



COLLECTION OF ARTICLES

ADMINISTRATIVE REFORM 2017 IN ESTONIA

decisions | background | implementation



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2018

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Preface

It is finally done.

‘The unfinished administrative reform will be the chorus to the song of Estonia’s uncompleted nation building,’ said President Toomas Hendrik Ilves as he declared open the annual Municipal Days in Tallinn in 2014. The thought has recurred in various forms, for example, in the Auditor Generals’ annual reports to the *Riigikogu* (Estonian Parliament). The failure (or even impossibility) of administrative reform had become a symbol in Estonian politics over the years.

So why was this long-awaited feat successful this time? What exactly was the process and where did it end up?

There is probably no one right answer as to why it was successful. As with planning a long sea voyage or mountain climb, those involved had to be able to make many choices and as few mistakes as possible; try to find friends and supporters and not gain many opponents in the process; wait for favourable weather conditions, or in this case, a political window of opportunity, and then use it, not too hastily but also not letting the chance slip.

And of course, for a thing like this to succeed, a little luck is needed. What I have in mind is that the dogmatic no-campaigns very popular in politics lately tended to focus on other things – such as potential refugees or the Rail Baltic project – at the time and tackled the administrative reform with less impact than feared, although the fight was carried all the way through to the Supreme Court.

In this collection, these topics are addressed by competent authors who were involved in the process of the administrative reform to a greater or lesser extent, or contributed in their respective areas of expertise, from legal issues to the changing of place names in the course of the reform.

The different authors' assessments of the reform as a whole or its specific aspects also vary somewhat, at times being even incompatible. All in all, these articles should provide a rather multifaceted, comprehensive picture of the events, combining the points of view of those involved with the opinions of observers.

Preferences are sometimes irreconcilable. Hardly any minister, expert or official who participated in the process can say that everything went exactly as they wanted in every detail. For example, some experts and politicians believed that the government should have more forcefully merged all municipalities into functional areas at least the size of Saaremaa. Others, however, thought this inconceivable – even now, many small municipalities already chose to go to court.

Should the names have been chosen solely by the merging municipalities themselves or based only on the proposals of the Place Names Board, which preferred historic names? Was the decision to first allow municipalities to choose their own merger partners the only way to go or, in some cases, a fatal error? Should some villages have been allowed to join another municipality even if the local council did not support this? Was it a reasonable compromise or an unnecessary concession to allow post-merger municipalities that comprise urban areas as well as agricultural land and wilderness to still be called cities?

We do not know, and probably never will know for sure, whether an administrative reform based on different principles would have similarly led to agreement or whether the political and other contradictions would then have become unmanageable and the whole thing collapsed. We know that the chosen path led to a result – the result that Estonia now has almost three times fewer municipalities, which are proportionately larger and stronger, with a fourfold increase in their median population size, from about 1,800 residents to more than 7,700 per municipality.

Before the reform, most Estonian municipalities had a population of fewer than 5,000 residents, which was set as the minimum criterion for the reform and is considered by many experts as the critical number of inhabitants needed for a municipality to cope with its tasks. While a few such municipalities remained as isolated exceptions after the reform, their number had been reduced tenfold.

Probably a positive aspect of the reform process is the fact that most mergers (involving a total of 160 municipalities in 47 merger areas) were carried out in the voluntary stage of mergers initiated by the municipal councils themselves and in accordance with local agreements. The government hardly interfered when approving these decisions, only changing the names of a few municipalities based on proposals from the Place Names Board.

It was feared that the administrative reform might weaken the sense with which local people identify with the newly formed municipality and that they might not participate in local elections. Fortunately, this concern was mostly disproved by the local elections held on 15 October 2017. Most of the merged municipalities (36 out of 51, or 70 per cent) had higher levels of election participation than the average in Estonian municipalities; only 15 merged municipalities showed levels slightly below the average. The fear that local electoral coalitions would be unable to compete with the big national political parties in the merged municipalities after the reform also proved unfounded. Electoral

coalitions took the largest number of seats in the councils of most of the post-merger municipalities (30 out of 51).

A third important positive result is that in all the post-merger municipalities, except one, candidates from at least three different electoral lists, and from even five or more lists in half of the post-merger municipalities, made it to the council. From the very beginning, then, there was very strong competition and a wealth of choice in the new municipalities, which was also one of the goals of the administrative reform. A lack of active people willing to participate in municipal management used to be a frequent problem in the previous small municipalities. Admittedly, increased competition may also have a negative aspect – power struggles. That too is part of local democracy.

It is clearly too early for a final assessment of the impact of the reform. For that to be possible, the new local authorities will have to work for some time – at least for one election period, if the experience of other countries is anything to go by. That analysis still lies ahead.

In at least one of the 51 new municipalities, the result of the administrative reform has already been very highly recognised by the local community – the long-awaited merging of Setomaa, a homogeneous cultural area, into a single municipality at the initiative of the national government was declared the Deed of the Century by the Setomaa municipal association. Another success story is the merging of all the municipalities on the island of Saaremaa into a single island municipality, which has been unanimously praised. This is bound to create new opportunities for the islanders, provided that they know how to take advantage of them. (A more detailed account of the municipal merger of Saaremaa is given in the article on the merger negotiations initiated by municipal councils).

It is definitely a good thing that Estonians no longer need to constantly talk about the need for administrative reform as they have done for the last twenty years – some with hope, others with fear. An endless topic on the public agenda has been laid to rest at least for a while.

There is no doubt that Estonian local administration will be reorganised again in the future, as it has been before – in the 1938 municipal reform in the pre-war Republic of Estonia, to give just one example. However, it is safe to assume that the most recent reform and the new administrative map will be the basis of organising local life in Estonia for at least a generation. To put it without any false modesty: in 2017, we probably witnessed and participated in a historical change, the full extent and meaning of which we cannot even estimate yet.

The aims and structure of the collection

The aim of this collection is to provide a comprehensive overview of the central choices and processes of one of the most significant and complex government reforms in Estonia's recent history. It can serve as the basis for further analysis of the results and impact of the administrative reform, which will certainly be carried out when taking stock of the reform in years to come. It could also be used as a learning resource for planning and implementing complex reforms in the future, why not even outside of Estonia.

The numerous people that were asked to help in compiling this collection are experts familiar with the implementation of the administrative reform. The topics and authors of the articles were selected according to the principles discussed in this informal circle of experts, with a view to covering the different aspects of the reform process.

- How the key decisions leading up to the reform were made, what the underlying choices were and how the decisions were implemented through mergers is described by people most of whom were personally involved in the process.
- Next, some broader background to the development of the Estonian system of local government is provided, describing the main historical and socio-economic problems in local government that the reform was expected to resolve. The key contributors here have long-standing academic and analytical experience.

- The actual steps taken to implement the reform, seen from a national as well as various local perspectives and divided into specific topics (such as the changing of place names, transferring villages between municipalities or the protection of constitutional guarantees), are discussed by experts in the respective areas.
- The final part of the collection takes stock of the first lessons learned from the process – some positive, others less so – and future prospects. What was achieved and what remains unfinished or yet to be addressed?

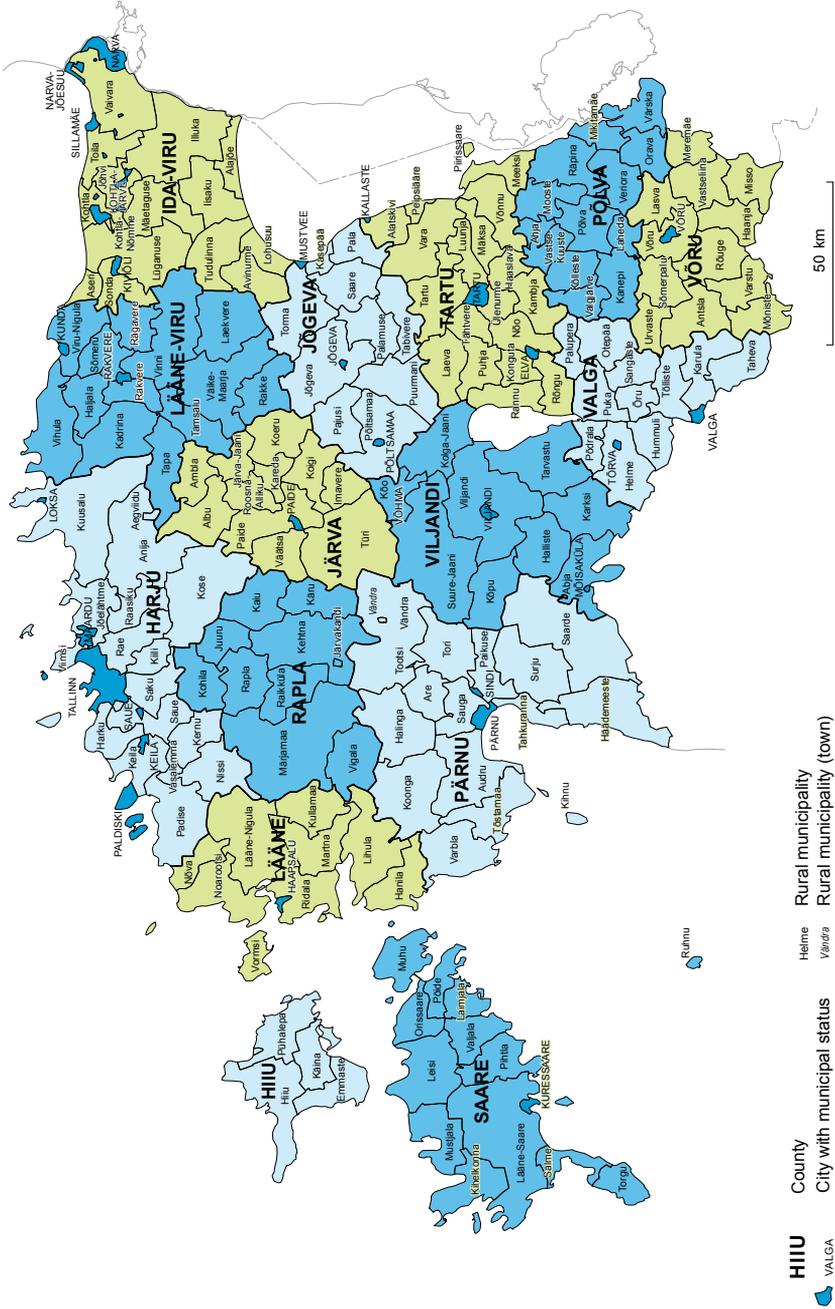
Although it ended up being quite voluminous, the collection does not nearly cover all the subtopics and details that the authors could have discussed under one or another heading here. Most of the topics could be analysed in far more detail and hopefully will be in the future. We also discussed how academic or accessible the articles should be. Right at the outset it was agreed that rather than pieces of scientific research, which would require much more time and resources, the articles should be analytical accounts of the main features of the recent reform process. Our hope is that the balance achieved will suit most of the intended audience.

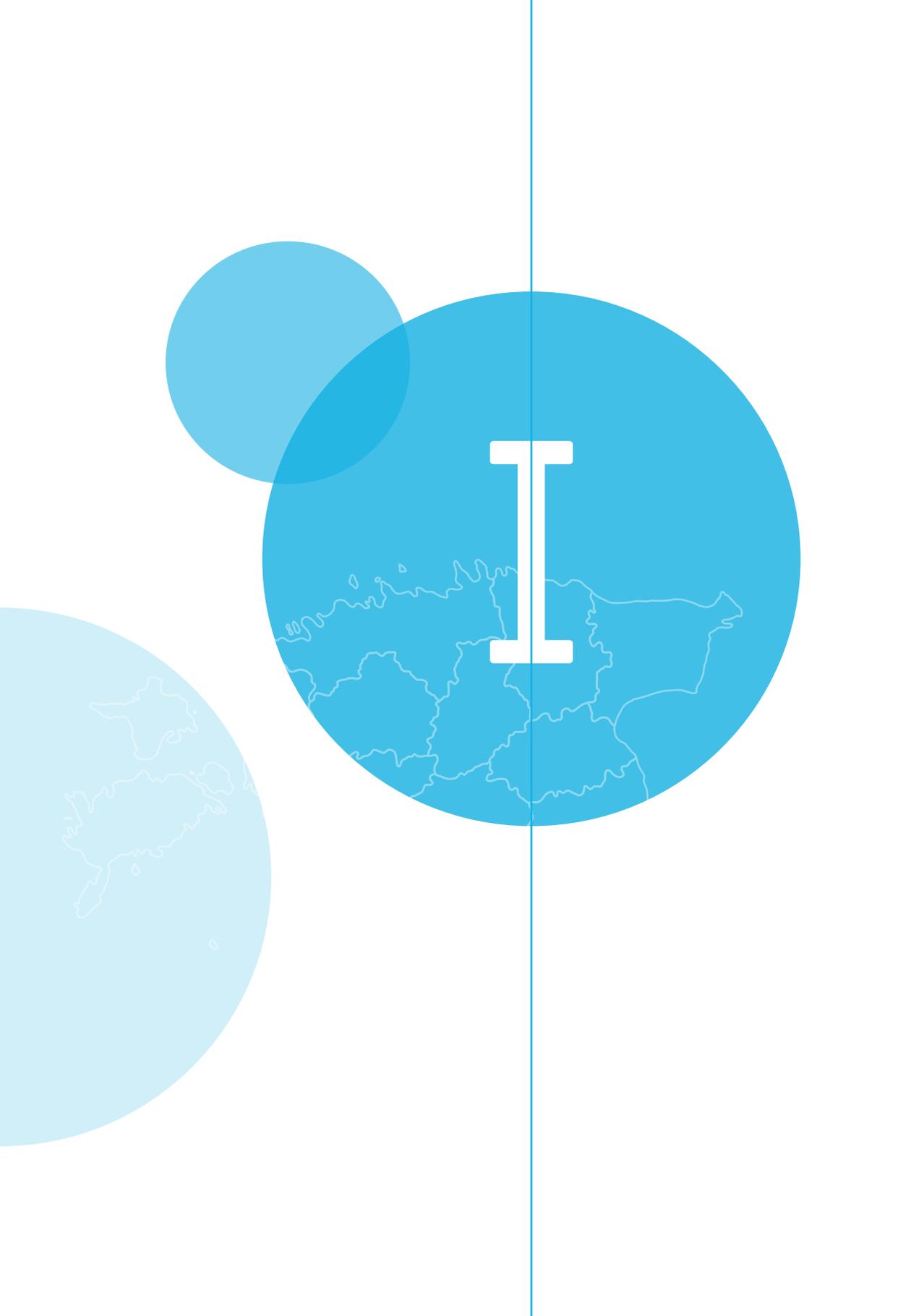
The editor wishes to thank Rivo Noorkõiv as the initiator of the idea for this collection of articles, all the authors, the circle of experts involved and all others who supported the idea of this collection, participated in discussions and made valuable observations that helped clarify the message and avoid misunderstandings or mistakes.

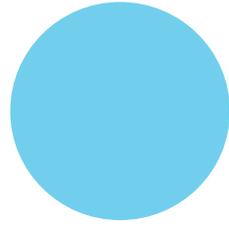
Naturally, we also owe a debt of gratitude to all those who at least since 1997 – to recall the public appeal by the then ministers Jaak Leimann, Raivo Vare and Mart Opmann – have talked about the need for a thorough modernisation of the Estonian system of local government or participated in one way or another in the process leading to the 2017 administrative reform.

Sulev Valner

Estonian municipalities before the administrative reform as of 1 January 2017







Decisions
leading up
to the reform

The Design of the Process of the Administrative Reform

AVE VIKS

Previous plans influencing the reform

Leading up to the 2017 administrative reform, most of Estonia's previous ministers of regional affairs (or interior minister responsible for the area) had also developed and submitted their visions for administrative reform (for more details, see Madis Kaldmäe, 'The Plans for the Administrative-Territorial Restructuring of Estonia from 1989 to 2005'):

- Peep Aru (in office 1997–1999), 'Principles for the Development of Public Administration' (1999);¹

¹ https://haldusreform.fin.ee/static/sites/3/2012/09/1999_avaliku-halduse-arendamise-alused.pdf ja https://haldusreform.fin.ee/static/sites/3/2012/09/1999_avaliku-halduse-arendamise-aluste-seletuskiri.pdf

- Tarmo Loodus (1999–2002), 'Strategy: Administrative reform in local government' (2001);²
- Jaan Õunapuu (2003–2007), 'Regional administration reform project' (2003);³
- Vallo Reimaa (2007–2008), 'Rationalisation of Regional Administration' (2007);⁴
- Siim Kiisler (2008–2014), draft Administrative-Territorial Organisation Reform Act (2009),⁵ draft Local Government Organisation Reform Act, 2013;⁶
- Hanno Pevkur (Minister of the Interior 2014–2015), 'Concept document for local government reform specifying the appropriate levels for the execution of public functions'.⁷

The last wave of previous reform plans, drawn up from 2009 onward, was for a long time led by the Pro Patria and Res Publica Union, with Siim Kiisler as the Minister of Regional Affairs. Most of the

² https://haldusreform.fin.ee/static/sites/3/2012/09/2001_haldusreform-kov-valdkonnas-strateegia.pdf

³ https://haldusreform.fin.ee/static/sites/3/2012/09/2003_c3b5unapuu_regionaalhalduse_reformi_projekt.pdf ja https://haldusreform.fin.ee/static/sites/3/2012/09/2003_c3b5unapuu_a_mudel_20070302040323.pdf

⁴ https://haldusreform.fin.ee/static/sites/3/2012/09/2007_reimaa_regionaalhalduse-korras-tamine-seletuskiri-22-10-07.pdf

⁵ https://haldusreform.fin.ee/static/sites/3/2012/09/haldusterritoriaalse_korralduse_reformi_seletuskiri.pdf

⁶ https://haldusreform.fin.ee/static/sites/3/2012/09/2013_kiisler_omavalitsuskorralduse-reformi-seadus_en.pdf ja https://haldusreform.fin.ee/static/sites/3/2012/09/2013_kiisler_omavalitsuskorralduse-reformi-seadus_sk.pdf

⁷ After a new government took office in 2014, with the Pro Patria and Res Publica Union left out of the coalition, the government no longer included a minister of regional affairs, and these responsibilities were transferred to the Minister of the Interior, Hanno Pevkur. The chapter on state reform in the government's 2014–2015 action plan (https://www.riigiteataja.ee/aktiivisa/3290/4201/4007/VV_180k_lisa.pdf) contained a separate section on local government reform ('Omavalitsusreform') envisioning the development by 2015 of a plan to clearly specify which functions would be performed at what level and how they would be financed [the action 'Concept document for local government reform specifying the appropriate levels for the execution of public functions'].

other political parties remained ambivalent about their support for administrative reform in general as well as any particular plans for a reform, and the Reform Party continued in rather clear opposition to any reform until Andrus Ansip stepped down as party leader.⁸

Therefore, when the plan for the 2017 administrative reform was unveiled, both the general public and politicians were suspicious that the new Reform Party-led government and public administration minister would be re-inventing the wheel by failing to give enough consideration to the analyses carried out in previous years and the work put in by the interior ministry.

Despite these fears, preparations for the 2017 administrative reform may still be considered an evolutionary process, the initial impetus for which dates back to 2009 and the presentation of Siim Kiisler's first plan for a county-based reform.

This does not mean that earlier experience with reform preparations, for example, that of Tarmo Loodus, was ignored or considered irrelevant. However, with all the reform plans starting from those drawn up⁹ under Kiisler's leadership, the officials⁹ and experts involved in policy making, as well as the international experience¹⁰ relied upon have largely been the same, as a result of which the

⁸ Ansip's most colourful statement on the issue went as follows: 'The formation of Estonian municipalities has been ongoing for roughly 1,500 years and by dismantling this structure we would be behaving like typical conquerors.' (*Postimees*, 24.11.2011)

⁹ The officials involved in developing this area for the longest periods of time between 2009 and 2017 were, in the Ministry of the Interior, Deputy Secretary-General for Regional Affairs Kaia Sarnet, Head of the Local Government and Regional Administration Department Väino Tõemets, Ave Viks, an adviser in the same department, Olivia Taluste, an adviser in the Regional Development Department, Sulev Valner, initially a project manager and subsequently an adviser in the Regional Administration Department as well as advisers to the Minister of Regional Affairs Aivo Vaske and Taavi Linnamäe; and in the Ministry of Finance, most notably Head of the Local Governments Financial Management Department Sulev Liivik and Andrus Jõgi, an adviser in the same department.

¹⁰ The most important international experiences on which these reform plans were modelled were the Danish administrative reform implemented in 2007 and the Finnish voluntary municipal mergers that took effect by 2009.

Mis on tõmbekeskus?

- Oluline pendelrände sihtkoht – suur osa keskuse ja tagamaa inimestest käib seal tööl või koolis ning kasutab sealseid avalikke ja erateenusoid
- Maakonnakeskus on kindlasti tõmbekeskus, kuid enamasti on maakonnas veel mõni selline keskus
- Juhul, kui ca 30 minutilise autosõidu kaugusel sellist keskust ei ole, võib piirkonnas tõmbekeskuseks valida ka asula, millel on suurim potentsiaal reformi tulemusel selliseks keskuseks kujuneda



Minister of Regional Affairs Siim Kiisler presenting an administrative reform plan based on local commuting centres at a press conference in August 2013. The plan never gained the support of the coalition partners, as had been the case with several previous administrative reform initiatives.

Source: Toomas Huik / Postimees.

content and design process of these plans may be said to have developed continuously.

Minister of Regional Affairs Siim Kiisler submitted his first reform plan as a draft act in March 2009. According to this, the reform would be implemented through government-initiated mergers during the 2009 local elections, resulting in the formation of municipalities with populations of at least 25,000. The five larger cities with at least 40,000 inhabitants – Tallinn, Tartu, Narva, Kohtla-Järve and Pärnu – would continue as separate municipalities.

With a requirement of 25,000 residents, most local authorities would have been formed based on all the local authorities in each county, which is why this plan was described as county-based, or the 15 + 5 reform plan.

While the 2009 draft act was submitted as a result of a short-term concentrated effort by a few officials, being mostly aimed at initiating political discussion on the need for reform, or the absence of such a need, the next draft act with its explanatory memorandum in 2013 was based on a more sustained and thorough effort, including the involvement of a local government development think tank set up by the Minister of Regional Affairs and the formation of its working groups for the preparation of the reform.¹¹

At the end of 2012, the Minister of Regional Affairs submitted six models for reforming the local government system to local authorities and their representative organisations.¹² Based on the feedback

¹¹ After the legislative intent for the Local Government Organisation Reform Act had been submitted for approval, the local government development think tank, working under the minister of regional affairs, decided to form working groups consisting of representatives from ministries and associations of local authorities as well as experts in the field: a working group on democracy, one on the functions and financing of local government, and another one on local business development and employment.

¹² **The models and their support rates based on feedback were as follows:** (1) **small municipalities** (8 %) – no substantial changes would be made and the existing organisation of local government would remain unchanged; (2) **associations of local authorities** (8 %) – the existing local authorities would delegate some of their functions to associations of local authorities; (3) **two-tier local government** (3 %) – another tier of local government will be added to the existing local authorities based on current counties; (4) **medium-sized municipalities (parishes)** (11 %) – the central government would set a deadline for the formation of municipalities with at least 3,000 residents each. The mergers would be voluntary, with the government only stepping in to merge those that failed to merge on a voluntary basis. A total of 70 to 100 municipalities would remain; (5) **local commuting centres** (67 %) – the central government would provide a list of local commuting centres for the local authorities to choose which of these to merge with. Those failing to find a partner would be merged by the government. The municipalities would generally have at least 10,000 residents and would number 30 to 50. County governments would become supervisory bodies, guaranteeing balanced development; (6) **counties** (3 %) – municipalities with at least 25,000 residents would have to be formed by a set deadline, with the possible exception of Hiiumaa. Those failing to find a partner would be merged by the government. The municipalities would number 20 to 25, with the municipal borders mostly coinciding with the existing county borders.

received, work continued on the most popular model of local commuting centres, according to which the state, in cooperation with the local authorities, would name the local commuting centres with which each municipality was to be merged for the local elections in 2017.

In autumn 2013, a draft act was sent out to the local authorities for pre-approval and, at the beginning of 2014, circulated for official approval in the ministries, the Government Office and the associations of local authorities. Unfortunately, the legislative proceedings of the draft act soon came to an end with a change in government in March 2014. In the first government of Taavi Rõivas, the Social Democratic Party replaced the Pro Patria and Res Publica Union as the coalition partner and the position of Minister of Regional Affairs was also abolished, transferring the respective functions to the Minister of the Interior, Hanno Pevkur.

However, neither regional issues nor the need for a local government reform were ignored or suppressed with Rõivas' government taking office. A chapter on state reform in the 2014–2015 action plan¹³ of the new government formed by the Reform Party and Social Democrats contained a separate section on local government reform ('Omavalitsusreform') envisioning the development by 2015 of a plan to clearly specify the functions to be performed at each level and how they would be financed.¹⁴

Although at the time the Reform Party lacked both a clear vision and a mandate from the people for making any decisions on a reform, the Ministry of the Interior set out to develop a concept. For this purpose, an agreement was signed with the Estonian Cooperation

¹³ 'Government of the Republic action plan 2014–2015', Annex to Government of the Republic Order No 180 of 24 April 2014; https://www.riigiteataja.ee/akti/isa/3290/4201/4007/VV_180k_lisa.pdf.

¹⁴ By the end of 2014, two documents, 'Concept document for local government reform specifying the appropriate levels for the execution of public functions' and 'Concept document for local government reform specifying the financing of public functions', were to be drawn up.

Assembly, whose task was to analyse the current situation and propose different scenarios for solutions.¹⁵

While the document that was prepared based on the proposals never made it to cabinet discussions, as parliamentary elections brought a new government to power, it clearly had an effect on the subsequent development of the reform, in particular by establishing the Cooperation Assembly as one of the voices, which, by presenting its *Good Governance Programme*¹⁶ to the public, also helped make the inescapable need for local government reform heard.

Thanks to this, among other things, public debate on state reform and other necessary changes in public administration reached a new, more mature level, providing input for debates on these issues in the 2015 parliamentary election campaigns.¹⁷ As a result, the topic of state reform, including local government reform, made it into the action plan of Rõivas' second government, formed in April 2015. This way, the Cooperation Assembly became a partner whose expertise and constructive criticism helped to prepare the 2017 administrative reform.

The Cooperation Assembly was not alone in its vigorous efforts to highlight the need for local government reform before the elections. During the campaigning for parliamentary elections, attorney-at-law

¹⁵ Estonian Cooperation Assembly, 'Omavalitsuskorralduse ja regionaalhalduse trendid ja stsenaariumid. Ettepanekud haldusreformi kontseptsiooni sisustamiseks', 2014; https://www.kogu.ee/wp-content/uploads/2014/11/Omavalitsuskorraldus-ja-regionaalhalduse-analüüs_loplik_27.11.14.pdf.

¹⁶ The Estonian-language version of the Cooperation Assembly's *Good Governance Programme* is available at https://www.kogu.ee/wp-content/uploads/2015/12/Riigipidamise-kava-terviktekst_final_kokkuvõttega2016-1.pdf.

