

Section 5. Legal Sciences

*Bicoku Arnaldo,
PhD student of Department of Public Law
St. Cyril and St. Methodius University, Veliko Turnovo, Bulgaria*

DISPUTE OF COMPETENCIES BETWEEN CENTRAL AND LOCAL GOVERNMENT IN ALBANIA

The purpose of the paper is to analyze the relationship between the central and local governments regarding the competencies that have been given to each of them in the exercise of public functions. The paper deals with the nature of this dispute, the bodies that can resolve the dispute and the consequences that arise from this relationship between the two bodies. The fact that the law has defined the Constitutional Court, which is the most important court in the Republic of Albania, as the body that resolves the dispute makes the handling of this work even more special.

In Law 139/2015 “On Local Self-Government” it is defined that competence is the authority given by law to a single body of local self-government to perform a function or part of it. From this definition, we understand that it is only the law that can give local government bodies the right to perform certain functions. By “function” we understand the field of activity, for which the local self-government unit is established and has the legal competence to exercise freely in accordance with the laws and by-laws. Regarding the latter, there is the Law mentioned above, which lists the functions of local self-government bodies. The functions of local bodies are focused on the field of infrastructures and public services, social services, cultures, sports, entertainment services, environmental protection, agriculture, rural areas, economic users and public safety. We also have delegated functions that are transferred to local self-government units by law or by agreement, being accompanied in each case by the transfer of money centers to finance the cost of exercising these functions. What is important has to do with the fact that local government units must exercise their functions in accordance with the Constitution, the European Charter of Local Autonomy, the laws in force, as well as respecting national and regional policies.

In the Republic of Albania, local self-government is presented with a constitutional status. Determining the powers directly in the Constitution is of particular

importance, because such a solution would make powerless the governing tendency to change the laws at any time. Of course, such a solution guarantees the stability of the powers of the local government and renders powerless the political pressure of the government that can be exerted at any time.

Exactly such a model has been chosen by the Constitution of the Republic of Albania. Local self-government is presented with a constitutional status and its independence is guaranteed through it. This independence lies in the right that citizens have to form representative bodies and to exercise the function of self-government (referendums) [articles 108/4; 109, 110 of the Constitution; in the organizational independence of local institutions (Article 113); in the exercise of affairs within their jurisdiction, without the intervention of the central bodies of power (Article 113); in the existence of financial means and other means, with which it disposes independently (articles 111, 113/b, c, ç); in the existence of independent administration without the interference of central bodies (Article 113/d); in the existence of norms for the functioning of local self-government and the constitutional protection of self-government rights (articles 113/, points 2, 3) etc.¹

The Constitution of the Republic of Albania in its article 13 sanctions that “Local government in the Republic of Albania is established on the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy”

The court emphasized that the essence of Article 13 of the Constitution are the principles of decentralization of power and local autonomy. Local government means the right of the people in the given territorial community to independently govern their affairs through self-elected bodies or directly. The principle of decentralization of power is the essential principle on which local government is established and functions. It is exercised through the constitutional principle of local autonomy and conditions the existence of a local self-governing power, according to advanced concepts of the organization of the democratic state. The manner of organization and operation of local government, as well as the relationship it has with the central government, depend on the constitutional and legal meaning given to the decentralization of power, local autonomy and self-government². Decentralization is a process where authority and responsibility for certain functions is transferred from the central government to local government units. At the foundation of decentralization is the principle of subsidiarity, according to which “the exercise of public responsibilities should, in general, belong to the authorities closest to the citizens.” And autonomy is such a legal regime, in which the bodies of local units act independently to solve those issues that the Constitution and laws have left under their competence. Its most visible aspect, the autonomy of the local government is expressed in the division of powers, which

¹ Decision no. 37 dated 12.06.2015 of the Constitutional Court.

² Decision no. 29, dated 21.12.2006 of the Constitutional Court.

is about the initiative that local government bodies have or should have, based on the Constitution and the law, to decide on their own about the problems that come under their jurisdiction.

