9FX-vsrPa6zYQqbr4fA

c) For the specific rights and obligations of municipalities and regions as public legal persons, see Chapter III. Law 139/2015 On local Self-government (PËRVETËQEVERISJEN VENDORE). It can be found in Albanian here: <http://planifikimi.gov.al/index.php?eID=dumpFile&t=f&f=2405&token=1ce5740157a0950f0502bf4726da43d280ff05b6&fbclid=IwAR1AOWJ99LOB8v0-gl-OerOuplqTlYbpeeFoS9xpCGqmTyKI-cSCiND49g8>

6. **In case in your country a notion "municipality" or its analogue is stipulated in the legislation, is this notion applied to a community or a territorial unit? Or does this notion apply only/also to a local self-government authority (councils or their executive bodies)?**

According to the recent territorial consolidation reform, municipalities represent administrative-territorial units and a community of inhabitants. Their territory is determined by law (Art. 5 Law 139-2015). It can comprise several administrative units, according to traditional, historical, economic, and social criteria. Administrative units in the territory of a municipality, their territorial extent and name are determined by law. Sub-municipal units consist of towns, neighbourhoods and/or villages.

7. **May bankruptcy proceedings be instituted against a local community or "administrative territorial unit" in your country? (yes or no)**

No.

8. **If you answered "yes" to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or "administrative territorial units" in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or "administrative territorial unit" and three to four special aspects that make bankruptcy proceedings against local communities or "administrative territorial units" different from bankruptcy proceedings against other legal entities?**

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9. **Do the laws of your country provide for suspension of local self-government authorities of a local community or "administrative territorial unit" (local councillors or executive bodies) from the management of affairs when the local community or "administrative territorial unit" enters into voluntary administration? (yes or no)**

Yes.

10. ***If you answered “yes” to question No. 9, please elaborate what are conditions for introduction of the voluntary administration, what government authority is responsible for the voluntary administration, and what is the period of voluntary administration?***

Art. 57 Law 68/2017 on Local Self-government Finances provides measures and actions for local self-government units under serious financial difficulty. A municipality or a region is considered to be in serious financial difficulty when long-term debts and outstanding liabilities to third parties account for over 80 percent of annual expenditures. Upon ascertaining the situation of serious financial difficulty, the mayor or the president of the regional council immediately notifies the council and the Ministry of Finance. The Ministry of Finance, upon receiving the notification from the chairman of the local self-government unit or when it ascertains itself, proposes to the Council of Ministers the measures for overcoming the situation of serious financial difficulty. In this case, the Council of Ministers decides: a) to provide financial support in the form of assistance or loans, defining the plan for the exit of the local self-government unit from the situation of serious financial difficulty, as well as the plan of return of the given amount; b) to mandate the Ministry of Finance to negotiate debt restructuring and outstanding liabilities; c) to declare the local self-government unit under financial supervision and to authorise The Ministry of Finance as its financial supervisor, strictly respecting the following conditions: i) the local self-government unit may not take any decision that may lead to the addition of its financial obligations; ii) the local self-government unit cannot establish new public services, establish public enterprises or any other institution; iii) the local self-government unit cannot settle any financial obligation, created before the declaration of a case of financial difficulty, in addition to the obligations expressly set out in the financial rehabilitation plan. The council of the local self-government unit, within 30 days approves a financial rehabilitation plan, which is submitted to the Ministry of Finance for approval. The implementation of the rehabilitation plan is mandatory for the local self-government unit.

According to Art. 59 of the same law, a municipality or a region is considered in a situation of insolvency if it fails to implement the financial rehabilitation plan and/or if the ratio of long-term debts and liabilities of unpaid to approved annual expenditure is higher than 1.3. Upon ascertaining the insolvency situation, the chairman of the local self-government unit immediately notifies the unit council and the Ministry of Finance. The Ministry of Finance, upon receiving the notification from the chairman of the local self-government unit or when it ascertains itself, proposes to the Council of Ministers to place under voluntary administration of the unit of local self-government. In the decision of the Council of Ministers for placing under voluntary administration of the unit of local self-government that is in a situation of insolvency, an action plan for exit is determined, whose implementation is mandatory.