¹⁷ The Estonian Cooperation Assembly's annual report 2014, p. 6, https://www.kogu.ee/wp-content/uploads/2015/03/EKK_aruanne2014.pdf.

Jüri Raidla,¹⁸ the Praxis Centre for Policy Studies¹⁹ and the Estonian Employers' Confederation among others sought to draw the attention of politicians and the public to it. This was certainly part of the reason why an influential share of entrepreneurs came to support the idea of state reform and why every major political party included related issues in their election programmes.

Therefore, the debates leading up to the 2015 elections gave the 13th *Riigikogu*, unlike its predecessor, a clear mandate for the preparation and implementation of a state reform, including local government reform, and the relevant key tasks were defined in the government's action program.

Dilemmas faced in designing the reform

After the 2015 elections, coalition talks yielded certain political agreements, which were recorded in the coalition agreement²⁰ and reaffirmed in the government's action plan, thereby becoming a reference point for the reform preparations. However, there was no previous political agreement on many of the principles of the reform, and these were only subsequently elaborated by officials and during political negotiations (carried out by the Minister of Public Administration within his own party and with the representatives of other factions in the *Riigikogu*).

For example, while a number of experts and documents raised the important state reform-related question of whether the future would see a strongly centralised state model whereby the central government would take over some local public services or whether, by contrast, the intention was to give more power to local authorities, the government's

¹⁸ J. Raidla, 'Riigireformi kava ehk kümme käsku' – *Maaleht*, 21.1.2015, <http://maaleht.delfi.ee/news/maaleht/uudised/juri-raidla-riigireformi-kava-ehk-kumme-kasku?id=70510571>.

¹⁹ Praxis, 'Valimised 2015. Teemapaber riigivalitsemise reformist', <http://www.praxis.ee/wp-content/uploads/2015/02/riigivalitsemise-reformi-teemapaber.pdf>.

²⁰ Agreement between the Estonian Reform Party, the Social Democratic Party and the Pro Patria and Res Publica Union on the formation of a government and the fundamentals of the coalition action plan of 8 April 2015, <https://www.reform.ee/koalitsioonilepe-2015-2016-re-sde-irl>.

action plan failed to give a straight answer to that question. What had been agreed was that a local government reform would be carried out and that the necessary legislative amendments, including the timetable for the reform, would be adopted by law by 1 July 2016 at the latest.

It had already been laid down in the coalition agreement that the reform would be implemented in two stages, starting with voluntary mergers, supported with doubled merger grants and completed for the 2017 local elections, which were to be followed by government-initiated mergers. There was political agreement that 'objective and unambiguous criteria' for assessing the need for mergers would be set out and would serve as the basis for the implementation of the administrative reform.

The government's action plan was the main signpost for policy makers from both the Minister of Public Administration and the Ministry of Finance in preparing and implementing the reform. The first major dilemmas on which there was previously no clear political agreement concerned the more specific timetable and criteria for the reform.

As concerns time schedule, one of the options considered was government-initiated mergers leading up to extraordinary elections a year after the regular elections following voluntary mergers, but this solution was ruled out by both the legislation regulating elections, which did not allow for extending the councils' mandate,²¹ and the possible negative impact on the management and organisation of the local authorities in question during this interim period.

In the early stages of preparations for the reform, more comprehensive disputes focused on the 'objective and unambiguous criteria' agreed upon in the government's action program. The decisions were made step by step and the first political agreement reached in

²¹ The Estonia constitution does not allow municipal council mandates to be extended, unlike in Denmark, for example, where two types of councils operated during the preparations for mergers: the councils of the merging municipalities handled daily politics and the new municipal councils were in charge of preparing the strategic development of the new municipalities.

the cabinet in light of proposals from the expert committee was that the reform would be based on population size as the criterion, rather than some other, more abstract indicator. This was also recorded in the government's supplemented action plan. In reaching this decision, a significant role was played by the expert committee on administrative reform, which produced its reasoning and proposals for implementing a population-size criterion, and subsequently proposed specific criteria.

In addition to those provided in the action plan, the political reality itself offered certain guidelines that could be relied on. One of these was to maintain a one-tier local government system, as there was no political will to restore a two-tier system with the reform.

The area causing the greatest amount of uncertainty, on the other hand, was the reorganisation of county governments, on which there was no previous political agreement or clear common ground between the political parties,^{22, 23} and there was also a lack of clarity as to the scope and content of the specific functions to be transferred from the state to the local authorities, on which the guidance provided in the government's action plan was vague. On these issues, solutions emerged in the course of the process.

Perhaps the greatest change that occurred during the process was related to the function of developing the local business environment – the plan was to make it a shared responsibility for local authorities. The

²² While the elements of the reform that concerned county governments (the updating of county governments' supervisory functions, the transfer of functions from county governments to local authorities, and the harmonisation of national sectoral and regional administration) were already included in the coalition agreement and the concept document for the administrative reform, there was at that time no political agreement or readiness to abolish county governments.

²³ For example, there were strong advocates of increasing the role of county governments within the Social Democratic Party, while the Reform Party started out leaning towards reducing the number of county governments and centralising their functions. There were also differing views on whether the county governments' functions should be taken over by the local authorities, accumulating more power as a result, or by county-level associations of local authorities.



In autumn 2015, a number of discussions on administrative reform were held in various counties, with participants communicating their expectations of Estonia's future municipalities.

Two photographs showing a discussion in Valgamaa.

Source: Arvo Meeks / Valgamaalane.

main reason for the change was that there was no political agreement on the input for this process; the solution developed by the officials ultimately proved politically untenable and was adapted to the expectations of decision makers and various stakeholders.

The reform ended up not providing a solution for the harmonisation of territorial and sectoral administration at the county level or the harmonisation of development and spatial planning, including improved synchronising of county-level development planning with the national strategic planning process.

Another solution found in the course of the work was the additional compensation paid to outgoing municipal mayors, which, following the Finnish example, had already been included in the draft Local Government Organisation Reform Act drawn up by the Ministry of the Interior in 2013.

Concept for the 2017 administrative reform

According to the action plan of Taavi Rõivas' second government,²⁴ the principles of the administrative reform, including the timetable, were initially supposed to be set out in a concept document for the administrative reform, which was to be completed by October 2015, or six months after the new government was formed.

Based on the concept document approved by the government, a draft act was to be prepared by the Minister of Public Administration within five months, by February 2016. The concept document was intended to describe fundamental solutions and principles that would serve as a basis for drafting further legal acts, which, in turn, would undergo legislative proceedings once the government had approved the Administrative Reform Act.

²⁴ Taavi Rõivas' second government was formed by the Reform Party, the Social Democratic Party, and the Pro Patria and Res Publica Union; it was in office from 9 April 2015 to 23 November 2016.

The concept document set out in more detail the goals and timetable of the reform, as well as the process for the merging of municipalities (the relevant criteria and exceptions to their implementation, increases in merger grants, execution of government-initiated mergers and organisation of elections); in somewhat less detail and more in terms of general principles, the document also described changes in cooperation between local authorities (regulation of joint agencies of local authorities and strategic cooperation at the county level) and possible additional functions (development planning and public transport management to be taken over from county governments and the new responsibility for developing the business environment along with possible functions transferred from the state). In terms of goals and the general approach, the transfer of functions was described through specific examples – no concrete, exhaustive list was provided.

The concept document also contained alternatives for amending the system for local government financing. These were divided into proposed changes in taxation (tying personal income tax to the place of employment, increasing autonomy with respect to land tax, and possibly imposing a new tourist tax) and proposals for amending equalisation and support fund policies (changing the policy for allocating support from the equalisation fund and linking allocations to the place of employment, allocating support fund grants through income tax and the equalisation fund, and support for teachers' salaries).

The concept document also addressed changes in territorial and community management within municipalities (amendments to the rules governing municipal districts and village elders).

The final part of the concept document was devoted to possible changes in regional administration: the transfer of functions from county governments to local authorities, the modernisation of supervisory functions (division between ministries or consolidation at the regional level), and the harmonisation of sectoral and territorial management.

After the concept document had been drawn up, the drafting of two plans – one for local government reform, or administrative reform, and another for the reorganisation of county governments – continued separately, as the experts involved in policy-making and the partners were different. The reorganisation of county governments was considered part of a larger state reform project, while local government reform was a separate topic with a separate team.

Nevertheless, the two were planned in parallel and major changes in regional administration were also discussed with the officials and experts involved in the planning of the local government reform, as well as partners and local authorities.

The proposed process envisaged that, after the concept had been approved, the Administrative Reform Act as framework legislation sufficient in itself for implementing the reform would go through legislative proceedings first, followed by the necessary legislative amendments in specific areas.

The Administrative Reform Act itself was to focus on the process, with minimum regulation of specific issues, such as the division of functions or financing. While the latter changes were to be prepared and processed in accordance with the directions and principles set out in the concept document, this was to be done separately by the relevant ministries and experts; that is, not during or as part of the legislative procedure for the Administrative Reform Act, but as a next stage.

In reality, this did not go quite according to plan, largely because the government was not ready to make choices on specific issues at such an early stage or to adopt the fundamental principles for the reform presented in the concept document at the very beginning of the process. First, there was a slight delay in the discussion of the principles and the approval of the concept document. The

administrative reform concept²⁵ was finally discussed at a cabinet meeting in November 2015 and the only principle that was approved was the minimum criterion of 5,000 residents, along with the exceptions to it; there was no political debate on the other principles and no decisions were made. The concept document was formally acknowledged, rather than approved.

For the most part, then, the concept remained a 'working document' of the Ministry of Finance; in contrast to what had been planned, the debate about the principles and solutions presented in the document did not take off.

Largely because of this, it was only the more specific part of the concept – the part discussing the goals and time schedule for the reform, its criteria and the municipal merger process – that would ultimately be implemented. Its proposals on joint municipal agencies as well as changes in territorial and community management within municipalities also resulted in legislative amendments (amendment of the provisions governing municipal districts as well as some additions to the provisions applying to village elders).

Unfortunately, though, the proposed solutions for strategic cooperation, which also concerned broader, regional-level changes in the system for development planning, did not materialise. The further integration of the national strategic planning system and the regional development processes led by the local authorities was in fact the only theme in the concept that was completely abandoned. The rest of the themes that were described in more general terms and without clear solutions in the concept document were specified in more detail and found a definitive solution in the course of subsequent work and political negotiations.

²⁵ Draft concept for the administrative reform (17 December 2015); https://www.rahandusminis-terium.ee/sites/default/files/document_files/kov/151218_haldusreformi_kontseptsioon.pdf.

Although the designers of the reform did rely on the principles and choices presented in the concept document when preparing the amendments,²⁶ the solutions deriving from them were never formulated in any detail, as the principles and choices had not been politically endorsed. Therefore, the criticism from politicians at state and municipal levels as well as from experts – that the content of the reform was ambiguous and the consequent substantive changes unknown – was more or less justified. This was certainly an obstacle to holding substantive dialogues during the preparation of the reform.

However, given the change in government and the responsible ministers, the fact that no political agreement on all specific issues was reached right at the outset may be considered positive in retrospect, as such agreements could have been breached later on, which could have damaged the process more than agreeing on specific issues step by step, which is what happened in the course of the reform.

Although useful for structuring the process, the decision to first adopt the act regulating the entire process and only then the legislation providing for the solutions for specific issues made it difficult to explain the reform to the target group; this was one of the most attacked aspects of the plan from the very beginning – by heads of local government, other ministries and members of the *Riigikogu* – as several target groups did not support the Administrative Reform Act, because it did not contain all the specific substantive changes that the reform would involve.

The Administrative Reform Act

The Administrative Reform Act was intended to lay down a framework for the implementation of the reform. Incidentally, there was also heated debate over the title of the act, both in the Ministry of Justice and, subsequently, in the Constitutional Committee of the *Riigikogu*.

²⁶ The government approved only the timetable and criteria set out in the concept document.

The act, which in the end would still be titled the Administrative Reform Act, established the purpose of the administrative reform,²⁷ the criteria for the minimum population size (at least 5,000 residents) and the recommended population size for a municipality (the Government of the Republic seeks to support the formation of larger municipalities, with at least 11,000 residents or incorporating entire counties), as well as exceptions (for municipalities with a large territory or cultural specificities and for those on the islands).

The Act also set out the different stages of implementing the administrative reform (the stage of mergers initiated by municipal councils, followed by the stage of government-initiated mergers of municipalities that failed to meet the criteria) and a precise timetable.

The deadline for the completion of the voluntary stage of the administrative reform was set at 1 January 2017. By that date, the municipalities that sought to initiate a merger were to submit a merger application to the relevant county governor; the central government had until 1 February 2017 to approve the mergers. The deadline for government-initiated mergers was 15 July 2017, by which time the mergers had to be approved by government regulation.

In order to encourage mergers, the rate of merger grants²⁸ for municipalities that met the relevant criterion was doubled and social benefits put in place for outgoing heads of local government.²⁹

²⁷ The Ministry of Justice proposed the title 'Administrative-Territorial Reform Act'.

²⁸ Merger grants would be paid to those municipalities that opted for a voluntary merger in 2016. The rate of merger grants for municipalities meeting the minimum population size criterion was 100 euros per resident of the merging municipalities (instead of the standard 50 euros). The minimum merger grant sum was 300,000 euros and the maximum 800,000 euros for each merging municipality (as opposed to the standard amounts of 150,000 and 400,000 euros). As a one-time bonus, a municipality that either had at least 11,000 residents or incorporated an entire county as a result of a merger would receive an additional 500,000 euros.

²⁹ The social benefits for municipal leaders stepping down as the result of a merger were enhanced by increasing their severance pay from 6 to 12 months' salary for those that had held office for more than a year, and to 6 months' salary for those that had served for less than a year.

The reform process and the two-step approach formulated in the Act were modelled on the recent experiences of neighbouring countries³⁰ and relied on the general logic of reform, which by definition involves comprehensive change or innovation and therefore cannot be implemented without using some carrot as well as some stick. Voluntary mergers have taken place in many countries, but there was no precedent for systematic reform on a voluntary basis that reform designers could use as a model. At the same time, well-designed reform processes that are explained to the target groups and based on acceptable rules may be perceived as voluntary despite the presence of explicit legislative sanctions. This was how then municipal leaders perceived the 2007 local government reform in Denmark, for example.

Therefore, the legislation first provided municipalities with the opportunity to prepare for mergers according to explicit rules and a clearly defined timetable, and failing that, the government was given a clear mandate to decide on mergers on its own initiative. This had already been a theoretical and legal possibility under the Territory of Estonia Administrative Division Act adopted in 1995, but so far, there had been a lack of political will to apply this provision. According to the Chancellor of Justice, the provision was so general and incomplete as to be inapplicable in practice without additional regulation.³¹

The concept document for the administrative reform was intended to describe fundamental solutions and principles that would serve as a basis for drafting amendments to area-specific legislation after the government

³⁰ The most important international experiences on which these reform plans were modelled were the Danish administrative reform implemented in 2007, the voluntary municipal mergers in Finland that took effect by 2009 and, to a lesser extent, the 2009 local government reform in Latvia.

³¹ 'The Territory of Estonia Administrative Division Act does not allow for ... coercive merging independently of the Administrative Reform Act, as it does not contain the necessary norms to substitute for the actions and declarations of intent by a municipal council that refuses a coercive merger, which the Administrative Reform Act does contain.' Quoted from Chancellor of Justice letter No 9-2/161053/1603836 'Supplementary opinion in Constitutional Review Case No 3-4-1-3-16' of 22 September 2016.

had approved the Administrative Reform Act. This would have allowed the Administrative Reform Act to focus on principles and process.

In reality, however, some more detailed amendments were introduced into the Act, including amendments to regulations on the formation of municipal districts and electoral districts, as well as some organisational matters relating to local government management, which had previously been addressed in merger agreements in the case of voluntary mergers. This was due to both a practical need (including the elimination of contradictions with the Administrative Reform Act) and political agreements (e.g. that amendments to the regulation on municipal districts would already be included in the Administrative Reform Act, rather than waiting for amendments to specific legislation).

Amendments to specific legislation to support the objective of the administrative reform

Due to time pressure as well as political and administrative pragmatism, the process was planned so that first the Administrative Reform Act would be adopted to regulate the general process, after which specific amendments to the performance of local government functions and financial arrangements would be prepared. Therefore, this area-specific legislation³² was anxiously awaited by stakeholders and decision makers, as well as partners, experts and policy observers.

As the functions, financing and cooperation opportunities for local authorities had been analysed in the course of preparing several previous reform programmes, the Ministry of Finance submitted its proposals

³² 'Area-specific legislation' (valdkonnaseadused) is a term that was used for a set of legislative amendments prepared after the Administrative Reform Act. These derived from the administrative reform concept document and were necessary to support the objective of the administrative reform. As the amendments to the financial arrangements primarily concern the state budget and state budget strategy and are long-term, the relevant act mainly regulates cooperation between local authorities (joint agencies), the organisation of county-level development planning, changes in the organisation of county public transport and amendments to the organisation of county-level associations of local authorities.

for possible changes to the concept of administrative reform, and did not plan for additional analysis. Instead, it waited for the positions of the other ministries on the submitted proposals. Amendments were planned in the three main areas of cooperation between local authorities, additional local government functions and local government finances.

In order to enhance cooperation, there were plans to include regulation of joint agencies in the legislation, which the Ministry of the Interior began to prepare as early as 2013.

The three major changes that were prepared during the entire process and ultimately realised were related to county development planning, the development of the business environment and the organisation of regional public transport, which up to then had been the responsibility of county governments.

County-level development planning as described in the concept document was almost fully incorporated into the draft Act, although the accompanying changes in the national strategic planning process were not as significant as envisaged in the concept document (which tied county-level development planning directly to the national strategic planning process).

The development of the business environment, on the other hand, was envisaged as a separate function in the concept document, and was also treated as such during most of the planning process, but since the central government had not performed this function in that form, it was not clearly regulated or funded. As a result, no agreement was reached on the definition or financing of this function, and entrepreneurship-related tasks were not assigned as a shared function to local authorities in the course of the reform.

Regarding the transfer of the function of regional public transport organisation, the concept document already outlined a solution (transferring this function to regional public transport centres), which was adopted as a goal, so that the disputes and agreements already focused on more detailed organisational issues regarding the establishment



The first meeting of the administrative reform expert committee on 29 May 2015.
Source: Ministry of the Interior

of public transport centres, including their number, management and transfer of functions. The discussions were complicated by the fact that the coalition agreement required the government to plan these changes in parallel with the development of a free public transport scheme.

The process of transferring the other essentially local government functions away from the central government as stipulated in the coalition agreement and the government's action plan was more ambiguous. The Ministry of Finance proposed a variety of options to the other ministries, which, however, rejected most of these on account of their hindering the effective implementation of sectoral policies.³³

³³ Examples include the proposal, in social welfare, to transfer responsibility for the organisation and financing of certain services (childcare, periodic benefits for people with disabilities and childbirth allowances) from the national government to the local authorities or, in transport, to transfer some national roads with the relevant funds.

During the process, the transfer of various national responsibilities was considered in varying degrees of seriousness and detail,³⁴ but the reform brought no major changes in the responsibilities of local authorities.

On the one hand, the difficulty was that the abstract 'transfer of state functions' was not aimed at solving a specific or clearly defined problem, which is why many officials and even politicians themselves failed to grasp the need for achieving this goal.

On the other hand, this was exacerbated by the fact that the cause of the problems is the performance of functions that suffer from a lack of funding (or the complete absence of state funding). As a result, the ministries were particularly interested in transferring functions that were performed inadequately due to the absence of regulation (performance obligation) or funding, rather than well-functioning state-funded services.

In order to accelerate the process of transferring state functions, which had stalled due to the indifference of the relevant ministers and ministry officials, the Prime Minister took the initiative in early 2016 and planned a special government session to discuss the transfer of functions. After that, negotiations with the ministries intensified and serious discussions were held with the Minister of Education for the transfer of teachers' salary funds as well as some vocational schools and state-run upper secondary schools to local authorities. However, no specific agreements were reached on any significant transfer of functions; in social welfare, it was agreed that the funding of periodic benefits for people with disabilities and substitute care would be transferred to local authorities. In education, further analysis of possible changes was to be continued after the implementation of the administrative reform.

The decision-making and implementation of changes in funding have been gradual and are still ongoing.

³⁴ Examples include the transfer of responsibility for primary healthcare institutions, organising special welfare services, managing state forests, previously state-run upper secondary schools and vocational schools, as well as running county museums and theatres.

The administrative reform expert committee and its role in the reform process

As mentioned, the Expert Committee on Administrative Reform has contributed to the preparation of the reform. The expert commission responsible for advising on the implementation of administrative reform was formed by the Minister of Public Administration, Arto Aas, about a month after the new government took office in April 2015. Confirming the evolutionary nature of the preparations for the reform, the committee members were largely the same as those of the local government think tank and its working groups formed by the then Minister of Regional Affairs, Siim Kiisler, in 2012 and 2013.

Starting shortly after the formation of the new government, committee meetings took place from May 2015 through to 2017, numbering more than ten in total. The committee played a particularly important role in formulating the reform goals at the early stages of the reform and in proposing criteria. At that time, the committee met every month.

The government relied on the reasoning and proposals of the experts on the committee in deciding to base the reform (solely) on criteria for minimum population size as well as to stipulate 5,000 residents as the mandatory and 11,000 inhabitants as the recommended limit.³⁵

The government's role in the design process

The government's role in preparing the reform can be assessed in different ways. The fact that the government committee preparing the administrative reform under the leadership of the Prime Minister, which was formed at the start of the process, only met twice and failed to become an important arena for the preparation of the reform, does not mean that the government played a weak or non-existent role. Although some

³⁵ The experts also did not reach unanimous agreement on specific figures, but during the committee's discussions, their views converged sufficiently, so that the committee decided to propose to the government three different figures – 3,500, 5,000 and 11,000 – all of which were subsequently put to use.

critics have claimed this to be so, the author of this article cannot help but disagree; for the Prime Minister(s) to assume a greater role in leading the reform, the Government Office would have needed an official or even an entire unit dedicated to this, thus essentially duplicating the work of the Public Administration Minister's team and blurring the lines of responsibility.

Looking back, both Prime Ministers (first Taavi Rõivas and then Jüri Ratas during the completion of the reform) can be said to have been very good at fulfilling their roles, keeping themselves apprised and capably leading the way toward reaching substantive agreements. Initially, it took some time to put the issues on the government's agenda (and this also happened later on during the process), but it should be taken in consideration that the ongoing state reform and preparations for the Estonian Presidency of the Council of the European Union understandably increased the government's workload alongside everyday work.

The administrative reform was repeatedly discussed by the government, step by step, mostly in cabinet meetings, but also in several government sessions. The cabinet first discussed the objectives, timetable and principles of the reform in July 2015, approving the timetable and the approach based on a minimum population size criterion as well as the doubling of merger grants. The rest of the fundamental principles for the reform were only formally acknowledged at that time.

The cabinet discussed the concept document again in November 2015, approving the 5,000-resident criterion and the exceptions to it. No decisions were made on the other principles established in the concept document; formally, the concept was duly noted, rather than approved. Still, the government did approve those aspects that were necessary for the preparation of the Administrative Reform Act, and the draft Act was completed in a month, by December 2015.

In 2016, the government repeatedly discussed the planned changes that the administrative reform would involve. In February, the government discussed the financing of local authorities; in March, the draft

Administrative Reform Act was approved. In July, a memorandum for the amendment of area-specific legislation to support the implementation of the administrative reform objectives was debated in a cabinet meeting. This debate was repeatedly postponed during the summer and the government approved the principles for amending the specific legislation only at the end of August, ordering the Ministry of Finance to submit the relevant draft act by December 2016.

The draft act was ready by the end of October 2016 and was circulated for approval. However, with the appointment of a new government, led by Jüri Ratas, the procedure was put on hold for a time, and resumed under the leadership of the new Minister of Public Administration. Some substantive additions were also made (in particular, amendments to the organisation of public transport³⁶ and the exclusion of the development of the business environment³⁷). The government approved the draft Act Amending the Local Government Organisation Act and Other Acts Related to the Implementation of the Administrative Reform and submitted it to the *Riigikogu* in April 2017, just under five months after taking office. The legislative proceedings in the *Riigikogu* took less than two months; the Act was adopted on 14 June 2017 and entered into force on 1 January 2018.³⁸

Conclusion

Preparations for the administrative reform began in April 2015, as the new government led by the Reform Party and a public administration minister from the same party took office. The preparation process was led by three different ministers until its completion in July 2017 when the government approved the last ongoing mergers that it had initiated. As governments

³⁶ The obligation to establish, or join existing, regional public transport centres was imposed on the local authorities of all municipalities, except Saaremaa and Hiiumaa.

³⁷ The joint obligation for local authorities to develop the business environment was taken out of the draft Act.

³⁸ <https://www.riigiteataja.ee/akt/104072017002>

changed, the Reform Party's Arto Aas was succeeded by Mihhail Korb (Centre Party) in November 2016, and after his resignation in June 2017, Jaak Aab (Centre Party) led the reform preparations to their completion.

In retrospect, the preparatory period of just over two years may be considered optimal. There is always room for criticism – that not enough time was spent on preparation, not enough stakeholders were involved and the analysis was insufficient. However, the longer the preparation period, the more likely it is that changing political circumstances and coalitions bring the process to a halt. This has happened more than once before.

With this reform too, when governments changed, local authorities expected that the Centre Party-led government would not continue with the reform or, if it did continue, would only implement the voluntary stage. All the more so, given that during her presidential campaign, the Centre Party's candidate quite openly and explicitly conveyed to the heads of local government her opposition to the administrative reform in its present form. Ambiguous statements by the new Centre Party ministers also helped some heads of local government develop the belief that their municipalities would not be merged after all.

The main obstacles to the reform process were the change of government and the fact that the Supreme Court did not reach a decision on the Administrative Reform Act, which was contested by 26 municipalities in the summer and early autumn of 2016, until just before Christmas 2016, or shortly before the end of the voluntary stage of the reform. According to several experts, without these circumstances, the share of locally initiated mergers would have been significantly higher, given that some municipalities had unfortunately suspended preparations, expecting the Supreme Court to declare the Administrative Reform Act unconstitutional, and did not have time to complete the process after the judgment to the contrary was handed down.

What could have been done differently or better in terms of those parts of the reform process that, unlike the change of government or

the Supreme Court's deliberations, were under the control of officials and politicians?

Contrary to one of the most common criticisms, the reform process and its outcome were certainly not impacted by insufficient analysis of the existing situation. Another typical criticism of all policymaking is that there is a lack of stakeholder engagement. While the preparations for the 2017 reform placed a great deal of emphasis on engagement, it often emerged that the information disseminated at meetings with heads of local government as well as through information letters or leaflets had not quite reached all the heads of local government, let alone other officials. A typical engagement dilemma may be to blame here: if engaged too early, the stakeholders are dissatisfied because the message is vague, with no firm decisions or promises; however, if engaged too late, after the decisions are already made, they can only be apprised of these, but their feedback cannot be used to shape the decisions.