The European Charter of Local Autonomy, ratified by law no. 8548, dated 11.11.1999, in its article 4, point 3, reiterates the principle of subsidiarity according to which: "The exercise of public responsibilities should, in general, belong to the authorities closest to citizens. Giving a responsibility to another authority should be done taking into account the importance and nature of the task, as well as the requirements of ability and economy". The aforementioned provision of the Charter allows the assignment of a responsibility to another authority, provided that certain criteria are taken into account, such as the importance, the nature of the task, as well as the requirements of ability and economy. The Court has emphasized that the purpose of the European Charter of Local Autonomy is for the state parties to create the necessary framework for local authorities to have a wide range of responsibilities, which can be carried out at the local level. When areas of activity have implications at the local level, it is important that in the conception of local authorities acting to develop the general well-being of their residents, they have the right to exercise initiative in these matters. Therefore, according to paragraph 3, article 4 of this Charter, the exercise of responsibilities should go towards decentralization. This principle requires that, except in cases where the nature and size of the problem is such that it belongs to a very large territorial area and with important economic interests, the solution must be entrusted to the local government (see decision no. 29, dated 21.12.2006 of Constitutional Court) (04/2015).

The reasons for the creation of competence disputes and the characteristics of this dispute.

The powers with which the law provides local government bodies should be such that a good part of public issues are regulated according to the principle of subsidiarity. The legal right to regulate and manage certain public issues must be exercised by bodies that are as close as possible to the citizens and be accompanied by effective means for their concretization. In reality, many issues have both local and national implications, and responsibility for them varies across space and time and, moreover, this responsibility can be shared between different levels of government. However, limiting the activity of local authorities only to matters that do not have wide implications carries the risk of turning them into authorities with an insignificant role. On the other hand, it is necessary to reserve some important functions of national and strategic importance to the central government. Determining the interest of the community is also related to the need for the existence of limits for the local government itself, which must not exceed its powers by deciding on issues that belong to a purely political decision-making or on issues that have economic consequences for the entire country. and not only for the relevant local community.

Referring to constitutional doctrine and jurisprudence, the Constitutional Court assesses that the competence dispute can be presented in the form of a “normative” conflict when the competence that constitutes the object of the dispute is provided for in laws, as well as in the form of an “individual” conflict, when the institutions in conflict issue the relevant acts of implementation of the concrete law. Competence disputes can be caused when a law attributes the same competence to two or more institutions, when the same competence is attributed to two institutions according to different laws, as well as when the law provides for the competence, but has not specified the body that should exercise it. The resolution of issues of this nature cannot be done by constitutional control in abstracto and by abstracting from the concrete case. Therefore, the fact of which body belongs to a debated competence is determined starting from a concrete case, when the body has implemented the conflicting law and, on this basis, issued the individual implementation act.

The conflict between laws that has arisen on the question of competences between constitutional bodies constitutes a constitutional issue, unlike other cases of legal conflict, for which the ordinary court is competent to decide which of the laws is applicable to the case under consideration before it. This is the distinguishing aspect that presents the issue of competence disputes as a prerogative of the Constitutional Court, regardless of whether the relevant dispute arose on the basis of the law as a normative act or the act of its implementation as an individual act of the relevant body. In addition, when the resolution of the competence dispute concerns legal or by-law acts issued by the parties to the conflict, it also examines the constitutionality or legality of the act. In this way, the judgment in the Constitutional Court is focused first of all on the resolution of disputes of competence regarding the functions of the constitutional level, finding and eliminating the decisive cause that has led to the birth of the dispute¹.

For example, in Decision number 60 dated 29.12.2014 of the Constitutional Court, it was determined by the latter that the elements of a disagreement of powers are present, since on the one hand we have a body of the central government, such as the National Council of the Territory, which functions under the Council of Ministers and on the other hand, we have the municipalities of Kashar and Farke as the basic unit of local self-government. The object of the disagreement was a Decision of the NCT, which, among other things, decided to suspend the granting of development permits by the planning authorities until the approval of the National General Plan. The municipalities of Kashar and Farkë, as basic units of local government, claim that the suspension of the granting of development permits within their territorial jurisdiction, without any deadline and without any criteria, constitutes an infringement of the

¹ Decision no. 29, dated 21.12.2006 of the Constitutional Court.

powers of the local government bodies, contrary to the principles of decentralization of power and local autonomy, provided for in Article 13 of the Constitution.