11. ***Do claimants, both legal entities and individuals, lodge their claims with a local community or “administrative territorial unit” in regard to any and all local issues? Do the laws of your country allow that a person may file a lawsuit directly with a local self-government authority or its official, but not with a local community?***

Local communities (i.e. villages) are not legal entities and have only advisory function or some delegated functions. Citizens and legal entities can lodge claims or file lawsuits only against the municipality that is a legal personality of public law. According to the current legal provisions:

a. Citizens and legal entities have the right to appeal to the municipality against any decision that harms their interests (Art. 19 Law 139/2015). They can also file an appeal to the Prefect (Art. 17 Law 8927/2002). The rights to appeal to the municipality and the Prefect are not mutually exclusive. According to Art. 113 Law 44/2015 (Code of Administrative Procedure), municipalities or the Prefect can annul, repeal or amend the administrative act.

b. A negative decision on the appeal by the municipality or the Prefect is a necessary procedural precondition for the admissibility of a lawsuit against administrative courts (Court of First Instance) (Art. 129 Law 44/2015). Citizens and legal entities may request the court: a) to abrogate in whole or in part the administrative act; b) to change, partially or completely, the administrative act or the obligation of the public body to amend an administrative act; c) to ascertain the absolute invalidity of the administrative act; d) to compel the public body to perform an administrative action, that is refused, or for which the public body has remained silent, although there has been a request; e) for the compensation of non-contractual damage, according to the special law (Art. 17 Law 44/2015).

12. ***Does your country hold officials of local self-government authorities disciplinarily or financially (civilly) liable for ineffective or unlawful decisions (where such decision results from a political position, error or incompetence, but is not a criminal offence)? If so, may damages be recovered from the property of the official at fault rather than from the property of the local community or “administrative territorial unit” (for example, joint and several liability of the local community/“administrative territorial unit” and the official or recovery from the official by recourse)?***

a) Disciplinary

According to Art. 115 of the Albanian Constitution, a directly elected organ of a local government unit may be dissolved or discharged by the Council of Ministers for serious violations of the Constitution or the laws. According to Art. 62 Law 139/2015, the Council of Ministers has the right to exercise disciplinary powers over the mayors. The mayor is dismissed by decision of the Council of Ministers in cases when: a) they commit serious violations of the Constitution or laws; b) they are punished for committing a criminal offense, by a final decision, by the court; c) they are proposed for dismissal by the relevant municipal council for non-appearance in office for one uninterrupted 3-month period. According to Art. 58 Law 139/2015, the Council of Ministers can also exercise disciplinary power over the municipal council against individual members for violations of their legal obligations. The municipal council is dissolved prematurely by the decision of the Council of Ministers even when the budget is not approved within the deadline defined in the law.

b) Civil liability

As a general rule, Art. 15 of the Albanian Code of Administrative Procedure (law 44/2015) provides that public organs and their employees, when carrying out an administrative procedure, shall be held responsible for the damage caused to private parties, in line with the relevant legislation. According to the Civil Code, these organs are liable with their own property only when it has been shown that they acted with deceit. Citizens and legal entities (excluding state legal personalities) may claim damages from the municipality or the region as a legal entity.

Further disciplinary powers are assigned to the Council of Ministers from the so-called "Decriminalisation Law" (Law 138/2015 on ensuring the integrity of persons elected, appointed, or holding public functions), that provides for the dismissal of elected local government officials in case they have a criminal record or have been indicted for certain crimes.

13. ***What legal status do the local self-government authorities have if the local community or "administrative territorial unit" is a legal entity and hence recognised as subject of legal rights and responsibility? How is the scope of the legal personality of local self-government authorities defined in this case?***

The elected municipal councils and the mayors are elected organs representing the municipality which is the only legal person in sight.

14. ***Who can act on behalf of a local community or "administrative territorial unit" directly in court? On what grounds? Do the laws of your country allow that a local community or "administrative territorial unit" is represented in external relations (in court, for example) by the State or a government authority?***

The mayor and the president of the region represent the municipality or region in front of the state and courts. Local authorities have the right to participate in international networks, twinnings, and partnerships after the approval of the Ministry of Foreign Affairs (Art. 14 Law 139/2015).

15. ***If in your country the State or a local community "administrative territorial unit" has changed their legal personality over the past thirty years, please indicate how long did the transformation take and what were the milestones of the transformation?***

The most recent reform of local authorities was in 2014 and it came into force with local elections in 2015. After a failed attempt to initiate the reform in 2003, it gained momentum in 2013. Significant technical support was provided by international organisations. The pre-legislative phase included several stages of technical and political consultations between domestic stakeholders that took place in 2014.

16. ***If in your country the State or a local community/"administrative territorial unit" changed their legal personality amid external or internal armed conflicts, were any risks identified for the territorial integrity or national security as a result of this change? If so, what preventative actions were taken to avoid these risks?***

Albania consolidated its borders in 1913.

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