Although the administrative reform concept document was ready and had been presented to the government as early as the end of 2015, it still lacked sufficient weight, as the government had not approved it, nor did it offer ready-made solutions for all the components of the reform. Meetings would reach a stalemate because of a lack of information or criticisms about the transfer of responsibilities or changes in financial arrangements, which were not yet politically decided; the general principles and plans alone did not provide enough certainty to support the reform. Another major reason was the considerable distrust that exists between the central government and local authorities, whereby plans that have been prepared but not yet approved by the government are treated with particular scepticism and are not accepted.

It cannot, then, be said in retrospect that there should have been more engagement. However, the engagement process could have been more effective had the government initiated a political debate earlier and formally approved the guidelines for the remaining issues addressed in the administrative reform concept document at the end of 2015 and had

the Ministry of Finance, together with its partners, started work accordingly. This would have allowed the avoidance of entanglement in disputes over responsibilities and financing in the course of the legislative proceedings for both the Administrative Reform Act and, subsequently, the area-specific legislation (as this also did not address the relevant changes to financial arrangements).

Furthermore, debates over financing and the transfer of responsibilities to local authorities could have been more in-depth and more thoroughly prepared if the government had included this in its agenda by the end of 2015, rather than in August 2016. On the other hand, this would have allowed for less flexibility in deciding on the specifics of the reform as governments and ministers changed.

In conclusion, the preparations for the reform can be evaluated as adequate or good; the same assessment has repeatedly been given to preparations for the administrative reform by the State Reform Radar initiative, led by the Praxis Centre for Policy Studies.³⁹

The way in which the changes that were prepared and implemented in the course of the reform affect the organisation of local government and people's everyday lives is a separate issue and deserves a separate collection of articles.

³⁹ <https://www.reformiradar.ee/hinnangud/>

The Main Political Attitudes and Arguments Prior to the Administrative Reform: Why was it successful this time?

ARGO IDEON

Maaleht

The first chance to decisively reduce the number of municipalities in Estonia slipped through politicians' fingers at the beginning of this century. By early 2001, there had been extensive discussions on the imminent administrative reform for four years. A start was made in 1997 by Jaak Leimann, Mart Opmann and Raivo Vare, ministers in the government formed by the Coalition Party and the Rural People's Union, with a proposal to reduce the number of municipalities to a third. By spring 2001, it did indeed seem that everything was almost ready. In the Ministry of the Interior, maps with new city and rural municipal borders were drawn, with around 60 to 110 possible new municipalities being envisaged.

As it happened, local elections were suitably due to be held in the autumn of 2002, conceivably within the redrawn borders. By that time, the Minister of the Interior, Tarmo Loodus (Pro Patria Union), had completed an almost impossible task – he had driven around Estonia and gain support in several municipalities for changes that seemed inevitable.

But nothing happened. A Reform Party board meeting on 20 March concluded with the politicians stating that the administrative reform had to be halted. 'We should be honest about this and let the Estonian people know that there will be no administrative reform during this election period,' said Andrus Ansip, vice chairman of the Reform Party at the time¹.

In public, the party justified its opposition by claiming that they would not support the government's coercive merging of cities and rural municipalities. Jürgen Ligi, chairman of the Reform Party faction in the *Riigikogu*, said that the party would like to see the merging of municipalities carried out on a more voluntary basis.²

In any event, the People's Union and the Centre Party, both in the opposition, were completely against any administrative reform plans put forth by the government. As the Reform Party moved to the opponents' side, it became increasingly impossible to make any administrative changes. (For a more detailed overview of the events of this period, see the article by Madis Kaldmäe).

The Reform Party would not admit in public that the underlying reason for their position was the desire not to lose support for their presidential candidate Toomas Savi in the electoral body, to which the presidential elections were expected to advance. On the contrary, the squirrels³ said that they were in favour of the reform – but not in this shape or form. Mart Laar's Pro Patria Union had apparently been

¹ T. Sildam, 'Reformierakond võtab toetuse haldusreformilt' – *Postimees*, 21.3.2001.

² 'Reformierakond seiskab haldusreformi' – *Eesti Päevaleht / BNS*, 23.3.2001.

³ The symbol of the Reform Party is the squirrel.

pursuing an agenda of their own that had little to do with their coalition partners. The Social Democrats, who were in the coalition, remained in favour of the reform, but this was not enough to be decisive.

Halting the administrative reform did not help the Reform Party's presidential candidate Toomas Savi to victory. In autumn 2001, Arnold Rüütel was elected Estonia's head of state.

In fact, President Lennart Meri was also somewhat sceptical. In autumn 2000, he was of the opinion that administrative-territorial changes could still wait a while. 'I would like it very much if proposals for territorial reforms were put forth by the people, instead of being born on the polished silence of desks,' said President Meri.⁴

In other words, the administrative reform fell through at the time because there were too many sceptics. Furthermore, current political goals would have had to be sacrificed in favour of any future benefits.

Following 2001, preparations for administrative reform in Estonia lay dormant for a while. Politicians had no desire to bring a failed undertaking back to life. Every now and then, there were of course a few proposals, some of which were quite bizarre.

For example, in early 2009, Tallinn city authorities (under the leadership of the Centre Party) announced that the city would carry out its own administrative reform. For that purpose, Tallinn was supposed to close down city district governments and start negotiations to merge with rural municipalities adjacent to the capital.⁵

For their part, the coalition parties viewed this as an attempt by Tallinn to ensure more votes for the Centre Party in the upcoming elections. A parliamentary majority banned Tallinn from abolishing city districts during an election year. By spring 2010, Tallinn had abandoned the plan to get rid of city districts.

⁴ U. Klaas, 'President Lennart Meri intervjuu Postimehele' – *Postimees*, 3.10.2000.

⁵ M. Jürgenson, 'Mõistlikuma elukorralduse nimel' – *Kesklinna Sõnumid*, February 2009.

There were also some more serious attempts. During his long term as the Minister of Regional Affairs during 2008–2014, Pro Patria and Res Publica Union politician Siim Kiisler kept carrying on his attempts at resuscitating the administrative-territorial reform.

In spring 2009, the minister announced that administrative-territorial changes needed to be implemented by the autumn of the same year. He had a specific schedule. The legislation was supposed to be adopted by the end of May, with surveys carried out in the municipalities in June, and in July, the central government was to approve the names and borders of the new municipalities, in time for the local government elections in autumn.⁶

‘While I was in government, the administrative reform was not implemented,’ Kiisler reminisced seven years later in the *Riigikogu*. ‘We did prepare two draft acts, though. One was based more on a county-centred logic ... The other draft act was based on the logic of local commuting centres.’

Kiisler’s plan was optimistic, but realistically impossible to implement, as Estonian society was not ready to make such great changes in a hurry, let alone during summertime. The minister did not manage to obtain the necessary political support for a comprehensive reform.

However, that does not mean that there was no heated debate about the reform during that time. For example, the Auditor General, Mihkel Oviir, wrote a public statement to Ivari Padar, the Minister of Finance, with strong arguments in favour of the administrative reform: ‘The administrative reform cannot wait until the very last minute.’

Among other things, Oviir said, ‘In order for local authorities to achieve a sufficient level of administrative capacity to the extent of the tasks they have now been given, it is necessary to form municipalities that have the prerequisite populations and competences to fulfil the tasks of

⁶ U. Seaver, M. Tamm, ‘Kiisler esitas valitsusele haldusreformi koos ajakavaga’ – *Postimees*, 5.3.2009.

local government.’ This is significant, because at a later time, after the 2015 elections, the weakness of small municipalities became the main argument in favour of their coercive merging. ‘We must not forget that the entire population of Estonia amounts to the population of a single district in a metropolis,’ the Auditor General announced to Padar.⁷

In reality, administrative reform did not become a major campaign topic that autumn, before the 2009 local elections.⁸ This also happened to be during the depths of the economic crisis.

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In real life, the idea of an administrative reform progressed more as a result of legislation passed in summer 2004, according to which government grants would be paid to merging municipalities. The coalition agreement of Juhan Parts’ government, which also included the Reform Party and the People’s Union of Estonia, stated that it was important to facilitate and support the voluntary merging of municipalities. A working group led by the Minister of Regional Affairs, Jaan Õunapuu, compiled a draft of the Promotion of Local Government Merger Act.

By law, the merger grant would be 500 *kroons* for every resident of a merged municipality, i.e. 1.5–3 million *kroons* per municipality. A list also set out the activities that the merger grant could be spent on. The explanatory memorandum of the draft act specifically mentioned what should improve as a result of the merging of municipalities. Mergers eligible for the grant were supposed to increase administrative capacity, improve project proposals, expand the availability and quality of public services, and strengthen collaboration between the authorities of different municipalities.⁹

⁷ Mihkel Oviir’s letter to Ivari Padar, 27.2.2009.

⁸ A. Ideon, ‘Seitse valimishetke’ – *Postimees*, 16.10.2009.

⁹ Draft Act 359SE and explanatory memorandum. – www.riigikogu.ee.

The payment of the merger grants proved a successful measure that helped with many voluntary mergers. Between 1997 and 2008, 47 municipalities were merged into 20.¹⁰ By the year 2009, there were 227 municipalities in Estonia.

One important reason for the eventual execution of the administrative reform lies in party politics.

The two major parties that had previously been the largest critics of the administrative reform – the Reform Party and the Centre Party – switched sides at different times, joining the Pro Patria and Res Publica Union (IRL) and the Social Democrats (SDE). For the squirrels, this took place after the 2015 parliamentary elections, when Taavi Rõivas formed his second government and Arto Aas became Minister of Public Administration.

In 2015, Alo Aasma, a Social Democrat and the former governor of Järvamaa county, said that the planetary alignment must have been right for a political agreement on administrative reform to be made. 'We must not underestimate the fact that the situation of local authorities was rather dismal in some places in Estonia,' he stated.¹¹

Surveys also had their role to play, such as in the drafting of a new capacity index for local authorities showing which rural municipal authorities in Estonia had less capacity. 'If, figuratively speaking, every third person has vanished from rural areas during the past 25 years, public administration and local authorities cannot be the last to adapt to these changes,' Aasma said.

Arto Aas, Minister of Public Administration in 2015–2016, said that the coalition formed after the parliamentary elections had a specific desire to get the administrative reform done. 'It is true that the political

¹⁰ A. Teeväli, 'Kohalike omavalitsuste sotsiaalmajandusliku arengu seos haldusterritoriaalse reformiga – aastatel 1999–2005 ühinenud omavalitsusüksuste sotsiaalmajanduslike muutuste analüüs'. Master's thesis. Tartu, 2009.

¹¹ Author's interview with Alo Aasma in December 2017.

agreement did not specify how it should be done. The how and the when was up to me, the minister, to figure out¹².

In Aas' view, it helped that a critical mass of Estonia's heads of local governments, entrepreneurs and opinion leaders active outside Toompea's inner circle came to understand that the administrative reform was inevitable.

As far as the Estonian Reform Party itself was concerned, a generational shift certainly helped to move things along, as Taavi Rõivas replaced party leader Andrus Ansip, who had traditionally been highly sceptical of any administrative reform. The new prime minister adopted a more open position in this matter. 'It is true that neither Siim Kallas nor Andrus Ansip were initially big fans of the proposed reform options,' Arto Aas also admitted.

Former Minister of Regional Affairs Siim Kiisler believed that without the coalition agreement in spring 2015, nothing would have happened.

'These kinds of reforms cannot be carried out from the bottom up; that's what the experience has been all over the world,' Kiisler said. 'The choices of local authorities and local leaders were certainly made easier by the fact that the reform was carried out in two stages, with the opportunity being given at the start to merge voluntarily, based on the set criteria. This way, the central government helped the local level out, to get things done.'¹³

He argues that the whole idea had had a long time to mature and become familiar to everyone. 'For many years, surveys had shown that there were more supporters than opponents among the Estonian population. And a large part of the preparations had been done already; the possible models had been tested during the 2015 elections.'

¹² Author's interview with Arto Aas in December 2017.

¹³ Author's interview with Siim Kiisler in December 2017.

Politically, however, Kiisler considers his own party to have been the main driving force behind the reform.

'The main impetus was IRL's decision that one of their main demands would be to include the administrative reform in the coalition agreement after the elections, and giving the honour of implementing the reform to the Reform Party, which held the ministerial position responsible for it. IRL understood that if the Reform Party did not hold this position, they would continue stalling, endlessly if necessary,' he said.

Following this agreement, there was a complete change in the Reform Party's attitude: all talk about needing further analysis stopped immediately, and the reforms were started,' Kiisler reminisced. 'Half-jokingly – when I read interviews with Arto Aas, the minister who was responsible for the reform at the beginning, I had to double-check whether it was actually one of my old interviews. In any case, it was a big step for the coalition partners, and I'd like to use this opportunity to offer them my sincere thanks!'

The most critical moments regarding the fate of the administrative reform came in 2016, where the second and third readings for the Administrative Reform Act took place in the *Riigikogu* in the summer.

The local government merger grants included in this Act also played an important role. In this way, Rõivas' government adopted a kind of a carrot-and-stick policy: if local authorities met the legal requirements and merged voluntarily by the set deadlines, they would receive a hefty merger bonus. In other cases, the central government would decide on the mergers and the local authorities would be able only to dream of the bonus.

The merger grant also made it easier for the municipal leaders to explain the situation to their sceptics and opponents: the reform is inevitable, better to make our own arrangements, get money for investments, and everything will be more sensible.

'The main thing was the clear message: if you do not merge by yourselves, we will merge you anyway!', reminisced Kiisler, now Minister of the Environment in Jüri Ratas' government.

At the time, one of the main points of criticism was the claim that the people in charge of the preparations for the reform were thinking and talking about the borders of cities and rural municipalities, but were not focused on the tasks of the new local authorities, or how to finance them.

‘There are big promises coming from Toompea, but very little of it will come to pass in the coming years,’ said Kersti Sarapuu, a politician from the Centre Party present at the discussion of the draft act. She was alluding to the fact that the issue of the revenue base for local authorities has remained unsolved.

The Reform Party-led government did discuss all topics, but did not manage to present any new solutions to the *Riigikogu* before their fall from power.

Another decisive moment for the politicians came in December 2016, while they were anxiously awaiting the Supreme Court’s ruling on the constitutional compliance of the Administrative Reform Act.

‘The core of this case is whether the merger of municipalities as stipulated in the Administrative Reform Act – first, voluntary merger and then coercive merger for the rest – is compliant with the constitutional order of Estonia,’ Priit Pikamäe, Chief Justice of the Supreme Court, explained after 26 municipalities had lodged complaints in October.¹⁴

In the end, the Supreme Court found only one provision to be unconstitutional: the limitation of compensation for merger expenses incurred by local governments to a maximum of 100,000 euros. In all other respects, the entire reform remained unchanged, including the option to merge municipalities coercively.

The Supreme Court’s positive decision also left Centre Party politicians without any arguments, the latter having previously been ready to reopen the topic of administrative reform under the new government if the message had been different.

¹⁴ A. Ideon, ‘Riigikohtu esimees: haldusreformi kohtuotsusega venitamist ei tule’ – *Maaleht*, 6.10.2016.

The Centre Party's shift regarding the administrative reform happened in late 2016, when Jüri Ratas was elected chairman, and then also immediately became prime minister. In the Centre-led government, Mihhail Korb took on the position of the Minister of Public Administration, responsible for the implementation of the reform. After his resignation, Jaak Aab took on this role in June 2017.

Mailis Reps, vice chairman of the Centre Party, visited Estonia's municipalities during the presidential election campaign in summer 2016, also trying to get an overview of the situation related to the administrative reform. What the Estonian Centre Party's presidential candidate saw made her sceptical.

'For the majority of rural municipalities, this is a forced marriage; only a few claim that they would merge even if there were no obligation to do so,' she said in August.

'If I were president, I would not have proclaimed the Administrative Reform Act in its current shape and form. There could be interesting decisions coming from the Supreme Court which will turn everything upside down.'¹⁵

Looking back, Reps, who is the Minister of Education in Jüri Ratas' cabinet, said that at the time everything depended politically on the Supreme Court's decision.

'Quite a few people thought that there would be some kind of shocking news from the Supreme Court. We had a deal in the Centre Party that if that happened, we would reopen the discussion. But if there was nothing, it would be pointless to keep trying. Without any legal arguments, we had no right to cause confusion – the majority of the local authorities were already finalising their agreements. Everyone who was even a little bit involved said that the rewinding of the reform would create complete chaos.'¹⁶

¹⁵ A. Ideon, B. Mikovitš, 'Mailis Reps: valimiskogu lööb poliitilise tagatoa segi ja see sobib' – *Maaleht*, 4.8.2016.

¹⁶ The author's interview with Mailis Reps in December 2017.

Mailis Reps admitted that for the Centre Party, it was particularly difficult to accept the part of the Administrative Reform Act that allowed municipalities to be forcibly merged by the central government.

‘It was extremely difficult. As one example, I’m still uneasy about what happened with Lügänuuse rural municipality in Ida-Virumaa – they had just been through a very difficult triple merger and appeared to accept it.’ (In 2013, the rural municipalities of Maidla and Lügänuuse in Ida-Virumaa county merged with the city of Püssi to form a new rural municipality, Lügänuuse; in 2017, however, the government merged Lügänuuse with the city of Kiviõli and Sonda rural municipality.)

‘For those who had merged voluntarily, there was less emotional, personal pain. But there is a story behind every merger,’ Reps stated.

Former Minister of Public Administration Arto Aas said that in private conversations, Centre Party members came to pat him on the back during his term in office, to say that he really was doing the right thing.

‘Although the Centre Party had never considered the administrative reform to be truly theirs, I was not too surprised when they did not put a stop to the reform when they came to power. Fortunately, IRL and the Social Democrats were sufficiently involved in the implementation of the administrative reform, so it would have been bizarre for them to throw it all away,’ Aas said.

Alo Aasma, a Social Democrat who ran in the 2017 local elections in Paide as a member of the Suur-Järvamaa electoral coalition instead, stated that for the Centre Party, which had just entered the government, supporting the administrative reform was a chance to show themselves to be statesmen instead of populists. ‘Jüri Ratas, as a leader of the new generation, perhaps needed it.’

But in order for large national reforms to be successful, that really is what it takes in the end: for everyone to be in the same boat, he said. ‘For big, important reforms, there is much greater support than just within the coalition. Maybe that’s the right way to do it.’

Siim Kiisler, in turn, thought that the Centre Party's behaviour upon reaching the government coalition made perfect sense. 'When in power, you have to behave sensibly. Besides, the process had developed far enough by that time, and it was obvious that local politicians and leaders had also accepted it.'

After the 2016 judgement from the Supreme Court, tempers were still running high regarding the minimum number of 5,000 residents required for new rural municipalities, although the new head of government, Ratas, promised to be flexible on this issue.

'When these figures end up at some stage on the government's desk, my first consideration is whether a municipality with that number of residents is capable of fulfilling its tasks, whether it makes sense geographically, and only then is the number issue considered,' said Jüri Ratas in an interview in late 2016.¹⁷

'The final figures are as follows: we have 79 municipalities: 64 rural municipalities and 15 cities,' said Minister of Public Administration Jaak Aab after the local elections held in autumn 2017. Whereas before the voluntary and coercive mergers, there were 169 municipalities in Estonia with fewer than 5,000 residents, following the administrative reform, 15 such municipalities remain.¹⁸

In other words, the government still granted a few exemptions. According to Mailis Reps, there would probably have been even more exemptions if Helir-Valdor Seeder had been elected chairman of IRL earlier, as Seeder had already held a critical attitude towards coercive mergers. But everything was decided before that. The Centre Party's political opponents were most critical about the exemption granted to the city of Loksa.

¹⁷ A. Ideon, B. Mikovitš, 'Kaks vaadet Eesti elule – Jüri Toompealt ja Anne Järvamaalt' – *Maaleht*, 4.1.2017.

¹⁸ Record of the government press conference, 26.10.2017.

Without a doubt, the administrative reform was successful because after the political agreement of spring 2015, the Estonian government tried to arrange the entire process as inclusively and openly as possible.

'We already knew in advance that the end result would not please everyone and that there were those who would be going to court, and the parliamentary opposition would be against it anyway,' said Arto Aas, Minister of Public Administration at the time. 'All of that was predictable.'

To counterbalance, Aas convened an expert committee on local administration reform, which reviewed all important decisions and analyses and approved these.

'We had academics, municipal leaders, county governors, party representatives and many others there,' the Reform Party politician recalled. 'As minister, this gave me a great deal of support: whenever I went to the government or the *Riigikogu*, I did not need to rely solely on my own knowledge and assessments, but something much broader.'

Of course, no new studies were commissioned regarding the necessity of the administrative reform in 2015, because in Aas' words, his 'desk drawers were full of such studies and we were able to use this information'.

All of this preparatory work made it easier later to justify the government's viewpoints, for example regarding the Supreme Court discussion referred to above.

A remarkable detail in the Administrative Reform Act was the payment of compensation to local leaders that would lose their jobs due to the imposed changes.

'Currently, the municipal and city leaders have been offered a carrot: if they leave office, they will get a bonus,' said Kersti Sarapuu, a representative of the Centre Party, during the discussion on the Administrative Reform Act.

'That suggestion also came from experts – people that knew how these reforms had been carried out in our neighbouring countries,' said Aas. 'I do not think it was a magic solution, but it did take a lot of the pressure off.'

In Alo Aasma's opinion, such an allocation of grants was excessive, because the prospect of being merged by the government was sufficient motivation to make the necessary decisions locally.

'It was just a nice bonus, but it has not done what it was supposed to,' Aasma admitted.

To summarise, the administrative reform was implemented successfully this time because there was wide political agreement in favour of the changes, including within the previously sceptical major political parties. A prerequisite for this was earlier work, including studies that demonstrated the inevitability and necessity of a reform.

Preparations for the reform progressed so smoothly that politicians on both sides of the fence marvelled at it. The government was able to use tried and tested methods, such as merger grants. If nothing else worked, the government could carry out a coercive merger, and local authorities were unable to contest these successfully in the Supreme Court.

The Attitudes of the General Public toward the Administrative Reform 2013–2016

HELLA KALDARU

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Turu-uuringute AS carried out opinion polls of the Estonian adult population (aged 15 or older) with regard to the administrative reform six times from May 2013 to October 2016. The opinion polls were conducted as regular omnibus surveys, in the course of which 1,000 people from across Estonia are interviewed in their homes. Survey sample areas are selected on the basis of the country's administrative division and the population density of each region. Within these areas, households and respondents are selected according to specific rules. Omnibus surveys are conducted as face-to-face interviews. Their results can be used to make generalisations about the entire population in the relevant age group, and the maximum permissible statistical error is $\pm 3\text{--}4\%$.

The attitudes of the Estonian population towards the administrative reform over the years 2013–2016

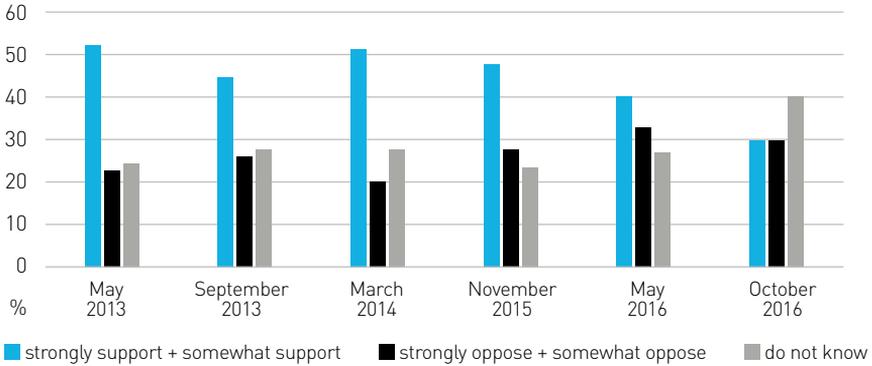


Figure 1.

The question of the respondent’s attitude toward the planned administrative reform was introduced by a short explanation. Its wording did not change much over the years. In 2013, the text read as follows:

‘According to the plan for the proposed administrative reform, small municipalities will merge with local commuting centres. These centres will drive the development of business, education and services in an entire region and will be connected to other settlements by means of high-quality roads and transport links. In the future, all local issues that people have to deal with on a daily basis, be it the creation of jobs or the maintenance of streets, will be the responsibility of one local authority. Local public services (preschools, primary schools and basic schools, social services, assistance for the elderly etc.) will continue to be provided to people close to their homes. What is your attitude towards such a plan for the administrative reform?’

Another sentence was added in 2015: ‘In order to ensure the development of municipalities, they must have sufficient population.’

Results

The results of the surveys conducted 2013–2014 were somewhat mixed, but the respondents supporting the reform always considerably outnumbered those opposing it.

By October 2016, there were an equal number of supporters and opponents – 30 % of the population in each case – and the proportion of respondents with no opinion had grown significantly (reaching 40 %). In earlier surveys this figure had been lower than 30 % and in 2013 even 25 % (see Figure 1).

Although the respondents' attitudes changed frequently within socio-demographic groups, the percentage of the supporters of the reform was always larger among younger respondents with tertiary education and higher income levels, particularly among entrepreneurs.

Support for the planned administrative reform (n = 1,000)

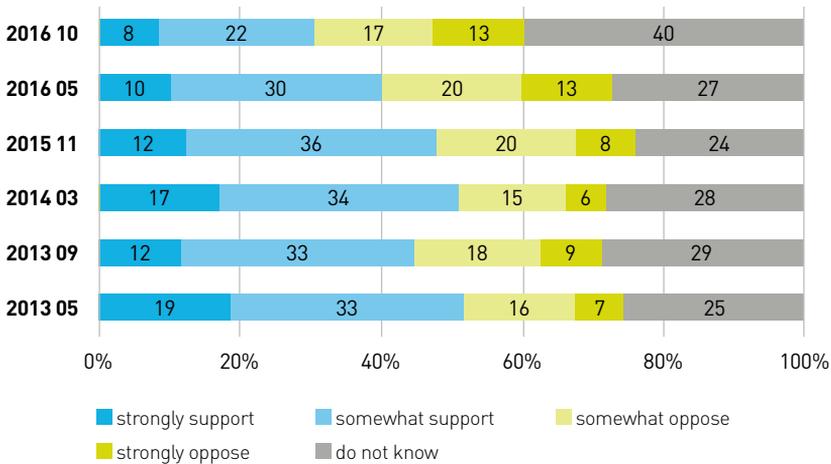


Figure 2.

