

Decentralisation of Authority

(Strategy of Institutional Arrangement of Self-Government)

Egnate Shamugia¹

Part I

Three decades have passed since the restoration of Georgia's independence, although no relevant changes were made in terms of governance over that period. Generally, institutional transformation process in Georgia got protracted and suffers from a number of problematic issues. At the same time, it can be argued that self-governance is among the issues that lag behind a general transition process.

After restoration of independence, self-government reform was carried out in different stages. Almost all of them were contradictory to each other. It is possible to say that in fact each stage was anti-reform, since they were not intended for administrative-territorial modernisation of the country, decentralisation of political power or institutional transformation. This is a rather salient issue in the post-soviet countries which are on their path of developing democratic institutions. Policy that was implemented in Georgia in this regard was rather a combination of actions aimed at solidification of power of political groups in government and attempts to stay in power. Therefore, even after three decades, we do not have a tangible result in this direction. In fact, political power is fully centralized and public goods are channeled through such system. As a result, we may say that we do not have a self-government, but de-facto self-government. There is a fundamental difference between these two.

Local self-government is a result of decentralisation which includes political, administrative and fiscal components. At the same time, decentralisation has several objectives. The major objective is effective implementation of public policy which in turn carries out such important functions as follows:

Public Good – public good is more effective and efficient if it is provided to the population by the closest government body. This is precipitated by local self-government's information advantage and flexibility vis-à-vis local population's needs.

Democracy – under decentralised governance it is possible to lessen the problem of elections as “incomplete contract”. Self-government body is the closest to the population. It is at the local level

¹ Research Fellow at Research Institute Gnomon Wise, e-mail: e.shamugia@ug.edu.ge

that population's [direct] participation in governance is possible and therefore it has more mechanisms of control of government bodies.

Limited Government – maintaining individual freedom requires eradication of power concentration. The mechanism to ensure this is rule of law and “horizontal” (legislative, executive and judiciary) division of power. However, the latter is not sufficient for the limited government because of persisting problem of enforcement. Decentralisation is a “vertical” division of power and represents a self-enforcing mechanism of curbing the government.

Market Protection – decentralisation implies competition between the self-government entities. Under such conditions, government bodies have an incentive to ensure credibility of their obligations. Wrong steps of the government will be punished and right ones, on the contrary, will be rewarded. This is necessary for a successful market.

Political Class – Under decentralisation, local politics are in fact made at a local level which enables relevant ground for emergence of local political leaders, their development and recruitment. This also contributes to development and stability of political parties/groups.

Firstly, real decentralisation starts with **administrative-territorial arrangement** issues. In particular, this implies where and on what level self-governance is exercised as well as what is optimal area to effectively and efficiently exercise self-governance which includes geographic, demographic, economic, historical, ethno-cultural and other circumstances.

Taking these into account will rule out (at any tier) creation of a self-government entity as a result of mechanical division or merger.

Political element of decentralisation means determination of local self-government bodies, defining rule of their formation (election) and equipping them with relevant political power. And from the citizens' part it implies election of local self-government bodies. This part in itself includes the issues of inter-relationship between the self-government bodies and distribution of political power.

Second element of decentralisation is **administrative** which envisages differentiating competences between the government levels. Firstly, this implies transferring competences from central government to local self-government. This means that local self-government is equipped to provide services of both local or/and regional importance exclusively, independently and under its own responsibility as well as it is able to independently and individually deal with issues such as organisational structure, service provision and others that are necessary for efficiently carrying out functions at local or/and regional level.

Another issue is what are the resources of local self-government to work and provide services within its scope of competence, which implies **fiscal** decentralisation. This is a particularly important element of the decentralisation process because it is precisely fiscal decentralisation that ensures real decentralisation and allows local authorities solve local issues independently, in line with local interests.

Fiscal decentralisation means not only independence in terms of planning of expenses of self-governing entities and provision with relevant resources but accumulation of incomes as well, that is, having comprehensive fiscal instruments and tax autonomy. The latter is necessary, although insufficient to carry out local economic policy. Delivery of public services or implementation of economic policy from local bodies require not only financial resources, but property as well. Therefore, this means transferring both principal (needed for carrying out responsibility – providing public services) and auxiliary (the rest which is not part of principal) property.

