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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT OPINION
ON THE RELATIONSHIP BETWEEN
THE DRAFT LAW ON THE CRITERIA AND CONDITIONS
TO BE ESTABLISHED FOR THE RE-ORGANISATION
OF THE ADMINISTRATIVE TERRITORIAL DIVISION
OF THE REPUBLIC OF ALBANIA
AND THE LAW ON THE ORGANISATION
AND FUNCTIONING OF LOCAL GOVERNMENT**

by
Mr Kaarlo TUORI (Member, Finland)

1. The Albanian Parliament has asked the Council of Europe to provide an assessment of the draft law On the Criteria and Conditions to Be Established for the Reorganization of the Administrative Territorial Division of the Republic of Albania. In this assessment, the draft law's relation to the Albanian Law on the Organization and Functioning of Local Government and the criteria for solving eventual conflicts between the two laws have been raised as a problem.

2. The background to this problem consists of the fact that the Law on the Organization and Functioning of Local Government has been approved by a three-fifths majority of the members of the Assembly. Art. 81(2) of the Constitution requires such a majority for, inter alia, laws regulating "the organization and operation of the institutions provided for in the Constitution". As is stated in its preamble, the Law on the Organization and Functioning of Local Government Law relies on Articles 108-115 of the Constitution.

3. The provisions in Art. 81(2) of the Constitution on laws requiring a three-fifths majority in the Assembly can perhaps be interpreted as implying the institution of the so-called organic laws. However, Chapter 1 of Part Seven of the Constitution, which contains provisions on normative acts and their mutual hierarchy, does not acknowledge such an institution. Thus, Art. 116(1) states that "normative acts that are effective in the entire territory of the Republic of Albania are:

- a) the Constitution;
- b) ratified international agreements;
- c) the laws;
- d) normative acts of the Council Ministers".

4. It seems justified to interpret the order in which the normative acts are mentioned in Art. 116(1) as laying down their mutual hierarchy. This interpretation can be supported with reference to Art. 122(2) which confirms the position of ratified international agreements between the Constitution and the laws: "An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it."

5. Thus, in Part Seven of the Constitution, which bears the title Normative Acts and International Agreements, no distinction is made between laws approved with simple majority and those referred to in Art. 81(2) and requiring a qualified majority of three fifths of the members of the Assembly. This is a strong argument in support of the view that all laws are located at the same, sub-constitutional level and that no *lex superior* relations prevail between laws approved with a qualified majority and other laws.

6. If this interpretation is accepted, conflicts between these two types of laws should be solved in accordance with the principles of *lex posterior* and *lex specialis*.

7. If the draft law is found to be in conflict with the Law on the Organization and Functioning of Local Government, it would supersede the latter as a *lex posterior*. If the interpretation proposed above of the norm hierarchical system of the Albanian Constitution is accepted, this would be the case irrespective of whether the draft law is passed with a simple majority or – because deemed to touch upon "the organization and operation of the institutions provided for in the Constitution" – with a qualified majority of three fifths of the members of the Assembly.

8. According to Art. 1 of the draft law, its purpose is “to determine the criteria needed for the assessment of the effectiveness of local units to be merged and the assessment of alternative solutions of the merging, to determine the necessary conditions for the reorganization of the administrative territorial division of the Republic of Albania, as well as the instruments and timeframes needed for the achievement of this purpose”. The Law on the Organization and Functioning of Local Government deals with the “Reorganization of Local Government” in its Chapter X. However, the criteria to be applied when assessing the need for merging inefficient local units and when considering alternative solutions for obligatory merging (Art. 3-4), the means to promote voluntary merging (Art. 5) or the organizational solutions and timeframes for the administrative preparation of the reform do not concern the organization and operation of local government in such a way that the draft law would fall under Art. 81(2) of the Constitution and require a three-fifths majority for its approval.