Attitudes of the rural population towards the planned administrative reform between 2013 and 2016

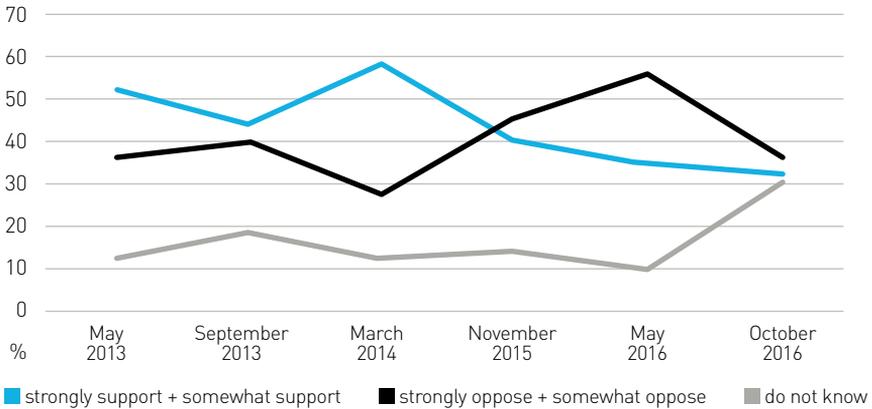


Figure 3.

Conversely, the share of opponents was always above average among people of retirement age, underprivileged people and rural populations, particularly in western Estonia. People living in villages and small towns became significantly more sceptical in 2015, when the sentence about the size requirement of municipalities was added to the questionnaire (see Figure 3).

A large part of the Russian-speaking population had no opinion.

The Principles and Legislative Choices Underlying the Administrative Reform

OLIVIA TALUSTE
Ministry of Finance

The administrative reform plans drafted in various periods, and later named after the ministers responsible for them (see Ave Viks, 'The Design of the Process of the Administrative Reform', and Madis Kaldmäe, 'The Plans for the Administrative-Territorial Restructuring of Estonia from 1989 to 2005'), either have emphasised the need to introduce another tier (county administration) to make municipal administration more efficient, or have stressed that local authorities need to cooperate in order to increase their capacity and to ensure the higher quality of the public services they provide, or else have underlined the need to encourage mergers at the initiative of municipal councils or required government-initiated municipal mergers.

In a nutshell, the administrative reform plans have been aiming to increase the capacity of local authorities for providing public services. Therefore, the preparation of the 2017 administrative reform, spearheaded by Arto Aas, the Minister of Public Administration, was driven by the need to support local authorities in increasing their capacity to provide high-quality public services using the prerequisites for regional development, increasing their competitive ability and ensuring more uniform regional development¹. The need to achieve these goals was agreed on in the 2015 coalition agreement and established as the core goal of the administrative reform in the Administrative Reform Act.²

The basic framework for the reform, which had been laid down by the government coalition in 2015, and was to be further elaborated under the guidance of the Ministry of Finance, was rather abstract. As far as the basis for planning the local administration reform (referred to below as 'the administrative reform'), which was part of the state reform, is concerned, the Pro Patria and Res Publica Union, Reform Party and Social Democratic Party had decided in the central government's action programme for 2015–2019 to adopt the legislative amendments necessary for the implementation of the administrative reform by 1 July 2016,³ which, among other things, were to establish the deadline for the reform. At the same time, a decision was made that an evaluation of the conformity of municipalities, on the basis of objective and unequivocal criteria, was to be conducted for the implementation of the administrative reform. It was also agreed that the non-conforming municipalities were to be merged by the deadline stated in the Act.

¹ More detailed information about the needs and motives for the implementation of the 2017 administrative reform can be found in the explanatory memorandum to the draft Administrative Reform Act (200 SE): <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/fec18826-0e43-4435-9ba8-598b6ed4ea40/Haldusreformi%20seadus>. The Act was passed by the Riigikogu (Estonian Parliament) on 7 June 2016 and entered into force on 1 July 2016.

² Article 1(2) of the Administrative Reform Act.

³ <https://www.riigiteataja.ee/aktilisa/3030/6201/5006/231klisa.pdf>.

The original text had stated that, unless the merger was performed within one year after the evaluation, the municipalities in question would be merged by the central government. Guidelines were also given for planning all the steps in such a manner that the process of the voluntary merger of municipalities within the reform could be completed by the 2017 local elections. The last provision was, however, further specified during the process, which is viewed in more detail below.

In order to emphasise the importance of the administrative reform, the political coordination of the reform was overseen by the Prime Minister, while the Ministry of Finance and the Minister of Public Administration remained chief driving powers behind the preparation of the draft Act. The author of this article had the honour of participating in the preparation of the draft Administrative Reform Act as the responsible lawyer within the Ministry of Finance.

This article examines the substantive considerations of the administrative reform, which the author regards as primary, and the corresponding legislative choices for the reform, which the Ministry of Finance, the central government and the *Riigikogu* relied on in the process of preparing the draft Act and establishing its principles.

The principles of the administrative reform were developed on the basis of numerous studies, analyses and expert opinions executed in Estonia, the recommendations of the OECD and the Council of Europe, as well as the experience of the states which are historically and culturally close to Estonia. In these countries, the reform was not limited to local initiative: at some point, the state became involved in directing it at the central government level.

The Administrative Reform Act establishes the legal basis and procedure for changing the administrative-territorial organisation of municipalities in order to achieve the purpose of the administrative reform, including deadlines for making the resolutions and performing the actions necessary for changing the said administrative-territorial organisation, the criterion for the minimum size of a municipality on the basis of its

population size, conditions for making exceptions to the application of this criterion, and the general rights and obligations of local authorities associated with changing the administrative-territorial organisation.

The article discusses the most significant principles, which form the backbone of the reform. In this connection, the following questions were posed before the preparation of the draft Act.

- Was the organisation of local government that was effective in 2015 constitutional?
- What would be the more efficient way of increasing the capacity of local authorities: mandatory cooperation or merging?
- Can objective criteria be applied to the demonstration of a local authority's capacity, and if so, what would the capacity threshold be for an 'average' local authority?
- Should the Act provide only for the merging of municipalities, or also prescribe additional tasks for local authorities, and then what should the title of the Act be in such a case?
- Should the preferred approach to the implementation of the administrative reform be a clear bottom-up process, and under which conditions can the state intervene if local authorities fail to start working to achieve the goals of the reform?
- What timeframe is to be established for the reform, and should the elections for the mergers initiated by local authorities and the mergers initiated by the central government be organised at the same time or at different times?
- How can the opinions of residents be determined in the process of the merging of municipalities and changing the borders of administrative divisions?
- How is it possible to promote the merging of centres with a hinterland (should 'city' be preserved as the type of administrative unit in the case of a merger of a city and a rural municipality)?
- How is it possible to ensure the involvement of residents in the exercising of local power and the right of regions to voice their

opinion (more detailed regulation of rural municipal districts and urban districts)?

- Should an abridged procedure be established for contesting merger regulations in court in the case of mergers initiated by the central government?

Was the local government organisation that was effective at the beginning of the preparations for the administrative reform constitutional?

According to the European Charter of Local Self-Government,⁴ local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. Therefore, local authorities should have opportunities for managing local affairs as well as the ability and obligation to do so.

The Charter narrows down the capacity of a local authority, stating that the conditions of service of local government employees shall permit the recruitment of high-quality staff on the basis of merit and competence.⁵ The Estonian Constitution also links the local authority's guarantee to its capacity, stating that all local matters are to be determined and managed by local authorities executing their duties autonomously in accordance with the law.⁶

Consequently, it was determined before commencing to prepare the Administrative Reform Act that the local government organisation effective at the time was not constitutional because many local authorities were not able to perform all essential local functions prescribed to them by the law due to their small size, lack of administrative capacity and limited financial capacity.

⁴ Article 3(1), European Charter of Local Self-Government.

⁵ Article 6(2) of the Charter.

⁶ Article 154(1), Constitution of the Republic of Estonia.

Before the local government elections of 2017, there were 213 municipalities in Estonia. The population of 80 per cent of the municipalities was below 5,000 people. A medium-sized municipality had a population below 2,000 people. Such local government organisation would not have been sustainable due to the limited resources and the ageing population.

If a local authority cannot fulfil all the local government functions due to a lack of capacity,⁷ the result will be a failure to guarantee the fundamental rights of its residents in a worst-case scenario. For instance, the Supreme Court en banc found that it is not acceptable under Article 28 of the Constitution for a situation to exist where guarantees of key fundamental social rights, in so far as the local authority's responsibility is concerned, vary greatly across the different regions of the state depending on differences in the financial capacity of the municipalities. The Court noted that the state cannot allow a situation to arise in which the availability of vital public services will largely depend on the financial capacity of the municipality which is the person's place of residence.

Nevertheless, cutting costs at the local level was not the initial reason for launching the administrative reform or the direct expected primary objective; rather the goal of the reform was to merge municipalities resulting in a system of local government that would guarantee the protection of the fundamental rights of local citizens. According to constitutional law, local authorities are under the obligation to guarantee

⁷ In paragraph 53 of Supreme Court en banc judgment No 3-4-1-8-09 of 16 March 2010, local matters are defined as follows: 'On the basis of the substantive criterion, local matters are those matters which arise from the local community and concern it and are not within or constitutionally assigned to the area of competence of a national authority on the basis of a formal criterion. The legislator has the right to make the fulfilment of a certain local function mandatory for the local authority (statutory function of the local authority) if it is an adequate measure for the achievement of the goal promised by the Constitution in the context of self-government. Therefore, local government functions fall within the local government functions arising from the law (also 'mandatory local government functions') and other functions (also 'voluntary local government functions'), the fulfilment of which is not prescribed by law.' <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-8-09>.

the subjective constitutional rights of the individual as the holders of fundamental rights.⁸ In order to do so, the guarantor of the fundamental rights must be professional and sufficiently capable.

In order to ensure that the organisation of local government in Estonia is constitutional, the Administrative Reform Act established the legitimate purpose of the reform: to result in the formation of municipalities with sufficient capacity to be able to perform all the functions prescribed to them by law and guarantee the high quality of the public services being provided; that is, to guarantee the protection of the fundamental rights of individuals anywhere in Estonia.

As the foundations of the administrative reform were being discussed, there was a prevailing consensus that a two-tier local government system was to be ruled out because the size of the Estonian state would make this unreasonable both in substantive terms and in terms of the use of resources. The formation of second-level local authorities would not solve the issue of the lack of constitutionality in small rural municipalities. No regionalisation trends have been observed in Europe either.

A solution that involves centralising the municipal functions that many or most local authorities struggle to cope with is not preferred either, since that would involve a departure from the actual substance of local government, which is to organise the addressing of local matters. Such an approach did not meet the approval of the local authorities either.

Therefore, should increasing the capacity of local authorities be achieved through mandatory cooperation or merging?

While earlier critics of the administrative reform (including the local authorities in the court dispute concerning the constitutionality of the

⁸ See the comments to Chapter II in the annotated edition of the Constitution of the Republic of Estonia, <http://www.pohiseadus.ee/index.php?sid=1&ptid=12>.

Administrative Reform Act⁹) expressed as one of the arguments against the reform that instead of merging municipalities a milder solution urging local authorities to cooperate in the provision of public services should be preferred, the preparation of the draft Administrative Reform Act was based on merging as a more effective measure for increasing capacity.

In actual practice, local authorities did not demonstrate any noticeable cooperative initiative. Cooperation did not function due to a number of reasons, for example, political rivalry and administrative complexity, which requires both legal and expert competence from the local authorities.

It is also clear that the management of a specific municipality through local government bodies (a municipal government or council) cannot be delegated to the authorities of another municipality.¹⁰ This means that cooperation can be achieved in the provision of only a few public services, which will not result in a substantial increase in overall capacity for local government. Still, the question of whether cooperation in the performance of functions should be mandatory for local authorities was touched upon during the discussions held as part of the preparation of the administrative reform.

Should the Administrative Reform Act only regulate the merging of municipalities or also provide for the complete review of local government functions? Should a special act be drawn up and how should it be titled?

When the draft Administrative Reform Act was circulated for approval, discussion at government meetings and read in the *Riigikogu*, comments were made that because the changes would primarily pertain to the

⁹ See Constitutional Review Chamber of the Supreme Court judgment No 3-4-1-3-16 of 20 December 2016, <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-3-16>.

¹⁰ For example, municipal council A cannot authorise municipal council B to issue A's legislation; legal acts apply only within the administrative territory of the relevant local authority (Article 7(3) of the Local Government Organisation Act).

administrative-territorial organisation of municipalities, it should be titled, for example, the 'Administrative-Territorial Organisation Reform Act', rather than the 'Administrative Reform Act'. The notion of an administrative reform was considered to be broader than the merging of municipalities.

The Ministry of Justice doubted that a new separate act needed to be prepared for the implementation of the reform because it found that adding amendments that would provide for the reform; for example, to the Territory of Estonia Administrative Division Act and the Promotion of Local Government Merger Act, was a possible option.

The Ministry of Finance would not agree with the above opinions because the notion of the 'administrative reform' had become ingrained in the public mind as synonymous with changing the administrative-territorial organisation of municipalities. A separate act was found to be necessary to emphasise the importance of the reform and for the timeframe of the reform to be universally understood. If amendments were added to other acts, the implementation of the reform would be even more complicated.

The initial ambition involved giving some new functions over to local authorities in the process of the administrative reform after the mergers. This plan was, however, rather quickly abandoned due a lack of political agreement.

As became apparent in practice later, the preparation of a separate act was the only right choice for the sake of legal clarity. Introducing a major reform involving amendments to other legal acts would have over-complicated the text and caused confusion in the references between the new act and existing laws, as to what is applicable and what not. A separate act would also be easier to understand for the addressees of the regulation, that is, the local authorities.¹¹

¹¹ <https://eelroud.valitsus.ee/main/mount/docList/7a8fcd91-77ec-4293-8555-09c23c1081a3>.

In addition to the provisions of the Administrative Reform Act (which are of a temporary nature), the Territory of Estonia Administrative Division Act and the Local Government Organisation Act were supplemented with permanent amendments that are also applicable to any future municipal mergers (for instance, the regulation on the formation of rural municipal districts and the amendment of merger agreements).

Searches for an objective indicator of the capacity of the local authority: should an estimation criterion or a specific numerical minimum size criterion be used?

During the preparation of the draft Administrative Reform Act, the number of residents was selected as the indicator of the capacity of local authorities because of its objective nature.¹²

Had only indicators that require broad discretion been selected as the core criteria of the administrative reform; for example, by focusing only on the evaluation of the circumstances and impacts listed in Article 7(5) of the Territory of Estonia Administrative Division Act¹³, it would have been extremely difficult to prove that the merging of these particular municipalities was optimal. A major part of the estimated impact is merely a prediction that would largely depend on the decisions – made by the municipalities to be merged and formed as the result of merging – on how to guarantee the provision of public services and which model of the internal organisation of the local authority to choose (for instance, whether rural municipal districts, administrative centres or regional departments

¹² As considered in detail in the explanatory memorandum to the draft Administrative Reform Act, the reasoning behind selecting this criterion is not repeated here. See <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/fec18826-0e43-4435-9ba8-598b6ed4ea40/Haldusreformi%20seadus>.

¹³ Under this provision, the following must be considered in the process of merging municipalities: (1) historical reasons; (2) effect on residents' living conditions; (3) residents' sense of cohesion; (4) effect on the quality of public services; (5) effect on administrative capacity; (6) effect on the demographic situation; (7) effect on the organisation of transport and communications; (8) effect on the business environment; (9) effect on the educational situation; and (10) effect on the organisational functioning of the municipality as a common service area.

would be created in the merged municipalities). The above implies that such objective criteria only allow the foreseeable impact of the merging of particular municipalities to be predicted based on current trends, but do not allow it to be definitively proven that the merging of municipality A with municipality B will result in the formation of a certain specific municipality, because it is the particular local authority that establishes the internal structures and the organisation of public services.

Both the expert committee on the administrative reform formed by the directive of the Minister of Public Administration and the central government considered other potential criteria in detail, but still arrived at a fairly unanimous conviction that the number of residents is the fairest and the most objective. The other options would have been much more subjective and less precise, not to mention their potential for being endlessly challenged and manipulated.

The Administrative reform Act, for the first time, established the minimum number of residents which indicates the capacity of the local authority and correlates this with the functions prescribed to a local authority by law. Namely, under the Administrative Reform Act,¹⁴ the local authority can guarantee it has the professional capacity necessary for managing its functions as prescribed by law and to provide high-quality public services to all its residents provided that the municipality has at least 5,000 residents (hereinafter the criterion for the minimum size of a municipality).

Still, this merely establishes the minimum size of a municipality, and not the ideal and optimal size prescribed by the state. Expert opinions showed that a clear economy of scale and increased financial capacity was noticed in municipalities with at least 5,000 residents. According to experts, the recommended size of a municipality would be at least 11,000 residents.¹⁵

¹⁴ Article 3 of the Administrative Reform Act.

¹⁵ Article 1(3) of the Administrative Reform Act.

The state decided to allocate another half a million euros in merger grants in order to aid the fulfilment of the recommended criterion or of the formation of county-sized municipalities during the round of mergers initiated by the municipal councils. Unfortunately, there were in fact no mergers initiated by municipal councils that would result in the formation of a county-sized municipality.

Discussions in the central government came to the conclusion that for the mergers initiated by the government to be painless, the Act is to establish that the central government shall initiate a merger when the number of residents in a rural municipality is below 5,000 and shall not use the recommended size of a municipality (at least 11,000 residents) as a basis.

The government was given the obligation to propose an additional merger for those municipalities where the municipal council had initiated a merger forming a municipality with fewer than 5,000 residents except when this council had applied for an exemption on the basis of Article 9(3) of the Administrative Reform Act.

The application of the criteria and exemptions created heated discussion when the draft Administrative Reform Act was circulated for approval and read in the *Riigikogu*. The Pro Patria and Res Publica Union as well as the Estonian Free Party believed that the requirement of 5,000 residents was too small, while others found that the requirement of 5,000 residents was too large (Conservative People's Party of Estonia) or that the reform could only be implemented on the initiative of municipal councils, and the 5,000-resident criterion could not be mandatory (Centre Party). In the end, this criterion was still a political compromise that was indeed an indicator suggested by experts and based on objective calculations. Looking into the future and considering the falling population, the legislator might as well have increased the criterion (for instance, to the recommended size of the municipality) in order to provide an even more efficient boost to the municipal development.

The process of establishing the criterion of the minimum size of a municipality is described in more detail in Veiko Sepp's and Rivo

Noorkõiv's article 'The Central Criteria for the Administrative Reform'.

In the court dispute concerning the constitutionality of the Administrative Reform Act, the Supreme Court found that, as far as the criterion of the minimum size of a municipality is concerned, there is no reason to doubt the legislator's assumption that the formation of larger municipalities could improve the capacity of local authorities to provide public services, and deemed the criterion to be constitutional.¹⁶ The Court agreed that municipalities with more than 5,000 residents can be expected to perform the functions assigned to them better than municipalities with fewer residents and emphasised that the establishment of the basic principles regarding the capacity of local authorities is a matter of national importance on which only the *Riigikogu*, and not the judiciary, is competent to decide.

The critics of the administrative reform also challenged the criterion of the minimum size of a municipality by claiming that minimum standards for the public services provided by local authorities should be developed in order to demonstrate their factual capacity. Given the fact that, in accordance with the principle of the right to self-government, municipalities have the right to make decisions on the specific method and procedure for, as well as frequency of, providing public services in the process of performing local government functions, the establishment of a mandatory standard by the state would be an unreasonable violation of the municipalities' right to self-government.¹⁷

¹⁶ Paragraphs 119 and 120 of Constitutional Review Chamber of the Supreme Court judgment No 3-4-1-3-16 of 20 December 2016, <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-3-16>. <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-3-16>. The Court also noted: 'The fact that the legislator attempted to promote the formation of larger municipalities in other ways before establishing the minimum number of residents should be taken into account, having for that purpose passed the Promotion of Local Government Merger Act as early as 2004. However, this measure proved to be ineffective, because there were 213 municipalities in Estonia as of 1 January 2016 according to Statistics Estonia data. Neither did opportunities for local authorities to cooperate significantly improve their capacity.'

¹⁷ Still, the law must establish the necessary basic standards for the protection of the fundamental rights of residents. Local authorities must not impose restrictions on fundamental rights.

How is it possible to maximise the results achieved in the course of the administrative reform while municipalities' right to self-government remains safeguarded? The implementation of the administrative reform in two stages

Before the administrative reform of 2017, local authorities were rather seen as community self-governments or a symbiosis of the community and state self-government theory.¹⁸

According to the theory of community self-government, the state is not to interfere with the municipalities' right to self-management at all or is to do so in highly exceptional and limited cases. Advocates of the community self-government model regarded municipalities as something of a state within a state and rather denied the central government's jurisdiction over changing their administrative-territorial organisation, which is, essentially, the transformation of the local government system by the state on the basis of development needs, the socio-economic situation or other considerations. The supporters of this approach have for decades also only favoured voluntary mergers of municipalities in Estonia; these have not, however, resulted in numerous mergers in any country despite state financial stimuli.

At the same time, legal theory has not been able to define 'community'; that is, to determine the characteristics and territorial scope of a community. There is no common understanding of whether a community is linked to the identity of place, or whether the entire population of a municipality, or some distinct subset of the population, can be regarded as a community.

Still, arguments for the need to protect a local government system based on abstract communities were often voiced in the form of

¹⁸ The theory of community self-governments is based on the ideas of natural law, which recognise local authorities as the source of power and justify the state's obligation to respect the freedom of community administration and the inalienability of community rights, which is what guarantees local authorities considerable autonomy (right to self-management). See the annotated online edition of the Constitution of the Republic of Estonia, 2017, <http://www.pohiseadus.ee/index.php?sid=1&ptid=170>.

dogmatic political statements. For example, in their rhetoric, those opposing the administrative reform would often protest that the merging of municipalities would result in the disappearance of unified communities, and decision-making would be removed from the population, so that local matters could no longer be organised in accordance with the European principle of subsidiarity. What they did not take into account was the fact that the principle of subsidiarity does not only imply that public services are provided as close as possible to home; it also means that the authority providing the function is to be adequate and the performance of the function is to be as effective and sustainable as possible.

Another argument against the reform was that since local authorities had the right to have legal personality (i.e. the right to exist), the state could only intervene in changes to the organisation of the administrative-territory of municipalities when there was a legitimate objective for implementing the change and the intervention was necessary, appropriate and moderate¹⁹ (i.e. a large-scale proportionality review must be performed).

According to legal scholars, the Constitution does not guarantee the status quo to a specific rural municipality or city as far as the size of their administrative territory or even the preservation of their legal personality is concerned. At the same time, it has been found that the termination of the legal personality of local authorities implies that the state government will meet various formal prerequisites (a hearing) and material prerequisites (identification and consideration of the interests of various parties, the principle of proportionality, constitutional principles: rule of law, democracy, social justice).²⁰

It has also been found that changes in administrative-territorial organisation should be accompanied by changes in the functions

¹⁹ Also see the opinions of the local authorities in court case no. 3-4-13-16 concerning the constitutional review; <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-3-16>.

²⁰ Constitution of the Republic of Estonia, annotated edition, 2008, p. 866.

performed by local authorities. In other words, administrative reform for the sole purpose of changing administrative-territorial organisation is criticised in legal literature.²¹ However, this view is not supported with substantive arguments.

Similarly, the dominant dogma in political rhetoric for years was that changes to the administrative-territorial organisation of municipalities could only be made on a strictly voluntary basis, since changing the administrative-territorial organisation is a local matter and not a state matter although international practice did not support such a position.

Taking into account the cautiousness and reservation towards the implementation of the administrative reform on the initiative of the state expressed in legal literature and political statement, the Administrative Reform Act worded the execution of the mergers in two stages: first those initiated by municipal councils and then, if municipalities did not merge at all or did not meet the minimum size criterion despite merging during the stage of mergers initiated by the municipal councils, mergers initiated by the central government.

The first stage, the so-called voluntary merger stage, implied merger negotiations and the submission of merger applications and documentation to the county governor by 1 January 2017 at the latest. The administration reform clearly targeted the merging of municipalities on the initiative of municipal councils, so a decision was made to create an incentive for mergers initiated by the municipal councils in the form of doubling the merger grant (compared to the regulation effective until 1 January 2018) and additional aid to those municipalities that would have more than 11,000 residents or form a county-sized municipality as the result of the merger. Another attempt involved securing increased termination-of-service compensation for the heads of rural municipalities, mayors and chairpersons of municipal councils.

²¹ See, for example, https://haldusreform.fin.ee/static/sites/3/2012/09/ekspertarvamus_olle_ps-riive.pdf

The above grants and compensations were meant to serve as social guarantees for the heads of local authorities because their statutory social guarantees are more limited than those of local government officials and employees, and at the same time, as incentives to promote mergers. Earlier mergers had clearly shown that the process would be successful where the head of the local authority led the merger. The Act ruled out the payment of compensations, as in Article 54¹(3)–(4) of the Local Government Organisation Act, only to those heads of local authorities who would continue working in the same position in the local authority formed after the merger (the former head of a rural municipality, the head of a rural municipality or mayor in the new local authority, the former chairman of the municipal council as the chairman of the municipal council in the new local authority).

In practice, the regulations were often approached in a casuistic manner. For example, a motion of no confidence in the heads of municipalities and municipal council chairmen who had effectively spearheaded mergers in good faith would be expressed just before the day of the municipal council elections to avoid paying compensations, and a new head of the rural municipality or a municipal council chairman would be promptly chosen, who would receive the compensation prescribed by the law in exchange for a very short term in office. There were also numerous cases of manipulation with leading positions in the new municipalities formed as a result of mergers; for instance, the former head of the municipality would be appointed chairman of the municipal council, not head of the municipality, only for the person in question to receive compensation in the amount of an annual salary although they would actually continue working in the new local authority. The author believes that such a reprehensible practice and manifestations of political culture could have been prevented if the Administrative Reform Act established that compensation would not be paid also in cases where the head of the municipality was elected chairman of the municipal council or vice versa.



During the planning of the administrative reform process, there was the hope that most local authorities would reach mutual agreements during the first stage of mergers initiated by municipal councils. This is what actually happened in many places. The photograph shows a fragment of the joint meeting of the municipal councils merged to form Valga rural municipality after the approval of the decision. Source: Arvo Meeks / Valgamaalane.

Another additional incentive in an attempt to motivate municipalities to merge on their own initiative was the fact that the provisions of the Promotion of Local Government Merger Act providing for merger grants to be allocated to the municipalities merging on the initiative of the municipal councils per standard procedure (that is, outside the administrative reform), were deemed ineffective as of 1 January 2018. Therefore, the amendments clearly signalled that further mergers would take place without government grants, so it would be worthwhile for local authorities to use the last opportunity to receive financial support for the merger from the state.

A decision was made to give the central government in chapter 3 of the Administrative Reform Act the right to intervene in changing the administrative-territorial organisation only when the first stage of merging was not the goal of the administrative reform and was not sufficiently effective from the perspective of the criterion of the minimum size of a municipality; that is, when a merger initiated by the municipal council still resulted in forming a municipality with fewer than 5,000 residents or if a municipality with fewer than 5,000 residents never took part in any merger negotiation group and did not submit a merger application to the county governor by 1 January 2017.