Therefore, local self-government reform is a complex issue which consists of all abovementioned components and require consistent implementation. Otherwise, it is unlikely to achieve efficient decentralisation and have real self-government.

Part II

The second part of this paper includes strategic outcomes. In particular, outcomes of complex reform aiming to achieve the strategic objective – real decentralisation. This part of the document takes into account Georgia's openly manifested political vector which is supported by the majority of the population – European integration. It also considers the principles set forth in the European Charter of Local Self-Government. All that is discussed in the next pages, stems from an ultimate goal that includes democratic development, strengthening democracy and ensuring governance that is both efficient and close to a citizen.

Administrative-territorial arrangement

Currently, self-governance in Georgia is exercised at an intermediate – municipal level which mostly coincides with districts under soviet administrative division which normally include two different settlements – urban and rural with the average size of 58,300 inhabitants (outside of Tbilisi it is 40,100 inhabitants on average). In total, there are 69 self-governing entities in Georgia (including Akhgori, Eredvi, Kurta, Tighva and Azhara municipalities that were created after 2006 elections and

are now on Georgia's occupied territories). This type of administrative-territorial arrangement does not meet the socio-economic and political demands that the country faces. This arrangement does not allow a relevant environment for decentralisation and consequently for real self-governance.

Given Georgia's geographic, demographic and socio-cultural circumstances as well as the experience of more or less homogenous developed countries, it is desirable for Georgia to have a two-tier self-government system – regional and municipal. And what is more, there are historically established districts but today they have no legal status whatsoever.

Municipal – First tier of self-government which is exercised within a city or town, townlet, village or amalgamation of villages only.

Regional – Second tier of self-government which is exercised in several municipalities and consists of historically established areas.

To make sure that governance is closer to population and there are more opportunities to participate in governance as well as of public services are delivered efficiently and effectively, number of self-governing entities at a municipal level should grow. Creation of a new municipality should be based on geographic, demographic, economic and other circumstances. Criteria based on these factors should be reflected in legal acts which set forth rules of division or merger of self-governing entity at a municipal level.

Issues of local importance should belong to the scope of self-governing entity at a municipal level whereas self-governing entity at a regional level should deal with all those public issues which are in essence inter-municipal and excluded from the fields that are subjected to the authority of central government.

Political Decentralisation

European Charter of Local Self-Government indicates that “This right [self-governance] shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them”. This makes a strong emphasis on representative body through which local self-government is exercised whereas if there is an executive body in place, the latter is responsible to them. This means that it is a representative body that should be the strongest link at a local level. This body should determine local policy and be equipped with relevant levers to carry out oversight of enforcement.

Therefore, the strategic goal – political decentralisation is achieved when:

At the municipal level the following things are in place:

- Strong representative body - municipal council - elected through a direct vote
- Number of municipal council members is based on number of population – there are members elected both by proportional and mixed system
- Stronger role of municipal council – increased political power to ensure that local politics is really determined and oversight on implementation is carried out.

At the regional tier the following things are in place:

- Strong representative body – regional assembly (council) – elected through a direct vote
- Number of regional council members is based on number of population – members are elected through proportional preferential (open lists) system
- Self-government board – manager model at a regional tier which implies staffing of a bureaucratic apparatus – regional government to implement decisions made by the assembly.

Administrative Decentralisation

Authority of local self-government at a municipal level is defined by the law which, according to the constitution, should be full and exclusive. At the same time, authority of self-government and central government is differentiated. Although such constitutional arrangements are in place, in fact demarcation of boundaries between authorities of central and local government remains a problem. In addition, current situation does not meet the criteria of exclusiveness and fullness. Under these circumstances, local self-government has limited independence to make decisions within their scope of competence and central authorities have leverage to interfere. On the other hand, full power is also important in terms of effectiveness of decisions made at a local level, because as part of various scope of power, effectiveness of decision-making often requires encompassing all components of power.

