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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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**

**AND THE LAW ON THE ORGANISATION
AND FUNCTIONING OF LOCAL GOVERNMENT**

OF THE REPUBLIC OF ALBANIA

**Adopted by the Venice Commission
at its 59th Plenary Session
(Venice, 18-19 June 2004)**

**on the basis of comments by
Mr Kaarlo TUORI (Member, Finland)**

Introduction

1. *By a letter of 8 April 2004, Mr Spartak Braho, Chairman of the Commission of Constitutional and Legal Affairs of the Parliament of the Republic of Albania, requested the Council of Europe to provide an expert assessment of 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. The Venice Commission was to look into the question of the relationship between the said draft Law and the Law on the Organisation and Functioning of Local Government in Albania.*

2. *Mr Kaarlo Tuori was appointed to act as member rapporteur. The present opinion, which was drawn up on the basis of his comments, was adopted by the Venice Commission at its 59th Plenary Session on 18-19 June 2004.*

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3. 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 relation between this law and the Albanian Law on the Organization and Functioning of Local Government, as well as the criteria for solving eventual conflicts between the two laws, have been raised as a problem.

4. 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.

5. 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”.

6. 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.”

7. 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.

8. 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*.

9. 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.

10. 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. Nor does the draft directly regulate the administrative divisions of the Republic. It therefore does not fall under Article 81(9) of the Constitution either.

11. In conclusion, the draft Law does not require a qualified majority of three-fifths of the members of the Assembly for its approval.