Nevertheless, the minimum size of a municipality was not an absolute criterion because it was found in the course of preparing the draft Act that it would be reasonable for the Act to comprehensively provide for exceptional cases in which local authorities could apply with the central government for an exemption from the requirement to merge.²² In addition to these exceptions, one more opportunity to opt out of merging was left for local authorities. Namely, after receiving a proposal for a merger from the central government, local authorities had the option of proving, under the Administrative Reform Act and the Territory of Administrative Division of Estonia Act,²³ that they are able to ensure administrative capacity and quality of public services without merging,

²² Article 9(3) of the Administrative Reform Act allows the central government to refrain from initiating the alteration of the administrative-territorial organisation of a municipality that does not meet the minimum population size criterion where: at least two municipalities with a total area of 900 square kilometres or more and a combined population of at least 3,500 have merged voluntarily; the relevant municipalities are maritime island municipalities; the new municipality resulting from a voluntary merger borders with a temporary control line of the Republic of Estonia within the meaning of Article 22(1) of the State Border Act on land, has a total population of at least 3,500 and is formed of at least four historically, culturally and geographically connected municipalities or parts thereof; or the population of the merging municipalities has dropped below 5,000 within the past year (by 1 January 2017).

²³ Article 9(9)1) of the Administrative Reform Act combined with Article 7(5) of the Territory of Estonia Administrative Division Act.

despite the considerations presented by the central government.

Therefore, the central government was given the discretionary power in the mergers initiated by the state or in deciding not to implement them while exercising this power was still limited by the law because local authorities had to thoroughly assess arguments against merging. The legislator deliberately left rather little room to manoeuvre in which the core criterion of the administrative reform could be disregarded, given that otherwise growth in the capacity of local authorities could not be achieved, and the goal of the administrative reform would not be fulfilled.

Numerous local authorities had started merger negotiations before the draft Administrative Reform Act was submitted to the *Riigikogu*. Still, it can be concluded with the benefit of hindsight that there would have been more mergers initiated by municipal councils in the end if not for the Estonian presidential elections, which took place at the same time as the merger negotiations – due to the fact that some candidates made election campaign promises not to pass the Administrative Reform Act should they be elected President, so that some of the local authorities, which were already deep in negotiations, suddenly renounced the idea of merging. What also played a part was, undoubtedly, the fears of local authority leaders for their future.

At the same time, the change of government and the dispute in the Supreme Court over the constitutionality of the Administrative Reform Act at the end of 2016 resulted in the conviction of local authorities that mergers would not be carried out, which was further strengthened by some former opposition politicians, because of the steps that the central government would take next and the expected court judgment (there were high hopes that the Supreme Court judgment would be in favour of the local authorities) (see Argo Ideon, 'The Main Political Attitudes and Arguments Prior to the Administrative Reform: Why was it successful this time?'). What was nevertheless surprising was the strong opposition

to the administrative reform in some municipalities, which was amplified by numerous politicians and top lawyers, in a manner that was rather unstatesman-like.²⁴

The implementation of the reform purely at the initiative of municipal councils would not have been possible even if more substantial financial aid from the state had been offered. For years before the administrative reform, the legislator had provided for paying merger grants to the local authorities merging at their own initiative,²⁵ and the amount had been increased on several occasions.

Practice showed though that using merger grants alone as an incentive did not result in systemic mergers of municipalities to such an extent that would restructure the entire local government system and replace the administrative reform.

Judging by the conservative opinions about reforming the local government organisations system expressed by experts and published in legal literature, an alternative solution implying that the state could have implemented the administrative reform only on the central government's initiative was never seriously considered. In such cases, the local authorities would not have had the discretionary power to choose their merger partners since the state would have 'mapped it out' or given local authorities a list of merging areas and required them to merge with another municipality within their area.²⁶

This is why the decision selected in the course of preparing the Administration Reform Act implied that local authorities would still have

²⁴ It is understandable that law firms act in the interests of their clients, but in this case they had been actively lobbying for local authorities to challenge the Administrative Reform Act and the regulations prescribing mergers. Which ultimately resulting in an irresponsible wasting of public funds.

²⁵ Promotion of Local Government Merger Act, in force from 25 July 2004. Amended to increase merger grants by the Act that amends the Territory of Estonia Administrative Division Act and other related acts, publication citation RT I, 19.3.2013, 1.

²⁶ In the dispute over the constitutionality of the Administrative Reform Act, the Supreme Court did not rule out the possibility that the legislator itself might establish the appropriate local government system.

broad discretionary power in selecting their merger partners (during the first stage of merging) even in cases where, as a result of the merger, the rural municipality or city had to change the county it belonged to (i.e. the merger crossed a county border). In order to guarantee the right to self-government for municipalities, the central government was deliberately not allowed to refuse to issue regulations approving the mergers initiated by municipal councils even if, during the first stage, the local authorities applied for a merger that would result in the formation of a municipality with fewer than 5,000 residents or if a merger did not guarantee the consideration of the impact and circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act in the best possible way; for example, if the newly formed municipality had several centres and was weakly connected. This is certainly one of the valuable lessons of the 2017 administrative reform.

If any further possible changes to the local government system were to be implemented in two stages (provided, of course, that there is sufficient time for such a reform), local authorities could be allowed to choose merger partners, but the state should take the lead in directing mergers if they do not comply with the positive impacts listed in Article 7(5) of the Territory of Estonia Administrative Division Act and should not approve such 'illogical' mergers.

During the preparation of the draft Administrative Reform Act it was decided that the state would only be allowed to offer guidance about the mergers initiated by municipal councils through regional committees formed by the state,²⁷ whose role was to advise local authorities, the Ministry of Finance and the central government. The most important and

²⁷ On the basis of Article 5(4) of the Administrative Reform Act, regional committees were formed by the central government. Initially the draft Administrative Reform Act established that regional committees would be formed by the responsible minister, but the proceedings in the Riigikogu (including the Constitutional Committee meetings) resulted in deciding that there would be better political balance if regional committees were formed by the government and could not be undeservingly accused of being suspiciously similar to one minister in their views.

challenging task of the regional committees was to advise the central government on where it should make proposals for state-initiated mergers of municipalities with fewer than 5,000 residents. County governors were also involved in the reform process (as members of regional committees), and they supported and advised the local authorities within their counties. The Committees were to assess compliance with the effects and circumstances specified in Article 7(5) of the Territory of Estonia Administrative Division Act and had to consider alternative mergers for municipalities with a population of fewer than 5,000 residents.

As far as the mergers initiated by the central government are concerned, another solution under consideration was that of the state simply not approving mergers initiated by municipal councils that would result in fewer than 5,000 residents. However, such a solution would have been too problematic for the local authorities that had applied to merge because the central government adding a merger partner, and only then approving the merger, could have resulted in unpredictable situations, including political strategising, which would have allowed the merger to slip away. In a worst-case scenario, it could have made some local authorities abandon the idea of merging and initiate litigation against the state.

It was found that by 1 February 2017, the central government could pass merger regulations concerning the local authorities that had applied to merge at the initiative of the municipal councils, and only then use the suggestions of the regional committees to decide which municipalities to merge with, or concerning municipalities with fewer than 5,000 residents it would make a proposal about changing their administrative-territorial organisation even if the stage of the implementation of the government's proposal would require that the merger regulation passed during the voluntary merger stage be modified or annulled.

The only exception was added during the proceedings in the *Riigikogu* when, according to a proposal by coalition representatives,

a provision was included in the Administrative Reform Act²⁸ making it possible for local authorities that do not share a border to initiate changes to the administrative-territorial organisation if a municipality with fewer than 5,000 residents is located between them, and the central government merges that municipality with the municipalities that are applying for a merger initiated by their municipal councils. During the proceedings concerning the draft Act, there was a specific example involving the rural municipalities of Kaiu, Raikküla and Rapla, with Juuru rural municipality, which was within the functional area of Rapla rural municipality, had fewer than 5,000 residents and was located between the territories of the three municipalities, refusing to enter into negotiations with the rural municipalities that would merge to form Rapla rural municipality.²⁹

One of the matters most disputed during the stage of mergers initiated by the central government was which requirements the local authorities should follow in choosing a merger partner for a municipality that had not already merged to form a municipality with more than 5,000 residents. The dilemma was whether the Act should establish that a municipality failing to meet the minimum size requirement should be merged with what is logically a local commuting centre (for instance, a surrounding rural municipality would be merged with a central municipality) or an arithmetic operation should rather be used as the basis, and the municipality should be merged with the neighbour which has the number of residents necessary for the two to formally meet the minimum size criterion. In other words, if the options are merging a municipality that fails to meet the population size criterion with an adjoining one which also fails to meet the criterion, or merging it with a capable municipality that meets the criterion and has stronger ties with

²⁸ Article 7(3) of the Administrative Reform Act.

²⁹ https://haldusreform.fin.ee/static/sites/3/2017/06/20170618_rapla_kaiu_raikkula_juuru_sk.pdf.

the former while merging with it will have a more positive effect on the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act, which merger should be chosen?

Because both the goal of the administrative reform (forming municipalities with at least 5,000 residents) had to be achieved and the circumstances and impacts listed in Article 7(5) of the Territory of Estonia Administrative Division Act had to be taken into consideration, it was found that merging a municipality that does not meet the criteria with what is logically the centre would be justified. This point of view was also covered in the explanatory memorandum to the draft Administrative Reform Act. Otherwise, if the municipalities to be merged had not cooperated or acted in the same functional area before, the internal organisation of the local authority and the provision of services would become more complicated. Therefore, the central government was allowed to initiate a merger of a municipality also with such a municipality that already met the minimum size criterion or even the recommended size criterion.³⁰

The administrative reform has been criticised because the state regrettably abandoned the local commuting centre model in the implementation of the reform. In fact, what was required by the Administrative Reform Act and in the case of mergers initiated by municipal councils or the central government was due consideration of the circumstances and impacts listed in Article 7(5) of the Territory of Estonia Administrative Division Act, which as a whole aimed to facilitate merging municipalities with local commuting centres because this type of merger ensures that the above circumstances are taken into account in the best way possible.

Nevertheless, the Administrative Reform Act did not stipulate that a government-initiated merger should have a predominantly positive effect in terms of each of the individual circumstances and impacts listed in Article 7(5); instead, it required that the overall positive effect of a

³⁰ Article 9(2) of the Administrative Reform Act.

merger outweigh its possible negative effects.³¹ As many local authorities had not experienced active or large-scale cooperation in providing services before merging, there could not have existed any major cooperation networks that would have unambiguously shown the local authorities to be a common cooperation area and would have thus had a positive impact on all sectors.

The authors of the draft Administrative Reform Act relied on the assumption that the formation of larger municipalities would not compromise compliance with the principle of subsidiarity *per se*,³² would not split established communities or reduce the accessibility of public services,³³ since requirements for the quality and accessibility of the services provided for in the Promotion of Local Government Merger Act were to be taken into account when redesigning the internal organisation of the work of the local authorities. Under the above Act,³⁴ a municipality formed as a result of a merger must guarantee accessibility and quality of public services to the residents of the rural municipality or city at least at the same level as before the merger of the municipalities. The provision of public services must be organised in all the settlements where a rural municipal government or city government was situated before the merger.³⁵

³¹ The Supreme Court also supported this opinion in disputes concerning the merger regulations issued by the central government.

³² The principle of subsidiarity does not mean that it is necessarily the public authority closest to the person that will be performing the public functions; the appropriateness and efficiency of the performer of the public functions is also important.

³³ The mergers of municipalities performed before the administrative reform largely had a positive effect on the provision of public services; financial capacity and investment capacity improved, which allowed local authorities to implement some important projects. See e.g. https://haldusreform.fin.ee/static/sites/3/2012/09/ekspertarvamus_sootla_omavalitsustehine-miste-mojudest_09-09-2013.pdf

³⁴ Article 4 of the Promotion of Local Government Merger Act.

³⁵ During the first reading of the draft Administrative Reform Act in the *Riigikogu*, Arto Aas, the Minister of Public Administration, explained: 'It is not possible to agree about everything down to the smallest detail in advance; not everything can be solved at the legislative level. It is important to understand that the administrative reform as such will not open or close down a single school, kindergarten or library. These are issues for local people to consider and decide as council members, mayors or heads of the local authority.' See <http://steno-grammid.riigikogu.ee/et/201604061400#PKP-18642>.

Through the judgment concerning the constitutional review of the Administrative Reform Act,³⁶ the Supreme Court clarified the scope of municipal autonomy and the legislator's powers in restricting the municipalities' right to self-government, which had previously rather been a 'no go zone', and in designing the system of local government (the positions of the Supreme Court are described in more detail in Vallo Olle and Liina Lust-Vedder's article 'The Protection of the Constitutional Guarantees for Local Government during the Administrative-Territorial Reform'). Although the constitution provides a simple derogation of the municipalities' right to self-government,³⁷ the opinion that had prevailed so far was that changing the administrative-territorial organisation of municipalities on the initiative of the central government was a rather excessive infringement of their right to self-government. Legal scholars have also found that the justification of the foundation of the administrative reform should also include a proportionality test to verify that the solution planned in accordance with the Act is suitable, necessary and reasonable.³⁸ The same principle was used as the basis for the explanatory memorandum to the draft Administrative Reform Act, and the justifications of the infringements of the constitutional guarantees for local authorities as well as the thorough explanation of the impact of the implementation of the Act. At that moment, there was no certainty

³⁶ Constitutional Review Chamber of the Supreme Court judgment No 3-4-1-3-16 of 20 December 2016: <https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-3-16>.

³⁷ Under Article 154 of the Constitution, local authorities must discharge their duties autonomously in accordance with the law. Obligations may be imposed on a local authority only pursuant to the law or by agreement with the local authority. Therefore, the Constitution makes it possible to limit the autonomy of a local authority on the basis of any law even if no agreement with the local authorities is reached concerning the issue.

³⁸ In accordance with the principle of proportionality, an infringement of a right must be appropriate (the measure must contribute to the achievement of the objective), necessary (the objective cannot be achieved by any other measure that would be less of a burden for the person but at least as effective as the former) and reasonable for the intended purpose (the means used are proportional to the objective). The restriction must not damage protected rights more than is justifiable with the legitimate objective of the regulation. See https://haldusreform.fin.ee/static/sites/3/2012/09/eksperiarvamus_olle_ps-riive.pdf.

that checking the planned measures to ensure they were not arbitrary, as well as emphasising the legitimate goal of the reform would be sufficient for the implementation of the administrative reform.

The Supreme Court found that the legislature has broad discretion over establishing and changing the administrative-territorial organisation of municipalities. Although municipalities do exist in the interests of limiting and balancing the power of the state as well as decentralising the public power, the Constitution does not provide for them to function as states within a state. According to the Court, changing the administrative-territorial organisation of municipalities is also a matter of national importance, and decisions about it are to be within the legislature's competence. Since the Constitution provides for the *Riigikogu's* broad discretion over establishing the administrative division of the territory of the state, the state does not have to meet the proportionality requirements in forming the local government system, but it must fulfil the conditions of the prohibition of arbitrariness.³⁹ The Court found that the reform had a legitimate objective and that the Administrative Reform Act met the conditions of the prohibition of arbitrariness.

In the end, the measure that infringed the municipalities' right to self-government the least was chosen as the administrative reform model, since local authorities were given an opportunity to select merger partners themselves.

³⁹ See paragraphs 89 and 91 of Constitutional Review Chamber of the Supreme Court judgment No 3-4-1-3-16 of 20 December 2016. In accordance with the judgment in question, the court is of the position that the prohibition of arbitrariness means that formal constitutional requirements must be followed in the process of changing the administrative-territorial organisation of the municipality (provision for restrictions in the law). In addition to meeting formal requirements, the changing the administrative-territorial organisation of the municipality must be constitutional in the material aspect; that is, to serve a constitutional purpose and contribute to achieving it (be appropriate for achieving it). At the same time, provisions of Article 158 of the Constitution must be taken into account, according to which borders of municipalities cannot be changed without 1) considering the opinion of the relevant local authorities (see paragraph 88 of the judgment). All of the above requirements were met in the course of preparing the draft Administrative Reform Act.

Should new functions be assigned to local authorities within the scope of the administrative reform?

Although the second stage of the reform planned during the preparation of the draft Act implied reassigning new functions from the county governments, which would cease operation, and from other state authorities to the local authorities of newly formed municipalities, it was emphasised both within the Ministry of Finance and by the Minister of Public Administration during all the proceedings of the Administrative Reform Act in the *Riigikogu* that there was no intention to revolutionise the functions fulfilled by local authorities.⁴⁰ The goal was to assign essentially local government functions, which are performed all over the country, along with funds from the national budget to the local authorities.

As far as the above is concerned, the draft Administrative Reform Act attempted to reconsider the prerequisites for the administrative reform as expressed earlier by scholars of law, according to which the administrative-territorial organisation reform initiated by the state could not be implemented without reforming local government functions. For instance, it was found that such a solution which implies that the territorial change aspect would be implemented in the proposed form separately from changes in the local government functions and financing, could not be regarded as legally correct. It was found that a solution involving the implementation of the package including all changes would meet local

⁴⁰ During the first reading of the draft Administrative Reform Act, Arto Aas, the Minister of Public Administration, said the following about assigning additional functions to local authorities: 'We are looking for ways to make local authorities stronger, to increase the significance of their role and financial support. At the same time, not a single discussion or proposal we received has implied that some kind of revolution (in the functions of local authorities) was occurring in Estonia. For over 20 years, we have actually known that the functions of local authorities and the functions of the central government have more or less been sorted out. Local authorities handle education, social welfare, local roads and infrastructure. No proposals for dramatic changes have been heard in this area. This is merely a pretext to criticise the reform. The mergers are necessary in any case. This will make local authorities more capable, and when they have become more capable, we will be able to have a systemic look at the state level to see what to do next.' <http://stenogrammid.riigikogu.ee/et/201604061400#PKP-18642>.

authorities' legitimate expectations and contribute to legal clarity. In the process, the timeframes for re-assigning various functions could vary, but clarity as to what the reform essentially means from the functional point of view should prevail as of the approval of the framework act.⁴¹

Similar arguments were used by the national associations of local authorities when the draft Administrative Reform Act was circulated for approval. For example, the Association of Municipalities of Estonia found that a major administrative reorganisation requires clarity as far as functions and financing principles are concerned, which the draft was mostly unclear about. The single financial aid package planned in the draft Act was important, but it did not replace a comprehensive, task-oriented and forward-looking system of financing local authorities.⁴²

The proposal made by the Association of Estonian Cities when the draft Act was circulated for approval was that provisions linked to the revenue base of local authorities (the principles for strengthening the revenue base and the appropriate financing model) should form a part of the Administrative Reform Act. The Association found that the financing model for the purpose of strengthening local authorities should be approved along with the Administrative Reform Act; therefore, it sought specific proposals for strengthening the revenue base of local authorities as part of the draft Administrative Reform Act.⁴³

Since the minimum size criterion for municipalities established in the Administrative Reform Act is based on the functions assigned to local authorities by existing laws, the local authorities could not claim that they were unaware of the scope of their future functions and therefore unable to estimate the size they should aim for in the merger.

To avoid possible legal disputes over the 'content' of the administrative reform, Article 38 of the Administrative Reform Act established

⁴¹ https://haldusreform.fin.ee/static/sites/3/2012/09/ekspertarvamus_olle_ps-riive.pdf, p. 9.

⁴² <https://eelnoud.valitsus.ee/main/mount/docList/7a8fcd91-77ec-4293-8555-09c23c1081a3>.

⁴³ Ibid.

that it is the task of the ministries responsible for the area to analyse the laws of the area of responsibility in cooperation with the Minister of Public Administration in order to determine the functions that are performed by the stated but are essentially local government functions and could be reassigned to the municipalities to be formed during the administrative reform.

It also sets forth that proposals for amending the laws of the area related to administrative reform be submitted to the central government for approval after the Administrative Reform Act enters into force because, contrary to the initial objective, no agreement with the ministries could be reached about these issues during the proceedings concerning the Administrative Reform Act. Political agreements concerning the re-assignment of the functions had not been made during the draft Administrative Reform Act proceedings either. An agreement on additional functions was only reached in 2017, when the *Riigikogu* passed an act amending the Local Government Organisation Act and other acts related to the implementation of the administrative reform,⁴⁴ and an act amending the Government of the Republic Act and other acts following the termination of the operation of county governments⁴⁵ on 14 June (the new local government functions are described in more detail in Ave Viks' article 'The Design of the Process of the Administrative Reform').

The county government reform was to be implemented at a later stage to avoid creating more confusion for the municipalities newly formed as a result of mergers by assigning them and implementing additional statutory functions.

⁴⁴ <https://www.riigiteataja.ee/akt/104072017002>

⁴⁵ <https://www.riigiteataja.ee/akt/104072017001>

The Supreme Court also took a milder stance in the judgment concerning the constitutionality of the Administrative Reform Act and did not find that the administrative reform could only be implemented while reforming the functions to be fulfilled by the local authorities.⁴⁶

What should the timeframe of the administrative reform be to ensure optimal results?

Initially, the central government's action programme involved the merging of municipalities in two stages so that the mergers initiated by municipal councils would come into force in 2017 along with the regular municipal council elections, and the mergers initiated by the central government would take place one year after the mergers initiated by the local authorities.⁴⁷

As far as the timeframe of the administrative reform is concerned, an agreement was reached in the central government before the Act was drafted that it would be optimal and most reasonable if mergers initiated by municipal councils and the central government alike entered into force simultaneously to keep the development of municipalities 'along the same lines' regardless of whether the merger was initiated by the state or the municipal council and to avoid creating confusion via a long transition period.

⁴⁶ See paragraphs 125 and 130 of Constitutional Review Chamber of Supreme Court judgment No 3-4-1-3-16 of 20 December 2016. In simple terms, the Court noted that although it had not been clear which state functions would in the future be assigned to local authorities at the time of reaching the court judgment, this could not result in the Administrative Reform Act being unconstitutional. The Constitution does not establish that a local authority must be informed in advance of any state functions that are going to be assigned to it in the future. The law also allows the central government to impose such functions on local authorities. Therefore, future amendments to the act and potential problems in financing local authorities were not legal obstacles to the implementation of the administrative-territorial reform initiated by the central government. Therefore, the central government should base its proposals and decisions concerning mergers on the capacity of the local authorities to perform the functions established by existing laws.

⁴⁷ <https://www.riigiteataja.ee/aktilisa/3030/6201/5006/231klisa.pdf>

The national associations of local authorities, the Chancellor of Justice, the local authorities which participated in court disputes as well as numerous members of the *Riigikogu* found that the administrative reform schedule was unreasonably dense and did not essentially allow local authorities to hold merger negotiations.

According to the authors of the draft Act, the schedule established by the Administrative Reform Act was indeed tight but still sufficient for local authorities to finalise the mergers initiated by themselves or the central government so that regular municipal council elections would take place on 15 October 2017.

Deliberate attempts were made to avoid a situation in which, in the case of mergers initiated by the central government, elections would be postponed until the period between regular elections or until the year 2021, when the next regular municipal council elections were to take place. The argument behind the decision was that local authorities had had 21 years to conduct voluntary mergers,⁴⁸ of which the state had also supported mergers with grants for the past 12 years.⁴⁹ The Administrative Reform Act also provides for merger grants, and local authorities will receive compensation for direct and proven merger-related expenses in the case of mergers initiated by the central government.

Local authorities had been generally aware of the criteria to be included in the administrative reform since December 2015, when the Ministry of Finance uploaded the draft Administrative Reform Act⁵⁰ in the Information System of Draft Acts for circulation and approval. By 1 July 2016 at the latest, when the Administrative Reform Act entered into force, all local authorities had been made aware of the reform schedule and criteria.

The practice of voluntary mergers (i.e. those initiated by municipal councils) had also shown that, given good will, it was possible to hold

⁴⁸ The Territory of Estonia Administrative Division Act came into force on 27 March 1995.

⁴⁹ The Promotion of Local Government Merger Act came into force on 25 July 2004.

⁵⁰ <https://eelnoud.valitsus.ee/main/mount/docList/7a8fcd91-77ec-4293-8555-09c23c1081a3>

successful merger negotiations and perform the operations required by the law to apply for a merger within six months. As all municipalities that did not meet the minimum size criterion were obligated by the law to select a merger partner after 1 July 2016, and the law provided for repercussions if the merger application was not submitted to the county governor by 1 January 2017, the overall timeframe of the reform was considered sufficient for local authorities to complete mergers.

One very important argument in the process of preparing the reform schedule was political clarity and legal certainty. Naturally, alternatives were considered here as well.

Still, the completion of mergers initiated by the central government later than October 2017, which would imply off-year elections, would have meant that the development of local authorities and political leadership would have been postponed until an undecided time in the future. Relying on the four-year working cycle of municipal councils is important for legality and allows local authorities to focus on their work. Stretching the timeframe of mergers and organising off-year elections would have created a political vacuum for at least two years, which would have been a financially burdensome process and exhausting for the population.

The schedule in the draft was prepared with due consideration of the fact that the schedule did not rule out or restrict the opportunity for local authorities to turn to the courts for the protection of their rights. On the contrary, the fact that the central government was to approve mergers by issuing a regulation,⁵¹ which is a legislative act, gave local authorities the most effective right to challenge the merger regulations: under Article 7 of the Constitutional Review Court Procedure Act, a municipal council may directly submit a request to the Supreme Court to declare a regulation of the central government which has not yet entered into force to be in conflict with the Constitution or to repeal a regulation of

⁵¹ Articles 8 and 13 of the Administrative Reform Act.

the central government or a provision thereof if it is in conflict with the constitutional guarantees of the local government. Consequently, local authorities did not have to go through the three-stage administrative court proceedings to protect their rights.

At the same time, there was no intention to set forth a separate court procedure in the Administrative Reform Act, since there was no necessity to emphasise that a local authority may turn directly to the Supreme Court in order to challenge a legislative act. The explanatory memorandum to the draft Administrative Reform Act (p. 32) states: 'The regulation format is more appropriate for the central government's proposal since a change in administrative-territorial organisation infringes the municipalities' right to self-government, and, in accordance with the theory of law, such an infringement is to be provided for by a legislative act.'

Similarly, establishing shortened proceedings was not deemed necessary at the time of preparing the draft since setting any additional restriction would have required extremely powerful arguments. In practice, local authorities and their representatives used inaccurate arguments in court disputes concerning the central government's merger regulations, claiming that the government's regulation was essentially an administrative act, which can be appealed against in an administrative court. By doing so, they ignored the point of view expressed in the explanatory memorandum to the draft Administrative Reform Act stating that a regulation as a legislative act can only be challenged in the Supreme Court by way of the constitutional review procedure and not in administrative court proceedings.