A dispute of competences between powers may arise when an act or conduct, which is considered illegal, brings harm to the applicant because it interferes with the sphere of competences fully or partially known to him. So, for such a conflict to arise, there must be a violation of the sphere of competences. The conflict is considered acceptable even when the affiliation of the power has not been contested, but the “bad use” that has been made of it reflects a reduction of the powers constitutionally guaranteed to the requesting subject. In such a case, the aggrieved body does not claim for itself the competence to fulfill a certain act, but claims that an act of another body or its inactive behavior have reduced the competences or prevented it from exercising them.

The requesting subjects

The requesting subjects must be defined in the Constitution and in the organic law of the Constitutional Court. Article 134 of the Constitution of the Republic of Albania provides that:

“1. The Constitutional Court is set in motion at the request of:

a) the President of the Republic; b) the Prime Minister; c) not less than one fifth of the deputies; ç) People’s Advocate; d) Chairman of the Supreme State Audit Office; dh) any court, according to Article 145, point 2, of this Constitution; e) every commissioner established by law for the protection of fundamental rights and freedoms guaranteed by the Constitution; ë) The High Judicial Council and the High Prosecution Council; f) local government bodies; g) bodies of religious communities; gj) political parties; h) organizations; i) individuals.

2. Subjects provided by subparagraphs “d”, “dh”, “e”, “ë”, “f”, “g”, “gj”, “h” and “i”, of paragraph 1, of this article, can only apply for issues related to their interests. Also in law No. 8557 dated 10.02.2000 amended by law no. 99/2016 “On the Organization and Functioning of the Constitutional Court”, in article 54 point 3 it is determined that: “The claim before the Constitutional Court is raised by the subjects in conflict or by the subjects directly affected by the conflict”. As we said above, the subjects that can move the court are divided into two categories. In the first category are included all those subjects who are in conflict of competences between them and each of them can move the court to seek his right. The second category is related to those subjects who, although they are not part of the conflict that is created, they have the right to file a claim in court as they are directly affected by this conflict. So what is important regarding these subjects is to prove the direct connection between their situation, the activity they exercise and the norm they oppose. In relation to these subjects, the Constitutional Court also expressed itself when it dealt with the case of the Association of Municipalities of Albania regarding the fact that it is legitimate to apply to the Constitutional Court. In its decision no. 37 dated 12.06.2015 it states: “In the

judgments of the control of the constitutionality of the norm, the initiating entities provided for in Article 134/2 of the Constitution have the obligation to prove the necessary connection that must exist between the legal activity that they perform and the constitutional issue raised. Associations, in the capacity of “other organizations”, are specified in article 134, point 1, letter “f”, of the Constitution, as one of the subjects that conditionally exercise the right to address the Court, having constitutional legitimacy only for issues related to their interests. They must prove the direct connection between the mission for which they were created or the activity they carry out and the consequences derived from the provisions that seek to be declared incompatible with the Constitution¹.

The court stated that the assessment of whether or not an organization has sufficient interest is done on a case-by-case basis, depending on the circumstances of each particular case. The organization that moves the Court must prove in what way it can be affected in some aspect of its situation, that is, it must prove the direct and individualized connection that exists between its situation and the norm it opposes. The interest to act must be certain, direct and personal. This interest consists in the violated right, in the real or potential damage and not in the theoretical premises on the unconstitutionality of the norm that brought about this violation of interest².

Review of the disagreement on competences by the Constitutional Court.