Formally, local bodies define and staff internal structures independently, at their own discretion. Independence of self-governance bodies in creation of organizational structure is vital, because organizational arrangement is an indispensable pre-condition for effective and efficient delivery of public services. However, organizational structures in local bodies are identical almost everywhere and principles of effectively exercising authority is not properly taken into account. The reason behind that on the one hand is a matter of political will and on the other hand legislative

arrangements which imposes common, unified approach across the countries and does not leave a room to independently shape organizational structure.

Therefore, the strategic goal – administrative decentralisation is achieved when:

The following things are in place at both levels:

- Authorities at central, regional and municipal levels are demarcated based on comprehensive observation of subsidiarity principle
- Authorities of regional and municipal self-governing entities are exclusive and full
- Regional and municipal bodies have full independence in defining internal structures.

When delegating the authorities, advantage is given to a municipal level whereas only that part of authority which in essence is inter-municipal is delegated to a regional government.

Fiscal Decentralisation

The level of fiscal Decentralisation in Georgia is higher in the component of expenses as compared to revenues. Given the fact that property tax and some of the levies constitute local budget's own income, although local bodies are deprived of a possibility to determine, plan and administer it, we can say that local self-government does not have any fiscal autonomy (in revenue aspect). On the other hand, self-governing entities are de jure allowed to independently plan expenses but de facto situation is different.

As of 2017, share of revenues of 63 municipalities (excluding municipalities of Tbilisi and the occupied territories) in a consolidated budget (all levels) was 10.1%. At that time, on average 28.0% of self-governing entities' revenues was money collected from taxation which equals 3.2% of total tax generated incomes. The major source of income of a self-governing entity is conditional and unconditional grants from the state budget. As of 2017, vertical fiscal imbalance of self-governing units' budgets is 0.65 on average (range from 0 to 1) which negatively affects steering of local budgeting process and at the same time, under these circumstances, local self-government bodies have less possibilities to plan payables independently at their own discretion.²

Therefore, strategic goal – fiscal Decentralisation is achieved when:

The following things are in place at both levels:

² There has not been such fiscal change since 2017 that would altered fiscal positions of municipalities.

- Fiscal misbalance of self-governing entity's budget is low.
- Financial sources of both levels are commensurate with their scope of competence.
- There is an equalization system for financially weak self-governing entities which does not de-incentivize accumulation of local revenues.
- Both levels of government have fiscal autonomy which implies not only independent planning of expenses but determination, planning and administering of taxes and levies.
- Property that is not in private ownership and it not a main property of central government is a self-governing entity's property.
- Self-governing entity independently disposes property at its ownership.
- Property between municipal and regional levels are distributed fairly which implies transfer and division of property in line with their scope of competence (in case there is an additional property, priority is given to a municipality).

Other Issues – Guarantees, Supervision, Direct Governance

On the one hand it is important to have complex Decentralisation – existence of self-governing entities with political, fiscal, administrative independence and responsibility. However, on the other hand of note is that local self-governance is exercised and local self-government bodies act within a unified legal system. Therefore, importance is attached to state oversight (legal) whose aim is to ensure that local self-government bodies carry out their activities in line with the law. In this part it is crucial to have clear legal oversight principles at any level of self-government and the oversight process itself should be unambiguous and strictly regulated to minimize possibilities of the central authorities to interfere in the activities of regional or municipal bodies.

Therefore, independence and relevant safeguards for self-government can exist when:

The following things are in place at both levels:

- Process of creation/abolition of self-governing entity at a regional and municipal level starts with consultations with local representative bodies.
- Different branches of government are involved in the decision-making process over creation/abolition of self-governing entity at a regional and municipal level. Parliament makes decision by qualified majority vote.
- Ground for dissolving or suspending activity of a local representative body exists when their actions pose a threat to the country's sovereignty, territorial integrity and exercise of constitutional powers of state bodies.

- Different branches of government are involved in dissolving or suspending representative body of regional or municipal self-governing entity.
- Criteria for suspending powers of local representative body is clearly defined by the law.
- The scope of direct government rule as well as process and principles for introduction of such rule is defined by the rule.

In addition, consultations held in line with a relevant rule should precede to all other decisions of the central government bodies related to the local self-government – not only those about creation/abolition issues. This rule should encompass such principles which ensure protection of interests of local self-government bodies and will deny a possibility to central government institutions to make decisions by escaping consultations with self-governing entities.