It can be said, with the benefit of hindsight, that the unnecessary appeals against the central government's regulations filed with the administrative courts, which were not accepted for proceedings by the administrative courts, could have been prevented by a provision in the Administrative Reform Act that would allow the central government's regulations to be challenged under the Constitutional Review Court Procedure Act, and a specific deadline being set for filing the appeals with

the Supreme court and a shortening of the standard four-month period of the proceedings for resolving such disputes. In such a case, instead of disputing the regulations in the administrative courts, local authorities could have focused on building new municipalities in accordance with the prerequisites.⁵²

Given that local authorities can hypothetically challenge the validity of the central government's regulation directly within a constitutional review court procedure, for which there are no statutory provisions as to the period of time during which provisions can be challenged, it would not have been reasonable to postpone the deadlines of the reform due to unpredictable potential disputes. Regardless of how far the completion date for the reform was shifted, there would always be someone who would like to challenge it at the last moment.⁵³

⁵² Another puzzling fact was the conviction shared by local authorities and their representatives that the courts were able to essentially review and evaluate (in the sense of Article 7(5) of the Territory of Estonia Administrative Division Act) the arguments and considerations in the explanatory memorandum to merger regulations in the case of mergers initiated by the central government. In the court disputes concerning merger regulations, the Supreme Court found that judicial control over the central government's decisions to change the administrative-territorial organisation of municipalities for the purpose of achieving the objectives of the administrative reform was limited. The central government has broad discretion in making decisions about changing the administrative-territorial organisation of a municipality. Moreover, most of the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act are of such a nature that the actual impact of changing the administrative-territorial organisation of a municipality on them can only be evaluated after the municipalities formed as the result of a merger have existed for some time. In addition, the actual impact of the merger on the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act largely depends on the actions and decisions of the local authority being created. The court can only review whether the central government has, in changing the administrative-territorial organisation of the municipality, taken into account relevant and important circumstances and ensured it has not relied on incorrect facts. Among other things, the court can check whether the central government has assessed the justification in the negative opinion presented by the local authority and has presented the relevant reasons as to why it does not consider the local authority's justifications sufficient in the explanatory memorandum to its regulation. See, for example, the paragraph 75 of the judgment concerning Koeru rural municipality: <https://www.riigikohus.ee/et/ lahendid?asjaNr=5-17-21/10>.

⁵³ The initiation of a court dispute does not suspend the validity of a regulation. The regulation remains in force until the Supreme Court has deemed it to be contrary to the Constitution and invalid.

Similarly, it was not considered necessary to establish variations for cases where mergers had already taken place, but potential court disputes would only be resolved after the date when the results of municipal council elections were announced. As the Administrative Reform Act provides for the obligation to grant a hearing to local authorities for presenting reasoned objections to the merger before the central government's final decision in cases of mergers initiated by the central government and for the central government's obligation to assess the validity of the objections, it was found that any possible abuse of this discretion carried out by the central government could be ameliorated in such a manner, and the use of the right to a hearing could prevent court disputes or at least reduce their number.

Since neither the Supreme Court in the constitutional review court procedure nor the administrative court in the administrative court procedure have jurisdiction over assessing the validity of arguments and considerations instead of an administrative authority, – such obligation to justify and power of discretion rests with the central government (which, in turn, relied on the expert assessments approved by the regional committees for the administrative reform), – numerous court disputes were not predicted nor were the prospects of successful claims or appeals considered very likely during the preparation of the draft Administrative Reform Act.

How can the residents' opinion be ascertained in the case of mergers and changes to the borders of administrative units planned in the course of the administrative reform?

One issue that drew a number of negative opinions during the implementation of the reform was the obligation to carry out public opinion surveys in the case of mergers initiated by municipal councils or the central government, established in the Administrative Reform Act.⁵⁴

⁵⁴ Articles 6 and 12(2)1) of the Administrative Reform Act.

The obligation to consult with the local communities when changing municipal borders arises from Article 5 of the European Charter of Local Self-Government. The Charter does not specify for the contracting states how the local communities should be consulted or stipulate that the residents' opinion is binding. The explanatory memorandum to the Charter rather explains that asking for public opinion serves the purpose of engaging the public and providing information. If a contracting state wishes to, it can also hold a referendum to ascertain the residents' opinions. The Administration Reform Act relies on the principle that the involvement of residents through surveys must be guaranteed to local authorities; still, the result of the survey is not binding for decision-makers but should merely be regarded as one of the arguments in making the decision. By contrast, the public perception was rather that surveys of residents were to be binding.

The Supreme Court found though that the provision of the residents' opinions could also come under the jurisdiction of the local authorities,⁵⁵ so the residents of the relevant municipality did not necessarily need to be asked for their opinion about the merger.

Should there be an option of preserving 'city' as the administrative unit in the case of a merger of a city and rural municipality?

Earlier discussions of the administrative reform would often encounter a problem presented by local authorities: since, according to the laws, it was not possible to preserve a city's historical name in the meaning of an independent municipality in the case of a merger, the idea of the

⁵⁵ Paragraph 136 of the judgment concerning the constitutionality of the Administrative Reform Act: the chamber believes that the European Charter of Local Self-Government does not require that the opinion of the local residents be heard. Article 5 of the Charter states: 'Changes in local authority boundaries shall not be made without prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by statute.' Therefore, the Charter leaves it for the contracting state to decide whether to hold a referendum, which is binding in accordance with the legal order of Estonia, or a public survey, which does not have legally binding force in accordance with the legal order of Estonia, or collect the residents' opinions under the jurisdiction of the local authority.

merger would rather be abandoned entirely. It is in order to encourage municipalities to merge with the city that is logically their commuting centre that the Administrative Reform Act establishes an exception in the form of the option of preserving 'city' as the type of municipality to be formed when merging a city and a rural municipality.⁵⁶ As the result, rural settlements (villages) also belong to the newly created administrative territory of the city.

Similarly, in accordance with the equal treatment principle, an opportunity to restore 'city' as the type of administrative unit in the case of a merger was provided for cities that had lost their status as independent cities as a result of a previous merger and had become settlements or cities without municipal status.

The option of restoring 'city' as the type of municipality was not used in the course of the administrative reform, but had this provision not been included in the Act, the city of Pärnu, for instance, would not have been formed within its new borders (Audru and Paikuse rural municipality merged with the city of Pärnu, and Tõstamaa rural municipality was merged with it by the central government).⁵⁷

Initially, the draft Act established that 'city' as a municipal type would be preserved if the number of residents was at least 5,000 people as of 1 January 2017 according to the population register, and if the population of the city constituted at least 1/2 of the total number of the residents in the merged municipalities. However, conditions for preserving 'city' as a municipal type were withdrawn during the proceedings in the *Riigikogu*, as they would have aborted mergers that had been initiated in municipalities unable to provide the required city-hinterland ratio before the discussions of the draft Act started.

⁵⁶ Article 14 of the Administrative Reform Act.

⁵⁷ Haapsalu, Narva-Jõesuu, Paide, Pärnu and Tartu remained cities with municipal status as a result of the reform.

Municipalities formed as a result of merging and named 'cities'

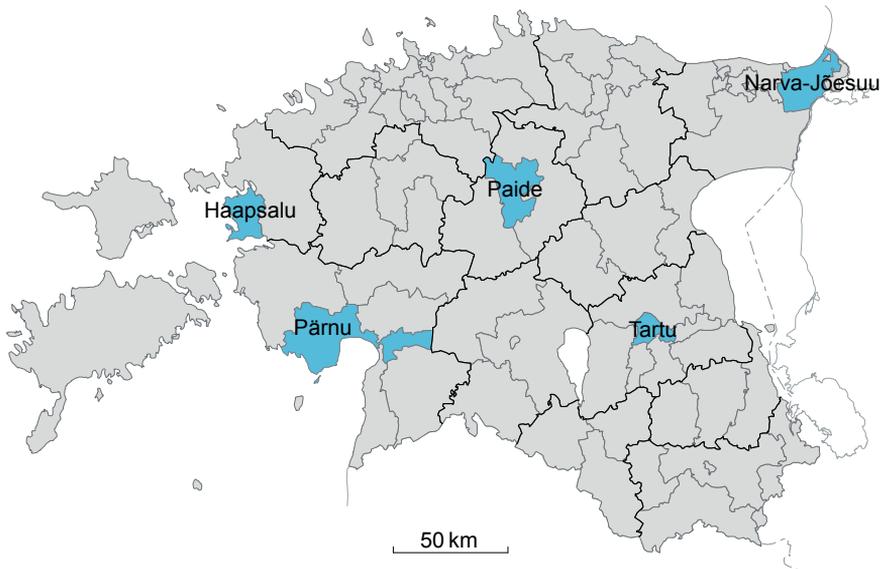


Figure 1.

Therefore, another question that immediately arose was how to refer to the territory of a merged city because the term 'city without municipal status' could not be used for a city formed as the result of a merger. The question was discussed by the Place Names Board, the administrative reform expert committee, the central government and the Constitutional Committee of the *Riigikogu*.

The initial suggestion of the Place Name Board members was 'urban core' (tuumlinn), which was not approved when the Act was circulated for approval. Neither was the term 'urban centre' (keskuslinn) considered suitable.

It was only during the proceedings in the *Riigikogu* that a proposal was made in the course of the Constitutional Committee's discussion not

to use the separate terms 'city without municipal status within a rural municipality' and 'city without municipal status within a city' to refer to such settlement units, but to adopt the common term 'city as settlement unit'. In practice, the identical name of the 'city' as an administrative unit and 'city' as a settlement unit has still created confusion; for example, in writing addresses (an address in the city of Pärnu after merging should consist of the following parts: Pärnu County, city of Pärnu, city of Pärnu, 1 Rütli Street; however, an address in Paikuse rural municipality, which merged to form the city of Pärnu, should look like Pärnu County, city of Pärnu, Silla village). This issue could benefit from a better legislative solution in the future because the current arrangement can be misleading.

Could a regulation about forming rural municipal districts or city districts be used to involve residents in local matters, and should a mandatory model be established?

While earlier administrative reform plans also discussed the option of making it mandatory for local authorities to form rural municipal districts or city districts (hereinafter together referred to as the municipal district) in the territory of merged rural municipalities and cities to ensure the accessibility of public services and involvement of local residents, it was found during the development of the draft Administrative reform Act that the formation of municipal districts could only be provided for in a voluntary form.

It was also found that the performance of municipal functions through municipal districts had to be essentially organised by local authorities themselves since the organisation of local matters through municipal districts is just one option for decentralising local government,⁵⁸ that the practices of local authorities might vary, and that

⁵⁸ See also indicative guidelines by the Ministry of Finance for the development of decentralised governance and administrative models in local government: https://haldusreformi.fin.ee/static/sites/3/2016/07/detsentraliseeritud_juhtimismudelid_loplik_21.07.2016.pdf.

restrictions could not be applied to the municipalities' right to internal self-government.

Discussions resulted in the decision, unlike in the previously effective Local Government Organisation Act, to make the formation of the representative bodies of a municipal district mandatory as an instrument for public engagement in case the municipal district model were used so that regional interests would be represented in accordance with the Local Government Organisation Act in the fulfilment or the functions of the rural municipality or city. Another decision meant establishing an obligation in the Act to forward a local authority development plan or budgeting strategy to the municipal district representative body for the latter to form a position and make suggestions before such a plan or strategy is approved.

Previously, the formation of a municipal district government or city district government as an administrative agency alongside the positions of the public officials necessary for a particular service was mandatory if municipal districts were formed. The Administrative Reform Act left the formation of the municipal district government and the appointment of the governor for the local authorities to decide.

The Act also guaranteed the formation of a municipal district for merging rural municipalities and cities by establishing that if the councils of the merging rural municipality and city wanted a municipal district to be formed within its territory, it would be the merged municipality's obligation to create one.⁵⁹

At the same time, the liquidation of a municipal district or alteration of its functions within four years after the merger, was made more complicated. Namely, the Administrative Reform Act established that a municipality formed as a result of a merger may not liquidate a rural municipal district or city district formed on the territory of a merged

⁵⁹ Article 15, Administrative Reform Act.

municipality during the first election period following the merger, excluding cases of an application by the rural municipal district representative body or city district representative body. Another principle added to the Act was that amending the rights and functions to be performed by the rural municipal district or city district under the merger contract or merger agreement during the first election period following the merger shall require at least a two-thirds majority of the membership of the council.

The specified regulation concerning municipal districts very clearly aimed to rule out situations where a two-level local government organisation would be created in a local authority formed as a result of a merger if there was a municipal district; that is, so that the status quo of the pre-merger municipalities would essentially be preserved.

How much did the draft Administrative Reform Act change in the course of the proceedings?

The draft entered into the Information System of Draft Acts did not differ very much from the draft text presented to the Government of the Republic. Most corrections involved the nature of the legislative drafting and most suggestions were further explained in the explanatory memorandum to the Administrative Reform Act.

As mentioned above, the key complaints from the national associations of local authorities about the draft Act related to the unresolved nature of the issue of which additional functions would be assigned to local authorities as a result of the administrative reform, and how the principles for the distribution of the revenue base would change, by the time the draft was circulated for approval.

In their opinion, the associations supported the implementation of the reform via mergers initiated by municipal councils. As far as government-initiated mergers were concerned, the Association of the Municipalities of Estonia took a much more negative stance, which was also logical because the reform mostly affected the members of this

association. The principal comments were mostly of an emotional and worldview nature. The draft Act was not changed much following the comments.

For example, the associations criticised the fact that the first stage of the administrative reform; that is, the mergers initiated by municipal councils, only seemed to be voluntary because an obligation to find merger partners would still apply to all municipalities with fewer than 5,000 residents. The stringent timeframe of the reform was also criticised.

Without substantiating its arguments, the Association of the Municipalities of Estonia even found that it was a given that there was no connection between the size of a municipality and the local authority's capacity; that is, there were weak and capable local authorities among large and small ones. It found that large municipalities that merged would generally not be receiving much additional financing, which would certainly not reach the remote regions of a rural municipality, especially for entrepreneurship and creating jobs. However, according to the analyses of merger experiences known to the Ministry of Finance so far, such fears never materialised in the merged municipalities.⁶⁰

It became apparent during the proceedings in the *Riigikogu* that political parties hold opposing views on the implementation of the reform.⁶¹ The Centre Party essentially wanted the reform to be implemented on a voluntary basis only (while requesting increased merger grants and compensations for heads of local authorities) without any minimum size criterion for a municipality or provisions on mergers initiated by the central government. The Estonian Free Party wanted to

⁶⁰ The comments of local authorities concerning the draft Administrative Reform Act and the responses given by the Ministry of Finance can be found in the draft coordination table: <https://eelroud.valitsus.ee/main/mount/docList/7a8fcd91-77ec-4293-8555-09c23c1081a3>. Experience of earlier mergers: <https://haldusreform.fin.ee/static/sites/3/2014/04/oppetun-nid-pool-aastat-parast-uhine-misi.pdf>.

⁶¹ For the motions to amend the Act, see: <https://www.riigikogu.ee/tegevus/eelroud/eelrou/muudatusettepanekud/fec18826-0e43-4435-9ba8-598b6ed4ea40/Haldusreformi%20seadus>.

increase the criterion for the minimum size of a municipality, but at the same time also increase the number of exemptions in the administrative reform, change governance organisation and election procedures in Tallinn, and give broad decision-making rights to municipal districts, which would have contradicted previously effective principles of local government organisation (by ‘hijacking’ a major part of the decision-making on issues which were under the sole jurisdiction of municipal councils) and would have created a second level of local government.

By contrast, the Pro Patria and Res Publica Union found that the reform was not ambitious enough and that its goal should be the formation of county-sized municipalities or those with at least 11,000 residents; the same opinion was expressed by numerous members of the Social Democratic Party, while the Conservative People’s Party of Estonia wanted the minimum size criterion to be reduced to 3,500 residents and the deadlines of the reform to be postponed.

A major part of the disputes in the parliament concerned exemptions from the administrative reform.⁶² One of the key changes made in the parliament was the unambiguous addition of the exemption for the formation of Setomaa rural municipality, which allowed the merger to be approved even though the merging municipalities did not share a border (the traditional Setomaa group of villages known as ‘nulk’, which was a part of the former Misso rural municipality, is now a separate area of land belonging to Setomaa rural municipality).

The proceedings in the *Riigikogu* also further specified the provision giving the central government the right to initiate the transfer of a part of the territory of one municipality to another in the course of a merger if necessary for the minimum size criterion to be met. In this case, it also needed to be ensured that the transfer of part of the territory guaranteed the territorial integrity of the municipality.

⁶² Three draft acts to amend the Administrative Reform Act also focused on changes to exemptions from the administrative reform; see 273 SE, 274 SE and 376 SE: <https://www.riigikogu.ee/?withoutTitle=haldusreform&checked=eelnoud&s=>.



Due to the opposition's delaying tactics, the Riigikogu even held a night session for the discussion of the Administrative Reform Act on 11 May 2016. List of proposed changes to the draft Administrative Reform Act. Source: Erik Prozes / *Postimees*.

What were the administrative reform lessons learned in as far as process management was concerned?

The implementation of the administrative reform was a genuine survival course for those who prepared and implemented it (the state and local authorities alike). On the other hand, the implementation of the reform was a developmental experience of the management of such a broad-based process, which had an important impact on society. In this regard, it is rather not about the questions of the substance of the reform or its legal options but about the procedural lessons listed below as worth special attention in the opinion of the author of the article.

A reform needs to have a clear goal based on expert opinion(s), but which political forces have agreed on from the start. It is good if the Prime Minister is politically responsible for the reform, which emphasises the importance of the issue. If only the minister of the certain area were responsible for the reform, it would be easier to put the issue on the shelf in the case of a political stand-off. The goal of the reform and its framework could be included in the coalition agreement to prevent disputes of principle in the process of draft preparation. The office has to support the political directions agreed upon, and politicians have to be responsible for leading the reform.

The implementation of the reform needs to start immediately after the appointment of the new government is confirmed so that political disputes and potential court disputes can be resolved without unnecessary time pressure. For the sake of clarity, the provisions of the reform should be established by a separate act.

- The wording of the act needs to be as simple as possible; parenthetic clauses which can later create interpretation problems should be avoided.
- Political volatility, when a change of power takes place mid-process, and the implementation of the reform is threatened, should also be avoided.
- The team for the preparation and implementation of the reform needs to be sufficiently large.
- Clear roles need be assigned to all team members, a detailed schedule needs to be prepared, and the fulfilment of the tasks agreed upon needs to be monitored regularly. The minister responsible for the reform must also be informed about all the details. To achieve that, regular meetings with the officials need to be held so that everyone is on the same page. The distribution of information through someone's mediation is not sufficiently effective.
- A leading ministry needs to be appointed, but a situation in which other ministries remain passive should be avoided although a

major change that influences the whole country will not leave other ministries' areas of government unaffected.

- Great attention needs to be paid to meetings and discussions with the representatives of local authorities, associations of local authorities, other ministries, politicians, other stakeholders and the media. This contributes to trust, partnership and the feeling of working toward a common cause. Keeping other ministries in the loop about the progress of the reform is also necessary. Explain, explain and explain!
- Although the goal is to reduce the amount of legislation, the experience of implementing the administrative reform shows that local authorities expect even more precise and detailed wording of legal regulations. Unfortunately, most local authorities do not have a habit of reading the explanatory memoranda of draft acts.
- Time and resources need to be allocated specifically for guiding and training local authorities.
- Private sector organisations need to be informed about the consequences of the changes and how they will affect their operation well in advance (e.g. one needs to know the principles of post-merger right of representation of the local government to perform notarial deeds).
- The local authorities also need to agree on specific people responsible for the process as well as specific dates, and need to turn to the state to resolve disagreements or disputes (the support of merger consultants was really necessary).

In What Way Should the Preparations for the 2017 Administrative Reform Have Been Different and Why?

SULEV MÄELTSEMEES

Since the restoration of independence, the issue of administrative reform has been brought onto the agenda in waves, just to ebb away again. Some described the reform of 2017 as the seventh wave and, considering that it rose higher than any before it, the description seems doubly appropriate. This is also supported by the fact that for the first time an Administrative Reform Act was adopted. Undoubtedly, our assessment of the reform depends largely on what we qualify as an administrative reform.

In education and research, it goes without saying that concepts must be defined clearly and unambiguously. This principle takes on an even wider practical meaning when a concept affects the daily life of a large proportion of the general public. The concept of administrative reform does just that. And at the same time, there are very few areas (if any) where a key term is used in such a variety of ways.

In order to illustrate this, I will provide a brief overview of how the concept of administrative reform has evolved over the last quarter of a century. In addition to the linguistic aspect, understanding this evolution is also essential in order to understand what should have (or at least could have) been different in the Administrative Reform Act adopted in 2016 and its implementation.

I believe that the process of preparing for an administrative reform should be as consistent as possible. There should be no campaign-style ad hoc activities that may well serve certain political objectives, but not the overall development of society. True, since the beginning of this century the process of preparing for the reform was indeed consistent, but regrettably the focus was solely on an administrative-territorial reform (a border reform). Important substantive matters, such as the distribution of responsibilities and funding between the different levels of public administration (which was even required by the Supreme Court in its judgment of 16 March 2010¹ , and the organisation of regional administration (in particular, county governments, and county-level associations of local governments), among other issues were merely widely discussed.

The phrase 'administrative reform' (*haldusreform*) was first used by the Supreme Council of the Republic of Estonia in its Resolution of 8 August 1989 on the implementation of an administrative reform in the Estonian SSR.² The Resolution established two objectives: the decentralisation of public authority, including developing management

¹ Judgment of the Supreme Court en banc of 16 March 2010 No 3-4-1-8-09.

² ESSR Supreme Council and Government Gazette, 1989, 26, 348.

functions at the local government level, and the reorganisation of the territorial administrative structure. Therefore, the Resolution also covered a border reform, but this objective was (deliberately) abandoned.³

That particular administrative reform has been criticised for not changing the internal borders, which would have been easier to do at the time. Those who have expressed such an opinion are perhaps unaware that there were indeed ambitions for border change then too, but these were very disparate.

Mostly, the idea was to restore the borders established by the 1939 rural municipal reform, some wished to re-establish the rural municipal borders of the 1920s, and in some areas people even preferred the borders of the successful agricultural holdings (collective farms or state farms) of the 1970s and 1980s. Moreover, it is safe to say that, had the matter of the relocation of the border markers been addressed then, the legal and economic aspects of local government would have suffered.

An administrative reform expert committee set up by the Presidium of the Supreme Council (of which I was a member) sought the substantive restoration of local government. I dare say that this resulted in a significant success. Local government – dismantled half a century earlier – was restored in just a few years, and this also played an invaluable role in the re-establishment of statehood.⁴

Seeming to be regrettably overlooked in the evolution of the concept of administrative reform is a document dated just a couple of years later – the coalition agreement of Estonia's first government after regaining independence, which held office from 1992 to 1995. Strikingly, the term 'administrative reform' was used in a broad sense in that document. Because it is not widely known, I hereby present a longer excerpt from it:

³ See S. Mäeltsemees, 'Haldusterritoriaalne poliitika' – *Eesti poliitika ja valitsemine 1991–2011*. Ed. Raivo Vetik. Tallinn University Press, 2012, pp. 325–355.

⁴ See e.g. S. Mäeltsemees, *Tallinna Linnavolikogu 140*. Tallinna Raamatutrükikoda, 2017.

Swift administrative reform is inescapable in order to consolidate Estonia's statehood and implement economic innovations. The administrative reform will specify the responsibilities, rights, and obligations of the state and local authorities. The basis of the government's policy is the decentralisation of power and bringing the decision-making process as close to the people as possible. It is necessary to pass legislation needed to implement the administrative reform (a local government act, an administrative border amendment act, a local government budget act, ...), to specify in more detail the rights and obligations of local authorities.

Particular attention should be paid to establishing local government institutions in the major cities. [...] Concurrently with the administrative reform and emergence of new administrative divisions, it is necessary to organise local government elections as soon as possible. Before that (Not after the elections! – S. M.) local authorities have to be ensured a fixed revenue base, which might consist of individual income tax, a part of the corporate income tax (in 1990–93 local governments received 35% of the corporate income tax – S. M.), value added tax, and 'resource taxes'. The role of local authorities in imposing taxes and granting benefits should be increased.⁵

The next significant step in the administrative reform process was the development of a concept document, 'Principles of Public Administration', in 1996–98. Thus far, this has been the only comprehensive document addressing all levels of public administration and its key issues, in which the administrative-territorial reform was also widely covered.

With respect to the concept of administrative reform, a fact that is worth remembering about this document is that the first step was to set up an expert committee of the Government of the Republic (by Order No 452-k of 11 June 1997), which was assigned the task of developing the concept of administrative reform. But as early as the first discussions,

⁵ Coalition agreement of 1992–1995 of the Estonian National Independence Party, the Pro Patria Union, and the Social Democrats.

this committee, consisting of twenty-five members, including Members of the *Riigikogu*, government ministers, county governors, representatives of local governments and local government associations, as well as researchers, concluded that the key phrase 'administrative reform' was already (NB! 20 years ago!) overused, and that it was also uncertain how reform-minded the proposed concept would in fact turn out to be, which is why the committee set out to draft a document entitled 'Principles for the Development of Public Administration'.

The organisation of regional administration became an important aspect of the concept. It is not without significance that at that very time, i.e. in the second half of the 1990s, the Council of Europe was discussing the European Charter of Regional Self-Government. Now, in early 2018, a radical change was made at the regional level, with the abolition of county governments.

An important legal effect, including the amendment of Article 156 of the Constitution, was achieved with the merger of the city of Abja-Paluoja and the Abja rural municipality in 1998, which was carried out between regular elections of municipal councils.

At the turn of the century, the Government of the Republic assigned the development of the administrative reform concept to researchers from the University of Tartu. Around that time, the phrase 'administrative reform' took on a rather different meaning, compared with earlier as well as later practices, the keyword being a 'creeping administrative reform'. This mainly meant centralising the responsibilities of county governments by the ministries, in particular by various boards and inspectorates. This 'creeping administrative reform' involved no changes whatsoever in the borders of municipalities.

In the years to follow, the proposal, made in 2000 by the Minister of Regional Affairs Toivo Asmer, to reorganise counties into rural municipalities remained almost unnoticed. According to this proposal, Estonia would have 15+5 municipalities (15 rural municipalities and 5 major cities). The Minister maintained that the coercive merging of ru-

ral municipalities and cities by the government would cause a lot of disagreement between municipal leaders and would not produce the desired result. In his opinion, the existing rural municipalities could be preserved as rural municipal districts.⁶

Indeed, the administrative reform of 2017 did produce rural municipalities (Hiiumaa and Saaremaa) that are (almost) the size of a county, and critics have said that such municipalities should have been formed in more counties.

By the start of the century, the preparations for the administrative-territorial reform had progressed quite a bit under the leadership of the Minister of the Interior Tarmo Loodus, but the process was interrupted by the presidential election campaigning and the formation of a new government. The next period yielded proposals by the Ministers of Regional Affairs Jaan Õunapuu and Vallo Reimaa about reforming specific areas of public administration. The administrative-territorial reform models developed by the Minister of Regional Affairs Siim Kiisler (including the model of local commuting centres) survived the longest. Substantial work on proposals for a state reform was carried out by the Estonian Cooperation Assembly headed by Külli Taro.⁷ In 2016, under the leadership of the Minister of Public Administration, Arto Aas, the Administrative Reform Act was finally adopted.