On the basis of Article 131 letter “ç” of the Constitution, the Constitutional Court decides on disputes of competence between powers, as well as between the central government and local government. Issues of this nature are raised by the competent constitutional body asking the Constitutional Court to finally declare the body, which is responsible for exercising its will in the specific sphere of state activity, and to determine the range of its powers

The provision of the letter “ç” of Article 131 of the Constitution includes disputes that arise in the sphere of the division of powers on a horizontal plane (legislative, executive and judicial), as well as on a vertical plane (central powers-local government). In addition, based on constitutional jurisprudence, this provision also includes another range of disputes, such as those that may arise between bodies or entities that do not belong, in a defined and categorical manner, to this or that power, such as the President, The Constitutional Court, the prosecution and other constitutional bodies. Elaborating on the provision of Article 131 letter “ç” of the Constitution, the legislator in Article 54 of Law No. 8577, dated 10.2.2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania” specifies that

¹ Decisions no. 35, dated 10.10.2007; no. 11, dated 06.04.2010; No. 5, dated 16.02.2012 and No. 11, dated 06.03.2014 of the Constitutional Court.

² Decisions no. 16, dated 25.07.2008; no. 4, dated 23.02.2011; No. 43, dated 06.10.2011 and No. 11, dated 06.03.2014 of the Constitutional Court).

“the Constitutional Court examines these conflicts when the relevant subjects have considered themselves competent to decide on specific issues and, as the case may be, have issued the acts for its regulation, or when the subjects have not considered themselves competent to decide in particular cases.” First of all, this provision refers to disputes between bodies that belong to different powers, the subject of which is the affiliation of a competence, as well as to the body that complains that its sphere of competence has been violated and that therefore addresses the Court Constitutional to declare the body to which the competence in question belongs.

The Constitutional Court decides, according to Article 56 of the above-mentioned law, which body of power has the competence to resolve the concrete issue, for which the dispute has arisen. In addition, when the resolution of the competence dispute concerns legal or by-law acts issued by the parties to the conflict, it also examines the constitutionality or legality of the act. In this way, the trial at the Constitutional Court is focused first of all on the resolution of disputes of competence regarding the functions of the constitutional level, finding and eliminating the decisive cause that has brought about the birth of the dispute.

Based on what was presented above, it is concluded that any power body is legitimate to file a request before the Constitutional Court when it claims to be faced with a conflict of competence, which may have arisen due to the law or a factual activity. It is decisive that the sphere of competences of conflicting bodies or entities must be defined by the constitutional norm.

Conclusions

Many issues have both local and national implications and responsibility for them varies across space and time and, moreover, this responsibility can also be shared between different levels of government. However, limiting the activity of local authorities only to matters that do not have wide implications, carries the risk of turning them into authorities with an insignificant role. On the other hand, it is necessary to reserve some important functions of national and strategic importance to the central government. Determining the interest of the community is also related to the need for the existence of limits for the local government itself, which must not exceed its powers by deciding on issues that belong to a purely political decision-making or on issues that have economic consequences for it. the whole country and not only for the respective local community. It is permissible for matters of national and strategic importance for the country's interests to be exercised under the authority of the central government, which is responsible for the country's economic and political development policy. However, the limitation of the powers of the local government bodies should not be such as to conflict with the principle of decentralization and local autonomy by weakening the role of these bodies, so that their existence or self-governance would become insensitive.

The fact that the resolution of this disagreement is done by the constitutional court shows the importance of both powers in the life of the country. On the one hand, we have the local government, which, as we said above, guarantees for its protection are raised to the constitutional level by defining some of the powers directly in the latter, and on the other hand, we have the central government, which is responsible for the political and economic development of all country. Considering how delicate the nature of the disagreement is, the constitutional court must make a fair solution to the issue in order to continue the normal functioning of the relevant bodies, whose powers and decision-making belong to ordinary citizens.

References:

1. Constitution of the Republic of Albania.
2. Law on the Organization and Functioning of the Constitutional Court.
3. Law 139/2015 "On Local Self-Government.
4. European Charter of Local Autonomy.
5. Decision no. 37 dated 12.06.2015 of the Constitutional Court.
6. Decision no. 29, dated 21.12.2006 of the Constitutional Court.
7. Decision no. 16, dated 25.07.2008 of the Constitutional Court.
8. Decision no. 4, dated 23.02.2011 of the Constitutional Court.
9. Decision No. 43, dated 06.10.2011 of the Constitutional Court.
10. Decision No. 11, dated 06.03.2014 of the Constitutional Court.