Regrettably, only one related piece of legislation was passed with the Administrative Reform Act in June 2016 (on 7 June), being the Act Amending the Status of Members of the *Riigikogu* Act and the Local Government Organisation Act (also known as the 'two seats act'), which entered into force on 16 October 2017. Leaving aside the problematic nature of the right to simultaneously hold a seat in the *Riigikogu* and on a municipal council,⁸ I think that, in order to launch the administrative-

⁶ <http://epl.delfi.ee/news/eesti/asmeri-haldusreformi-idee-valistab-vallajuhtide-tulid?id=50842443>

⁷ https://www.kogu.ee/wp-content/uploads/2014/11/Omavalitsuskorraldus-ja-regionaalhalduse-anal%3%bc%3%bcs_loplik_27.11.14.pdf

⁸ See e.g. S. Mäeltsemees, *Tallinna Linnavolikogu 140*. Tallinna Raamatutrükikoda, 2017.

territorial reform successfully, many more matters of legal, economic and administrative nature among others should have been regulated as well. These and other issues were raised by local authorities and associations of local authorities at the General Assembly of Estonian Cities and Rural Municipalities on 31 March 2012.⁹

For years it was said and written that one of the reasons a radical administrative-territorial reform is needed is to save administrative costs. In 2009, I wrote:

In regard to possible savings in administrative costs, the possibility of and the need for recruiting better qualified public officials [following the reform] should disprove this illusion. The smaller rural municipalities and cities that could merge employ only about one thousand public servants. Moreover, even with the extreme version (15+5) of the proposed administrative-territorial reform, the best of them would anyway find employment with the new rural municipal governments that will be located in the county capitals. There will certainly be reductions in the numbers of municipal council members, which is also identified as a potential benefit in the explanatory memorandum to the draft Administrative-Territorial Organisation Reform Act submitted by the Minister of Regional Affairs in March 2009. However, reducing the number of municipal council members does not result in any noteworthy economy of administrative costs. One of the objectives of our young political culture should also be raising a political progeny. In Sweden, there are nearly 46,000 politicians in the municipalities, with another 3,500 serving on county councils. Around 1% of the adult population of active age (18- to 80-year-olds) are involved in local politics. In Estonia, this figure is about three times lower (approximately 0.3 %).¹⁰

⁹ http://f.ell.ee/failid/ELL_volikogu/2012/2012-03-31_Eestimaa_Linnad_ja_Vallad/DEKLARATSIOON_kinnitatud.pdf

¹⁰ S. Mäeltsemees, 'Rechts- und Wirtschaftsprobleme der Gebietsreform in Estland' – *Estnische Gespräche über Wirtschaftspolitik XVII*. Lehrstuhl für Wirtschaftspolitik der Universität Tartu, Lehrstuhl für Regionalpolitik der Tallinner Technologischen Universität, Institut für Volkswirtschaftslehre und Wirtschaftspolitik der Fachhochschule Kiel. Berliner Wissenschafts-Verlag, 2009, pp. 56–63.

The media has already pointed out the fact that 'although one of the objectives set for the administrative reform was sustainable governance, the example of Saaremaa shows that creating a single large merged municipality does not provide savings in terms of the number of public servants, at least not in the short term'¹¹. In a short period of time a large number of articles¹² have been published that address the sometimes manifold increase of the remuneration paid to the leaders of newly formed large municipalities.¹³

I have never objected to the merging of our undersized municipalities where it is practical. In interviews given as far back as 20 years, I have maintained that the number of rural municipalities should be halved,¹⁴ but I also share the opinion of Professor Arto Haveri of the University of Tampere, that a discussion about the number of municipalities is merely wordplay.¹⁵ Municipalities should be furnished with substance appropriate for a modern democratic civil society.

I have taken a pessimistic view towards the claim that large municipalities help to reduce geographic marginalisation. This is not only because of the experience with the merging of agricultural holdings in the 1970s (known as the campaign of large agricultural holdings), which resulted in the decline of a large number of villages. For years it was discouraging to read opinions in our media about the radical border reform implemented in Latvia in 2009, in the process of which the number

¹¹ <http://www.err.ee/641420/haldusreform-ametnike-arvu-saaremaal-ei-vahendanud>

¹² Note: Unfortunately, one must mostly rely on references to newspaper articles here, as there are almost no academic publications analysing the current situation. In fact, given the novelty of the activities taking place under the 2016 Administrative Reform Act, no such analyses can be available yet.

¹³ E.g. E. Arula, 'Vallad kaovad, vallajuhtide palgad kerkivad' – *Postimees*, 17.11.2017.

¹⁴ U. Paet, 'Valdu võiks vähendada kuni poole võrra'. An interview with Sulev Mäeltsemees – *Postimees*, 14.2.1997.

A. Ammas, 'Kümne aasta pärast peaks Eestis olema alla saja valla'. An interview with Professor Sulev Mäeltsemees, Tallinn University of Technology. – *Eesti Päevaleht*, 16.1.1998.

¹⁵ A. Haveri, E. Laamanen, 'Boundaries, Size and Performance: A Delphi Study on the Development of Local Government Structure in Finland' – *Finnish Local Government Studies* 4, 2006, p. 324.

of municipalities was reduced by 4.5 times (from 525 to 119). After this, many here asked why we were not doing what the Latvians did.

Only in 2016 was it admitted (in the editorial of *Eesti Päevaleht* of 10 March) that: 'In addition to voluntary and coercive mergers of municipalities, we must start thinking seriously about a more important issue: how to avoid the Latvian scenario – that instead of the expected improvement of the situation, the administrative reform is followed by a new round of the depopulation of remote regions.'

A month later (on 6 April 2016), at the first reading of the draft Administrative Reform Act in the *Riigikogu*, the Minister of Public Administration Arto Aas said that: 'The objective of the administrative reform is to support the capacity building of local authorities, regional competitiveness, and thereby also more balanced development of Estonia as a whole. The objective is to raise local government to a qualitatively new level in order to be prepared for future challenges.' Undoubtedly this is true, but how could this be achieved in real life?

The general public is misled by the statements made after the municipal council elections in 2017, that the long-discussed administrative reform has finally been realised. The media has repeatedly made such statements, claiming, for example, that 'the administrative reform has been completed',¹⁶ or less resolutely, but saying the same thing, that 'the administrative reform in Estonia has been formally carried out'¹⁷.

Fortunately, one can also hear and read different opinions, one of the most succinct of which is an article by Igor Gräzin.¹⁸ In it, Gräzin points out that the problems with the administrative reform are only just starting to manifest themselves and that the gravest of these problems for the existence of the Estonian state is the nearly complete inability to be present throughout the entire territory of the country.

On the positive side, it should be admitted that lately the govern-

¹⁶ J. Värk, 'Skandaalide pitser valitsuse esimesel aastal' – *Postimees*, 23.11.2017.

¹⁷ M. Koemets, 'Suure Elva valla algus kujunes tormiliseks' – *Tartu Postimees*, 7.2.2018.

¹⁸ I. Gräzin, 'Haldusreformi probleemid alles algavad' – *Õhtuleht*, 30.11.2017.

ment has paid a great deal of attention in particular to the development of the state outside its capital city. The Minister of Public Administration, Jaak Aab, has also reaffirmed that the administrative reform does not amount merely to the redrawing of municipal borders and instead creates a framework for assigning more decision-making powers and responsibilities.¹⁹

What should have been done differently in the administrative reform initiated in 2016?

- An administrative reform is more effective when it is prepared consistently.
- The outcome of the administrative reform should have been planned more objectively. The general public should not be fed misleading illusions, for example, about saving the taxpayers' money.
- The border reform should not have been an end in itself. A number of earlier administrative reform plans, starting with the coalition agreement of the Government of the Republic of 1992 could have served as an example.
- One of the issues that was completely neglected, but should be addressed, is the role of the capital city and the surrounding region in our local government system and public administration as a whole, along with the question of how to encourage local authorities to engage in regional business development.
- We must stop regarding administrative reform as a synonym for administrative-territorial reform (border reform).

¹⁹ J. Aab, 'Omavalitsuste ajaloost ja tulevikust' – *Eesti kohalik omavalitsus ja liidud – taastamine ning areng 1989–2017*. Tallinn, 2017, p. 16.

The Central Criteria for the Administrative Reform: Why stipulate 5,000 and 11,000 residents?

VEIKO SEPP, RIVO NOORKÕIV

Introduction: the criterion of the number of residents in the logic of a structural administrative reform

The optimal size for municipalities in terms of the number of residents is one of the central questions in academic debates on administration theory as well as in public, administrative and political discussions accompanying structural administrative reforms. This topic is usually raised together with the question of the reasonable allocation of

‘Bigger is better’ vs ‘small is beautiful’

responsibilities between different territorial levels of government.¹ The answers centre around two general, conflicting views: ‘bigger is better’ vs ‘small is beautiful’.²

The former is mainly based on economic considerations, arguing that due to their size, larger municipalities are able to organise and provide services in a more economical and cost-efficient manner than smaller ones.³ The latter view is based on the belief that smaller municipalities support local representative democracy, increase the accountability of those in power to their citizens and that they inspire in citizens greater confidence in local government as such.⁴

Indeed, traditionally, the divide between advocates and opponents of structural administrative reform runs along the lines of the above-mentioned values. Those giving priority to economic values, such as effectiveness, economy and cost-efficiency, support reforms aimed at

¹ N. Vetter, A. Kersting (eds.), *Reforming Local Government in Europe. Closing the Gap between Democracy and Efficiency*. Springer Fachmedien Wiesbaden GmbH, 2003. H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*. Palgrave Macmillan, 2010.

² B. E. Dollery, L. Robotti, *The Theory and Practice of Local Government Reform*. Edward Elgar, 2008.

³ N. Marshall, K. Sproats, ‘Managing Democracy? Assessing Some of the Outcomes of Australian Local Government Reform.’ – J. Caulfield, H. O. Larsen (eds.), *Local Government at the Millenium*. Springer Fachmedien Wiesbaden GmbH, 2002. P. Swianiewicz, J. Lukomska, ‘Does size matter? The Impact of territorial fragmentation/consolidation on performance of local governments’, 2016; DOI: <http://dx.doi.org/10.18509/GBP.2016.47>.

⁴ J. Byrnes, B. E. Dollery, ‘Do Economies of Scale Exist in Australian Local Government? A Review of the Research Evidence’. – *Urban Policy and Research*, Vol. 20, 2002, pp. 391–414. S. W.

Hansen, ‘Polity Size and Local Political Trust: A Quasi-experiment Using Municipal Mergers in Denmark’ – *Scandinavian Political Studies*, Vol. 36, 2013, pp. 43–66.

larger municipalities, while those laying stronger emphasis on democratic values are against such reforms. However, empirical studies of specific local government systems point to the fact that neither of these viewpoints can be verified by unequivocal and general scientific evidence.

Therefore, conclusions drawn from studies testing economies of scale vary to a great extent – some of them confirm the existence of positive effects arising from size, while in at least the same number of analyses the hypothesis has not been statistically proven.⁵

Likewise, the view that smaller municipalities encourage greater democracy is also disproven by empirical evidence. For example, an analysis performed in preparation for the 2007 administrative reform in Denmark found that democratic participation tends to be smaller in smaller administrative districts.⁶ Furthermore, municipalities with a larger number of residents are characterised by more competitive elections and several other restrictions that prevent the emergence of political monopoly.⁷

Despite diverging results from social science research, structural administrative reforms are a fact of life in various countries. In other words, at a specific point in time there is a sufficient number of people among policy-makers and in society as a whole who believe that there is a positive correlation between the size of municipalities and their success, and that in the existing local government system there are too many municipalities that are too small.

⁵ J. Byrnes, B. E. Dollery, 'Do Economies of Scale Exist in Australian Local Government? A Review of the Research Evidence'. B. E. Dollery, L. Robotti, 'The Theory and Practice of Local Government Reform'. M. Holzer et al., 'Literature Review and Analysis Related to Municipal Government Consolidation', School of Public Affairs and Administration (SPAA) at Rutgers University, 2009.

⁶ U. Bundgaard, K. Vrangbøffik, 'Reform by Coincidence? Explaining the Policy Process of Structural Reform in Denmark'. – *Scandinavian Political Studies*, Vol. 30, 2007, pp. 491–520. P. E. Mouritzen, 'The Danish Revolution in Local Government: How and Why?' – H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*.

⁷ J. Gerring, D. Zarecki, 'Size and Democracy Revisited.' Draft: 22 September 2012.

Given that this is a sensitive topic⁸ and a decision that requires political courage, there is at least a similar number of administrative reforms that have not been initiated or brought to completion.⁹ However, when the decision for an administrative reform has been taken, the politicians and officials usually try to mitigate (their) risks. In a contemporary democratic state, the best way to do this is to rationalise one's decisions before one's electorate and opponents. In the case of a structural administrative reform this consists of three main stages:

- (1) problematising the functioning of the existing system of local government, making use of empirical evidence and rational argumentation;
- (2) linking problems related to the local government system to the suboptimal size of municipalities;
- (3) defining and supporting the optimal, and hence desirable, size of municipalities.

The last point is indeed a criterion in structural administrative reform which is most frequently expressed in terms of the number of residents. Examples of such criteria can be found in different countries at different times.

In Finland, for example, it was concluded in 1965 that the minimum size of a viable municipality is about 8,000 residents. In the process of the administrative reform initiated in 2005, however, a 'strong municipality' was defined as a rural municipality or a city with at least 20,000 residents.¹⁰ In the framework of the territorial administrative

⁸ V. Hoffmann-Martinot, 'Reform and Modernization of Urban Government in France' – V. Hoffmann-Martinot, H. Wollmann (eds.), *State and Local Government Reforms in France and Germany. Divergence and Convergence*. VS Verlag für Sozialwissenschaften, 2006.

⁹ A. Lidström, 'The Swedish Model under Stress: The Waning of the Egalitarian, Unitary State?' – H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*.

¹⁰ S. Sandberg, 'Finnish Power-Shift: The Defeat of the Periphery?' – H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*.

reform conducted in Norway at the beginning of the 1990s, it was recommended that municipalities should have at least 5,000 residents, where possible.¹¹ Likewise, the first criterion for the administrative reform completed in Latvia in 2009 was that the number of residents in new municipalities should be at least 5,000.¹²

In the Danish administrative reform, which became effective in 2007, the target was set to 30,000 residents, while the minimum criterion was 20,000 residents. Exemption from this threshold was possible under certain conditions.¹³ Even the history of France, where no local government reform has ever been successful since the proclamation of the Republic, knows attempts to conduct criterion-based reforms of the commune system. In particular, the relevant law of 1790 recommended to merge all communes that had fewer than 250 residents in order to enhance their capacity to provide services. Five years later, in connection with the constitution of 1795, it was planned to merge all communes whose number of residents was below 5,000 into one regional municipality.¹⁴ This did not happen, however, and today France is known as a country with the most fragmented system of local government in Europe.

From the point of view of mitigating risks, the main question is, however, not the specific value of the criterion but rather the strength of the epistemic community¹⁵ and the truth regime¹⁶ developed by it. In other

¹¹ H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*. Hampshire: Palgrave Macmillan, 2010.

¹² G. Sootla, K. Kattai, A. Viks, 'Läti Vabariigis 1998.–2009. aastal läbi viidud haldus-territoriaalse reformi ja selle esmatulemuste analüüs. Lõpparuanne', Tallinn University, 2011.

¹³ P. E. Mouritzen, 'The Danish Revolution in Local Government: How and Why?'

¹⁴ E. Kerrouche, 'France and Its 36,000 Communes: An Impossible Reform?' – H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*.

¹⁵ P. M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination' – *International Organization*, Vol. 46, 1992, pp. 1–35.

¹⁶ L. Weir, 'The Concept of Truth Regime.' – *Canadian Journal of Sociology*, Vol. 33, 2008, pp. 367–389.

words, borrowing some terminology from the ethnography of knowledge¹⁷, the question is how successful one is in solving the following two-part task:

- (1) to base one's whole policy on one or several simple numerical aggregate indicators (criteria) – this will increase the scope of application of the argument and the efficiency of the process;
- (2) to maintain and, if necessary, demonstrate the correlation of the values of these aggregate indicators with as many quantitative (e.g. variables in statistical analyses or calculations regarding the customer base of services) and qualitative values (e.g. goals of the administrative reform) as possible, as well as with the creators of these values (e.g. scientists, experts, officials, politicians) – this will render the aggregate indicators more resilient to attacks from opponents of the truth regime that supports the administrative reform.

The simplest thing that governments can do and indeed do in order to create an epistemic community that would support the administrative reform is to establish a committee that will prepare the reform. The above examples of administrative reform criteria used in other countries had all been proposed to governments and hence also to the general public by committees of various names. In order to support their proposed solutions, the committees, in turn, gather, order or prepare analyses, models, scenarios and strategies, in the contents and process of which numerical reform criteria are linked to a significant part of the state's political and administrative system, as well as sectorial experts and opinion leaders.

Previous attempts to reform local government in Estonia as well as the experience of foreign countries show that this task is not always resolved successfully. Even in the case of implemented administrative reforms, the translation of numerical criteria into successful

¹⁷ B. Latour, *Science in Action. How to follow scientists and engineers through society*. Harvard University Press, 1987.

administrative systems does not convince everyone. Epistemic communities gathered around administrative reforms are never all-inclusive.

Furthermore, it quickly becomes evident in the reform process that, instead of a truth regime, today's societies are characterised by a fragmented set of factions of truth¹⁸, whose values, basic knowledge and calculation logic may be considerably different.

Administrative practice does not provide certainty with regard to the correct solution either. Looking at local government systems in European countries shows that local governance is possible through widely divergent territorial structures.¹⁹ Even if one believes in a positive correlation between the size of municipalities and their success, models based on administration theory, and the experiences of other countries' show that there are several alternative solutions to the merging of municipalities²⁰, of which the main ones are the following:

- (a) transferring tasks to a higher administrative level of local government (Sweden) or creating such an administrative level (Finland);
- (b) differentiating between local governments by size and responsibilities (Spain, Hungary);²¹
- (c) creating regional cooperation structures with a view to achieving economies of scale (Spain, France, Germany);²²

¹⁸ L. Weir, 'The Concept of Truth Regime'.

¹⁹ H. Baldersheim, 'Subsidiarity at Work: Modes of Multi-Level Governance in European Countries' – J. Caulfield, H. O. Larsen (eds.), *Local Government at the Millenium*. Springer Fachmedien Wiesbaden GmbH, 2002.

²⁰ B. E. Dollery, L. Robotti, 'The Theory and Practice of Local Government Reform'.

²¹ C. Alba, C. Navarro, 'Twenty-five years of democratic local government in Spain'; G. Soos, 'Local government reforms and the capacity for local governance in Hungary' – N. Vetter, A. Kersting (eds.), *Reforming Local Government in Europe*. VS Verlag für Sozialwissenschaften, Wiesbaden, 2003.

²² A. Guengant, Y. Rocaboy, 'Structural reform in France' – B. E. Dollery, L. Robotti, *The Theory and Practice of Local Government Reform*, 2008; N. Kersting, J. Caulfield, R. A. Nickson, D. Olowu, H. Wollmann, *Local Governance Reform in Global Perspective*. VS Verlag für Sozialwissenschaften, 2009.

- (d) delegating the performance of tasks to the authorities of larger municipalities (Denmark).²³

Taking into account the fact that societies, including their expectations of public administration and local government, are in constant change and the differences that exist between the public administration systems of different countries, 'the phoenix-like character' of the question regarding the optimal size of municipalities – the fact that 'as soon as an answer is provided in one time and place, the question arises anew in another time or place'²⁴ – is not surprising.

It also means that, if at all, the right (or plausible) answer to this question can be found only for the local government system of a particular country and for a particular period in its development. Even in that case it is obvious that there can be no universally correct size for a municipality, considering that the most suitable size is different for different local government functions²⁵.

The path to administrative reform based on the number of residents

In Estonia, the administrative reform of local government has been prepared and initiated on several occasions over the past 20 years. The view that many Estonian rural municipalities and cities are too small to exercise local government in a 'Northern European' style – i.e. to perform a significant part of public-sector tasks – already emerged earlier, immediately after the restoration of local government (see article by Madis Kaldmäe). The abolition of county governments as second-level

²³ A. Sancton, *Merger Mania: The Assault on Local Government*. Montreal McGill-Queen's University Press, 2000.

²⁴ H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*.

²⁵ P. Meklin, M. Pekola-Sjöblom (eds.), 'The Reform to Restructure Municipalities and Services in Finland: A Research Perspective' – *Evaluation Research Programme ARTTU Studies No 23*. Association of Finnish Local and Regional Authorities, 2013.

local governments in 1993 only exacerbated the above concern (see article by Neeme Suur).

The first more serious attempt to problematise the Estonian local government system and define an optimal size for municipalities in order to solve their problems was made in the strategy document 'Haldusreform kohaliku omavalitsuse valdkonnas' (Administrative reform in local government, 2001). The strategy describes the baseline situation of the reform by outlining a number of systemic problems, from unsatisfactory capacity to perform the relevant functions to weak economic potential. Referring to research, it also links these problems to the insufficient size of municipalities.

Based on an analysis of the situation, it defines the goal of the reform as finding a balance 'between two principles – communal self-determination and efficiency derived from economies of scale'. In order to achieve sufficient economies of scale, a fairly complex system of criteria for the reorganisation of municipalities, and of factors allowing for justified deviations from these criteria are defined (see article by Madis Kaldmäe). Three criteria that are related to the number of residents are given priority:

1. As a general rule, **the number of residents in a municipality should be at least 3,500.**
2. **In suburban municipalities** where a majority of the population is concentrated in satellite settlements of the relevant city **the number of residents should be at least 4,500.**
3. Cities and towns with fewer than 10,000 residents should be part of a rural municipality.

Likewise, it is argued in the explanatory memorandum to the draft act on the reform of administrative-territorial organisation which was prepared in 2009 on the initiative of the minister responsible for this area that 'in Estonia, a significant number of municipalities are too small for efficient and effective exercise of local government'. To complement the argument, the memorandum also proposes an ideal model of services

and public servants which should characterise capable local authorities, but in many cases does not. The arguments are backed up with the international competitiveness requirement for municipalities and administrative reform experiences of other countries, where 'several positive results have already been observed'. The conclusion drawn about the criteria differs significantly from those reached in 2001:

The number of residents in a municipality formed as a result of a merger must not be smaller than 25,000, except in counties where the total number of residents is smaller than 25,000 according to the data in the population register as at 1 January 2009 and where one municipality is formed as a result of a merger. Cities on the territory of which live at least 40,000 residents according to the data in the population register as at 1 January 2009 will be preserved as independent administrative districts within the existing borders.

A new attempt to move forward with the administrative reform was made by Regional Minister Siim Kiisler from 2012 to 2014. No significant changes were made to the rationale of the reform. The explanatory memorandum to the draft act on the reform of local government organisation says that 'due to the small size of most of the municipalities, a large number of them lack a critical mass and budget capacity for attracting a sufficient amount of competence in order to participate fully in the development of the local living environment and provide high-quality public services'.

Bearing in mind previously failed reform attempts, the memorandum seeks to foster rational discussion on possible reform solutions in order to widen the epistemic community who would support administrative reform as such. To that end, six possible models for local government organisation are constructed and analysed. In regard to the criterion of the number of residents, the analyses resulted in a simple and unambiguous conclusion:

*a municipality formed as a result of a merger of rural municipalities and cities is **an area ... where there are, as a general rule, at least 5,000 residents.***

In parallel with the failed attempts at administrative reform, the epistemic community who considers the merging of local governments inevitable or necessary has strengthened and widened over the last two decades.

Of state institutions, the National Audit Office (*Riigikontroll*) has maintained the most consistent position, referring in its audits and statements to the small size of municipalities as the main reason why local authorities cannot perform all their tasks arising from legislation at a reasonable level of costs.²⁶ Chancellors of Justice have problematised the Estonian system of local government from the perspective of the protection of fundamental rights. They have found that a large number of Estonian local governments are not able to ensure the equal quality and availability of public services.²⁷

At the same time, all these assessments have been made with the background knowledge that in most municipalities there is a continuing trend of declining numbers and an ageing population.²⁸

The domestic assessments are supported by reports prepared by international organisations on the Estonian administrative system. For example, the OECD report of 2011 concluded about the situation in Estonian public administration that considering the range of tasks that need

²⁶ See e.g. 'Assumptions for provision of public services in small and remote local authorities', National Audit Office, 2012.

²⁷ See e.g. 'Õiguskantsler: haldusreformi läbiviimine näitab riigivõimu tugevust.' – *Postimees*, 2 March 2009, <http://www.postimees.ee/88980/oiguskantsler-haldusreformi-labiviimine-naitab-riigivoimu-tugevust>.

²⁸ 'Eesti rahvastikuproгноos 2040: neli positiivset stsenaariumi', Statistics Estonia, 2014; [Estonian population projections 2040: four positive scenarios, 2014]; <https://blog.stat.ee/2015/10/06/eesti-rahvastikuproгноos-2040-neli-positiivset-stsenaariumi/>.

to be performed, the small municipal population size is perhaps the most significant problem in the Estonian local public sector.²⁹

A similar conclusion was reached by the European Commission in its assessment report on the 2012 national reform programme and stability programme for Estonia: 'Local governments appear to be too small to meet the obligations placed on them by law.'³⁰ The reports do not propose any concrete target values for an optimal number of residents.

The ministry responsible for this area has tried to support the justification for the administrative reform by expanding the relevant analytical knowledge. Therefore, the Ministry of the Interior ordered a methodology in 2006³¹ for measuring the quality of services, cost-efficiency and effectiveness of the activities of the Estonian local government system as a whole and of each local authority separately, to attain an evidence-based foundation for assessing the need for changing the local government system. However, the implementation of this methodology proved to be unfeasible at that point in time due to the incompleteness of registry data, complexity of measurement tasks and high costs.

Instead, a local government capacity index³² was developed. The primary conclusion made on the basis of the analysis of its results was that there was an obvious need in the Estonian local government system for the harmonisation of capacities across all municipalities. Based on a comparison of municipalities grouped by size, it was claimed that an important threshold for enhancing the capacity of local authorities was

²⁹ OECD, 'Estonia: Towards a Single Government Approach', *OECD Public Governance Reviews*, OECD Publishing, 2011.

³⁰ 'Assessment of the 2012 national reform programme and stability programme for ESTONIA', COMMISSION STAFF WORKING DOCUMENT, 2012.

³¹ 'Kohaliku omavalitsuse üksuste haldussuutlikkuse hindamise metoodika' (Methodology for assessing the administrative capacity of local authorities), Geomeedia, 2008.

³² 'Kohaliku omavalitsuse üksuste haldussuutlikkuse hindamine. Indeks ja analüüs', Geomeedia, 2009.

5,000 residents.³³ This figure was also used as the value of the criterion specified in the 2012–2014 draft reform act.

The ministry's resolve in proving the need for administrative reform can be seen in the fact that even after yet another failed reform attempt, two more studies on the topic were ordered right before the elections that brought administrative reform to the government's agenda. In the study on ensuring the spatial distribution and availability of private and public services, and on addressing the services in county plans³⁴, the topics related to administrative reform clearly have a secondary role, but it is nevertheless required in the terms of reference for the study that the proposal to be drafted also support 'possible future decisions related to administrative organisation'. The study does this by defining future rural municipal governments and city governments as 'institutions with specialist teams that provide various administrative services related to local government functions at the same level as the high-quality local services provided by service centres.' The minimum customer base in terms of the number of residents which is required for providing high-quality local services is set at **4,500 residents**.

The issue of competence and specialisation of public servants working at local governments is addressed in the publication 'Kohalike omavalitsuste ametnike ja töötajate kompetentside kaardistamine ja koolitusvajaduse hindamise analüüs' (Mapping the competences of local government officials and employees, and an analysis of the assessment of training needs)³⁵. Based on the results of the analysis, it is concluded

³³ V. Sepp, R. Noorkõiv, K. Loodla, 'Eesti kohaliku omavalitsuse üksuste võimekuse indeks. Metoodika ja tulemused, 2005–2008' – Linnad ja vallad arvudes 2009, 2009. R. Noorkõiv, K. Ristmäe (2017). 'Kohaliku omavalitsuse üksuste võimekuse indeks 2013' – *Eesti kohalik omavalitsus ja liidud – taastamine ning areng 1989–2017*, 2017, pp. 310–341.

³⁴ V. Sepp, T. Kivi, T. Puolokainen, T. Tali, E. Themmas, Ü. Valgma, 'Uuring era- ja avalike teenuste ruumilise paiknemise ja kättesaadavuse tagamisest ja teenuste käsitlemisest maakonna-planeeringutes', University of Tartu, 2015.

³⁵ 'Kohalike omavalitsuste ametnike ja töötajate kompetentside kaardistamine ja koolitusvajaduse hindamise analüüs', ATAK and Geomedia, 2015.

that a reasonable workload can be ensured for key public servants in areas that have **approximately 5,000 residents**.

It can be said in conclusion that by 2015, a broad-based epistemic community supporting administrative reform had formed in Estonia, including a significant part of state institutions, politicians at national and local levels, area experts and opinion leaders, who possessed a considerable amount of knowledge regarding the problems in the local government system, experiences of other countries and possible solutions. Importantly, the solutions relied on the understanding that setting a criterion for the number of residents in municipalities when conducting structural administrative reform was possible and legitimate. Furthermore, there was no lack of specific numerical criteria.

All this is necessary for administrative reform – all the above analyses, reports and statements are also referred to in the concept document for administrative reform and the explanatory memorandum to the draft Administrative Reform Act – and yet it is insufficient for implementing such reforms. While this article will not discuss the reasons why the opposition, who had previously had the power to veto the reform, weakened (see article by Argo Ideon) and how a policy window³⁶ opened for implementing the local government administrative reform, it is a fact that the government coalition formed after the 2015 spring elections of the *Riigikogu* (Estonian Parliament) supported the administrative reform as an important policy change.³⁷

The fifth and last overall objective of the action programme prepared by that government coalition was ‘state and local administration reform; alleviation of regional marginalisation’. One of the indicators for measuring the achievement of this objective by 2019 was that ‘by the end of 2018, at least 95 % of the population live in municipalities that

³⁶ J. W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd edn. New York: Harper Collins College Publications, 1995.

³⁷ P. A. Sabatier, ‘An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein’ – *Policy Sciences* 21, 1988, pp. 147–156.

meet the **capacity and sustainability criteria** approved by the government'. The principles for the implementation of the reform, including the central importance attributed to the criteria, were formulated under the point 'Local administration reform':

*4.36. In order to implement the administrative reform, we will carry out **a compliance assessment of municipalities, based on the established objective and unambiguous criteria**. Non-compliant municipalities must be merged by the deadline prescribed by law.*

Developing the criteria for the 2017 administrative reform

The Government of the Republic added the task of preparing the administrative reform and defining its criteria to the newly established position of the Minister of Public Administration. In accordance with the rules of the game, an expert committee³⁸ was formed by a ministerial order of 26 May 2015 and tasked with submitting 'proposals, recommendations and assessments for preparing the administrative reform and for drawing up the relevant draft act and preparing other required legislative amendments' as well as 'regarding the process of assessing the compliance of municipalities with the criteria, and the compliance assessments performed by local governments themselves'.

By the first meeting of the expert committee, the ministry had already prepared a preliminary document outlining a timetable and principles for the local government reform. The document defines the goal of the reform as 'well-functioning and capable local authorities'.

³⁸ The committee members included Jüri Võigemast (Association of Estonian Cities), Märt Moll (Association of Municipalities of Estonia), Külli Taro (Estonian Cooperation Assembly), Rivo Noorkõiv (OÜ Geomedia), Veiko Sepp (Centre for Applied Social Sciences, University of Tartu), Georg Sootla (Tallinn University), Mikk Lõhmus (Tallinn University of Technology, Lääne-Nigula Rural Municipal Government), Rein Ahas (University of Tartu), Airi Mikli (National Audit Office), Mihkel Juhkami (Rakvere City Mayor, Lääne-Virumaa Local Government Association), Neeme Suur (member of the 12th *Riigikogu*), Rait Maruste (member of the 12th *Riigikogu*), Katrin Pihor (Praxis), Margus Sarapuu (Government Office), Kalle Küttis (Ministry of Education and Research), Sulev Liivik (Ministry of Finance), Kaia Sarnet (Ministry of the Interior) and Väino Tõemets (Ministry of the Interior).

One of the sub-goals, relying on the study on spatial distribution and availability of services³⁹, is the optimal number of residents:

*Local authorities will be capable of ensuring independently high-quality basic services in the context of population decline and ageing, **by having a sufficient number of residents** in order to ensure that each municipality has a service centre that provides high-quality local services and thereby to enable the majority of the residents to use these services within their home municipality.*

The document also set an optimistic deadline (June 2015) by which, according to instructions from the expert committee, the criteria to be used as a basis for the reform and the assessment of the capacity of the local authorities of each municipality from a broad and forward-looking perspective were to be submitted to a cabinet meeting for approval during the first stage of the reform.

To that end, a vision for local government capacity by 2020 was described in an annex to the document in five different dimensions: capacity to provide and organise services, professional capacity of public servants, capacity to manage local life in a democratic, decentralised and inclusive manner, capacity to ensure the territorial cohesion of the region, and capacity³⁹ to contribute to the development of the business environment. Compliance with the criteria – either quantitative or qualitative – was to be verified through self-assessments conducted by the local authorities. In addition, regional committees were to be set up to assess compliance with the criteria and, where appropriate, make proposals on reasonable mergers.

Due to the expected complexity of the process of compliance assessments, the indicative timetable required that only the voluntary mergers be completed by the 2017 elections. There was also a plan

³⁹ Centre for Applied Social Sciences, University of Tartu, 2015.

that local authorities would conduct compliance assessments (including making proposals on merger partners in order to meet the criteria) in the period from 1 July to 1 November 2016, and that regional committees would form their opinions in the period from 1 November to 1 December 2016.

On the basis of the expert committee's discussion held on 29 May 2015 and written proposals made by its members, a working paper was drafted on 7 June 2015, which contained the committee's preliminary views on the goals and criteria of the reform. According to the working paper, there was unanimous agreement with regard to the assessment criteria underlying the reform. This agreement covered the following.

- There is no ideal size for a municipality (in terms of the number of residents, the size of the area etc.). However, it is necessary to reach some kind of a social agreement or compromise regarding what a municipality should be like, and this has to be based on objective and measurable assessment criteria.
- There should not be too many criteria and they should be objectively justified, especially those on the basis of which possible mergers of municipalities will be decided in the second stage.
- The reform will shape the future of local government in Estonia. When assigning values to the criteria, one should not only assess the current situation, but also use forward-looking criteria, by taking into account, for example, the age composition of the population and the associated dynamics of customer groups.
- One should take into consideration that municipalities are not homogenous and therefore their customer groups and service needs are different.
- It is necessary to describe exemptions from the assessment criteria.

Possibilities for establishing the criteria were discussed in more detail in connection with the potential for providing services, and the professional

capacity to organise services. According to the working paper, consensus was greater on the criteria that would be established on the basis of the customer base, while opinions diverged more widely on the requirement for the professional capacity to perform organisational tasks.

- The experts mostly supported assessment criteria based on the potential of the customer base; for example, in the fields of education and social welfare, but more work will have to be done on the specific criteria. The values assigned to the criteria will affect the population size of municipalities. Therefore, without specifying the number of residents in a future municipality, we can influence the size of municipalities by establishing the criteria and their target values.
- Some experts found that the requirement for dedicated officials was not justified, as all (or most) competences can be covered through cooperation between the local authorities of different municipalities.
- Other experts found that local authorities must be able to organise most of their services themselves (and have officials with relevant competences), and that cooperation should be the exception for certain specific competences rather than the general rule. They also considered it evident from the current situation that local authorities were not even able to delegate services and carry out corresponding public procurements – after all, setting up cooperation arrangements also requires a certain capacity.

By the expert committee's meeting of 18 June 2015, the ministry had prepared a new discussion paper regarding the criteria underlying the municipal reform. The paper formulates five alternatives for defining the criteria:

1. qualitative assessment of services (in order to assess the level of services);
2. quantitative assessment of services (based on the existing infrastructure/institutions);

3. reducing the quality of services to the number of residents (essentially in accordance with the study by the Centre for Applied Social Sciences);
4. creating an ideal local government model/prototype (the emphasis is not so much on the ideal but on the idea that one should project, on the basis of current trends, a future local government model, against which one can compare today's local authorities, rather than simply use criteria following the current requirements prescribed by law);
5. capacity to organise services, i.e. professional capacity.

In July and August, the discussion regarding the criteria for the administrative reform continued, focusing on the goals of the reform and the associated future local government model⁴⁰. An objective tree was drawn up where the task of changing municipal borders was relegated to the bottom right corner, implying that completing this task alone would be far from covering all the changes expected of the administrative reform.

A preliminary and complex matrix for the self-assessment of good governance (including professional capacity) and the potential for providing services was also developed, on the basis of which local authorities could earn a maximum of 100 points.⁴¹ However, no specific thresholds above which the local authorities of a municipality would be capable of continuing independently were proposed.

The criterion of the number of residents is also in the background of discussions and working documents but it is called an alternative or additional criterion:

The number of residents living in a municipality will be between 4,500 and 5,000 (or the number of working-age population derived from it),

⁴⁰ See the discussion paper of 10 July 2015 'Reformi aluseks olevad kriteeriumid' (Criteria underlying the reform) prepared by the ministry for discussion by the expert committee.

⁴¹ N. Suur, 'Kohaliku omavalitsuse tulevikumudel', 28 July 2015.

*allowing for exceptions (e.g. islands or very sparsely populated areas) taking into account the local situation and traditions. A population of 4,500–5,000 will be sufficient for local authorities to be able to independently organise various services for the residents. Local authorities in a municipality with at least 5,000 residents will be able to hire full-time officials for the performance of most of the core functions of local government.*⁴²

In hindsight, the discussions about the content of the future local government model and assessment matrix were ‘academic’ by nature. Already at the meeting of the expert committee on 10 August 2015, the Minister of Public Administration made a proposal to establish a ‘numerical indicator with some exemptions’, which should ‘derive from the discussions of the committee’. The members of the expert committee agreed to the minister’s proposal.

On 25 August 2015, the government coalition agreed, on the basis of the written proposals made by the chairmen of the three coalition parties, that ‘objectively measurable criteria for the **minimum size of a municipality** must be formulated by 1 November, based on the capacity required for performing the functions of local government’. Moreover, it was decided in autumn 2015, based on legal and political considerations (see Ave Viks, ‘The Design of the Process of the Administrative Reform’), that all mergers would be completed by the time of the regular municipal council elections. Due to the shorter timeframe for the reform, an individual assessment of each municipality and the initiation and completion of the corresponding merger processes became unrealistic.

The decisive discussion about the criterion of the minimum size of a municipality was held in the expert committee on 11 September 2015. Four expert assessments were presented and discussed at the meeting.

⁴² Meeting of the expert committee of the municipal reform. Discussion of the municipal reform. Minutes, 10 August 2015.

Three of them had been submitted by external members of the expert committee (Rivo Noorkõiv, Veiko Sepp, and Georg Sootla with Kersten Kattai) and one by a representative of the ministry (Sulev Liivik). The expert opinions reflected earlier discussions and, based on the terms of reference, aimed at creating links between the problems in the Estonian local government system and the goals of the administrative reform on the one hand, and the optimal size of a municipality on the other hand. The opinions were based on the results of studies carried out in the following areas: customer base for various services, economies of scale and investment capacity, competence and workload of officials, revenue base of municipalities. As the goals of the reform and tasks of local authorities were manifold, the expert evaluations contained a large number of different assessments for the optimal size of a municipality.

The most important point that the experts emphasised was the need for enhanced efficiency and quality of local government services. It was found that the authorities of a new municipality should be capable of providing services to the majority of its population. Experts Georg Sootla and Kersten Kattai expressed the view that a rural municipality or city should provide basic services (education, hobby education, nursing homes etc.) to at least 60 % of its residents, and that municipalities that fail to meet this criterion should be merged with neighbouring municipalities providing these services.

In regard to various local government services, the experts highlighted a number of requirements for the customer base and the corresponding number of residents as possible bases for setting the minimum criteria: library – 500 residents; complete creche and nursery school groups (14 + 20 children) – 700 residents; basic school (grades 1 to 9, a total of 144 children) – 1,500 residents; youth centre – 1,500 residents; domestic services for the elderly (one full-time service provider) – 1,500 residents; needs assessment for assistance (one full-time manager) – 3,000 residents; general care home (50 customers) – 4,000 residents; primary health care centre – 4,500 residents;

rural upper secondary school with one class for each grade (1 to 12) – 5,000 residents. Expert Rivo Noorkõiv emphasised that from the perspective of the capacity to provide independent services, the most critical factor was the nature of the upper secondary education network. Following the calculation process based on the model of state-run upper secondary schools, which are schools that should have three fields of study, three parallel classes and 254 students, and assuming that the share of upper secondary school aged youth is equal to the average share of that age group in the Estonian population, and that 75 % of basic school graduates continue studies in upper secondary schools, there should be approximately 11,000 residents in a service area to ensure the capacity to independently organise a state-run upper secondary school.

At the same time, it was admitted that in the case of various services, such as culture, recreational activities and sports, no minimum threshold for the area-based number of residents was necessary, as these services can be provided to any number of people. This also applies to many social services that are provided based on contact hours. In situations where a city or rural municipality purchases services from other organisations, it is irrelevant for them how service providers ensure a reasonable customer base. It is, however, important that new municipalities are sustainable, bearing in mind demographic developments. Therefore, it was recommended that population projections should be made for at least 15 years.

A second assumption unanimously agreed on by the experts in making their recommendations was that a sufficient number of specialist officials was required for the organisation and provision of high-quality services. Analysing current practices, it was found that the share of standard support services provided by accountants, secretaries, registrars etc. (who made up more than 50 % of all officials in small rural municipalities) was only optimal in municipalities with at least 4,000–5,000 residents. Top professionals providing support services who are key in strategic management (lawyers, public relations officials, IT

specialists etc.), on the other hand, should be hired in rural municipalities with populations of at least 7,000–8,000. A few officials, for example social workers (but also construction or land management specialists), can already start working in municipalities with approximately 3,000 residents, but in that case they must perform general managerial functions at the same time. It was estimated that for many officials, the possibility of becoming a full-time specialist would start from 6,000–7,000 residents. Human resources specialists would be hired by local authorities in municipalities with 8,000–10,000 residents.

Another important argument was that local authorities in larger municipalities would be able to benefit from economies of scale. Hence, the authorities would not have to spend excessive resources on management costs, support services and standby arrangements (costs which are incurred regardless of the number of residents). Expert Sulev Liivik gave the example that the number of working hours per resident required for support services was 2.4 times less in a municipality with 3,500 residents than in one with 1,000 residents. Lower cost of time per resident for support services and managerial work means that their share is smaller in the costs of the main activities. This, in turn, makes it possible to spend more resources on core activities. For example, in municipalities with up to 5,000 residents, the absolute amount used for investments is increased gradually by 100,000 to 200,000 euros with each additional 1,000 residents. According to the analyses, this development stopped from the threshold of 5,000 residents. Operating revenue of 500,000 euros would make capital expenditure (loan repayments plus interest) of approximately 330,000 euros possible. This would translate into a loan of 3 million euros. As all cities and rural municipalities have a debt burden, such local authorities would be able to take an investment loan of 1–1.5 million euros. In combination with grants and loans, the local authorities of municipalities with 5,000 residents would be able to make annual investments in the amount of approximately 1 million euros. These funds would enable local authorities to cover their annual

depreciation costs (approximately 500,000 euros) and use money for the improvement of their fixed assets.

In addition to the criterion of the number of residents, all experts highlighted the need to harmonise the territorial division of merging municipalities with the settlement system. They recommended that the new municipal borders should take into account the territorial patterns of residents' daily working and learning mobility, as well as the outermost borders of the hinterland surrounding a service centre, in order to ensure local economic development.

They emphasised the need to merge ring-shaped rural municipalities formed around an urban municipality with the functional centre where services are actually provided. For example, expert Veiko Sepp made a proposal to merge municipalities that are located close to (have a common border with) the central city and have close connections with it (at least 25 % of residents work in the central city) with the central city, irrespective of the criterion of the number of residents. The cities of Tallinn, Tartu, Narva and Pärnu, where the situation is more complex, should be treated separately.

The experts also pointed out that, bearing in mind the territorial characteristics of Estonia, the territory of a rural municipality with 5,000 residents should not exceed 700–800 square kilometres. New municipalities should make sense as territorial entities, taking into account the nature of the settlement system, as well as the particular circumstances, traditions, cultural heritage and local identity of the relevant region.

After presenting various arguments, three of the four expert assessments reach an analytical generalisation about the criterion of the minimum number of residents – two of them propose 5,000 and one 11,000 residents.

In the course of the discussions following the presentation of the expert opinions, Minister Arto Aas, who was the chairman of the expert committee, explained that 'a concrete number was expected by 1 November', and put the preferred value of the minimum criterion – either 3,500,

5,000 or 11,000 residents – to the vote. The minister further explained that ‘the vote will not be binding, as the government committee and the cabinet will discuss all the proposals including their strengths and weaknesses’. 14 members of the expert committee participated in the vote, and some of them voted twice. The results were as follows: nine members were in favour of the minimum criterion of 5,000 residents, and four members in favour of both 3,500 and 11,000 residents.

A dedicated committee meeting was held on 25 September 2015 to discuss the question of exemptions. The committee concluded that:

- the number of exemptions should be limited and the vast majority of municipalities should comply with the established minimum criterion of 5,000 residents;
- exemptions should not be applied automatically; each exemption should be applied for and justified;
- exemptions are possible in a low-density area that forms a logical whole, has one or more second-level centres (based on the study by Centre for Applied Social Sciences), the area of which is at least 900 square kilometres, and which have at least 3,500 residents. The application of this exemption must not lead to the formation of new ring-shaped rural municipalities around urban municipalities, or a situation where some municipalities are left out of a merger.

The views of the expert committee were used by ministry officials as input when they drafted the concept paper for the administrative reform. The concept paper summarises the discussions of the expert committee, describes the different approaches taken by the experts to the bases for establishing the criteria and their values, and provides a conclusion of the results of the committee’s work with regard to the criteria:

*In conclusion, most of the experts consider **5,000 residents to be the threshold** for a significant increase in the capacity of larger municipalities compared to smaller ones: functioning local democracy, a budget that allows sufficient options and investments, possibilities*

to hire competent people for the full range of responsibilities of local authorities etc.

Reference is also made to the use of the criterion of the number of residents in administrative reforms of other countries and the need to take into account demographic developments.

Based on the concept document, the Minister of Public Administration drafted a memorandum for the cabinet meeting of 19 November 2015, which served as a basis for the agreement that the **criterion for the administrative reform** would be the **minimum number of residents of a municipality; that is, 5,000 residents**, and that the **goal** in implementing the administrative reform would be **new municipalities with at least 11,000 residents**.

In accordance with the agreement reached at the cabinet meeting, the Minister of Public Administration submitted to the government on 18 December 2015 a draft Administrative Reform Act that contained one criterion for the minimum size of a municipality, as defined in Article 3:

*Local authorities shall ensure the professional capability necessary for organising functions arising from law and potential to provide public services to all the residents of a municipality, provided that **the municipality has at least 5,000 residents**.*

In regard to the goal of forming municipalities with 11,000 residents, the draft Act provides that achieving 11,000 residents as a result of a merger will be the basis for the payment of an additional merger grant.

In the process of the approval of the draft Act, the criterion of the minimum number of residents was complemented with the criterion for the recommended size of a municipality. This was mostly a result of the pressure from the ministers of the Pro Patria and Res Publica Union, who relied on their interpretation of the decision taken in the cabinet meeting of 18 December 2015. Hence, in the framework of the approvals, Minister of Justice Urmas Reinsalu wrote:

*The Government of the Republic approved in its cabinet meeting that the goal of the reform of administrative-territorial organisation was **to establish 11,000 residents as the preferred size of a municipality** (and 5,000 residents as the minimum size). This goal for the reform of administrative-territorial organisation should also be clearly stipulated in the act, so that the regional committees could base their activities on the target size for a municipality of 11,000 residents, as decided by the Government of the Republic in its cabinet meeting.*

Likewise, the reasoning of Margus Tsahkna, Minister of Social Protection, relies on an interpretation of what was the actual intention of the cabinet meeting:

*We would like to note that the criterion of the minimum size of a municipality should not be used as guidance to local authorities, that this is the ultimate aim that they should strive for in the context of the administrative reform. Focusing merely on the requirement of 5,000 residents may send the signal that there is no need for further efforts. It is our view that **the draft Act should reflect the principle that the number of residents in merging municipalities should actually be 11,000**, as this would enable local authorities to provide high-quality public services. In order to achieve this goal, we envision that merging municipalities should receive additional grants in excess to those proposed in the draft Act. We consider it important that the state should promote municipal mergers to the maximum extent possible. **The text of Article 3 of the draft Act** should require local governments to aim at forming larger municipalities than ones with 5,000 residents. We request that the wording of Article 3 be based on the cabinet meeting of the Government of the Republic held on 19 November 2015. We understand that it was agreed at the cabinet meeting that the minimum criterion for municipal mergers is 5,000 residents. However, we would like to draw your attention to the fact that **the actual intention of that cabinet meeting** was that, as a result of the administrative reform,*

larger municipalities than those meeting the minimum criterion would be formed.

As a result of this political pressure, paragraph 3 was added to Article 1 of the draft Act that the government sent to the *Riigikogu* on 14 March 2016, which stipulates that, in order to achieve the goal of the administrative reform, 'alteration of administrative-territorial organisation must give preference to the formation of municipalities with more than 11,000 residents'. Article 5(3) of the draft Act assigns a corresponding task to the regional committee, which is 'to first consider the compliance of a municipality formed as a result of the alteration of the administrative-territorial organisation with the criterion for the recommended size of a municipality in the case of providing recommendations, opinions and assessments'.

As this was a recommended criterion – and non-compliance would not trigger any sanctions but would only result in loss of the additional grant of 500,000 euros – it had no material impact on municipal mergers or the emerging regional pattern (see Veiko Sepp, 'The New Territorial Pattern in Estonia'). Rather, it is a skilful political manoeuvre to hold together the coalition supporting the reform and manage political risks.

In the process of the approval of the draft Act, positions were also formulated by opponents of the proposed reform, notably national associations of local authorities. The Association of Estonian Cities declared that it was 'in favour of the approach of voluntary mergers of municipalities' and questioned the lawfulness of the implementation of the criterion of the minimum number of residents as such, 'taking into account the definition of local government in the Local Government Organisation Act (Article 2 'Definition of local government') and in the European Charter of Local Self-Government (Article 3 'Concept of local self-government')'.

Likewise, the Association of Rural Municipalities of Estonia found that 'mergers by government under the draft Act raise the question of the constitutionality of such a regulation, i.e. its compliance with the

principle of autonomy of local authorities under Article 154 of the Constitution of the Republic of Estonia'. The rationality of the criterion of the number of residents in designing well-functioning municipalities was called into question, as 'it is a fact that **there is no clear correlation between the size of a municipality and its capacity**; that is, there are weak and strong municipalities among both large and small ones'.

As a result of the process, the *Riigikogu* adopted the Administrative Reform Act on 7 June 2016, highlighting the criterion of the recommended size of a municipality – 11,000 residents – in Article 1, which describes the purpose of the administrative reform. Essentially, however, the Act establishes a criterion for structural administrative reform; that is, the minimum size of a municipality (Article 3):

*Local authorities shall be able to ensure the professional capability necessary for organising functions arising from the law and provide quality public services to all the residents of a municipality in accordance with the purpose of the administrative reform specified in Article 1(2) of this Act, provided that **the municipality has at least 5,000 residents**.*

How were the criteria treated in the process of the administrative reform?

As shown by the approval process, despite the strengthening of the epistemic community supporting the administrative reform over the last 20 years, there was still considerable resistance to the reform in Estonia, particularly on the part of the executive bodies of local government. They mobilised lawyers and local communities to defend their cause, and together they opposed the administrative reform and its criteria at different levels.

On the one hand, they challenged the lawfulness of mergers based on the criterion of size. On the other hand, they tried to show that an administrative reform conducted on the basis of the criterion of the number of residents lacked rational justification.

On 4 October 2016, 26 local government representatives appealed to the Supreme Court for an assessment of the constitutionality of the Administrative Reform Act. Among others, they submitted the following requests:

- amendments should be made to the Administrative Reform Act to allow for a substantive assessment of the administrative capacity of rural municipalities (instead of mergers based on arithmetic and imposed by the government, which may negatively affect services);
- public service regulations (including quality standards and financing) should be adopted, and assessments carried out as to whether mergers are an appropriate measure for meeting these criteria. An additional criterion should be the satisfaction of the residents of a municipality with the services provided. In and of itself, the criterion of 5,000 residents is not an indicator of administrative capacity;
- in addition to administrative capacity, criteria should include historical, geographical and other particular circumstances; impact sites, logical traffic routes and the wishes of the residents should also be considered. Currently, taking into account these criteria is required only as an exception, but this should be the general rule.

In its decision of 20 December 2016 on the assessment of the constitutionality of the Administrative Reform Act, the Constitutional Review Chamber of the Supreme Court rules in favour of the *Riigikogu* and hence the epistemic community who supported the implementation of the administrative reform on the basis of the criterion of the number of residents.

Among other things, the Chamber also supports the theoretical standpoint that, as a general rule, larger municipalities are more capable of performing public tasks, and it does not deem it possible to refute the hypothesis that 5,000 residents is a reasonable minimum criterion for the size of a municipality in Estonia (paragraph 120 of the decision):

The Chamber has no reason to doubt the assumption of the legislature that the formation of larger municipalities may improve the capacity of

*local authorities to provide public services. **It is expected that the local authorities in municipalities with more than 5,000 residents will be able to perform their tasks better than those of municipalities with fewer residents.** The Chamber does not deny that, in abstract terms, other criteria, in addition to that of the number of residents, can be used for assessing the capacity of local authorities, but as a judicial authority, it cannot assume the role of the legislature in order to propose alternative approaches. Under the second paragraph of Article 2 and the first paragraph of Article 3 of the Constitution, the establishment of the fundamental principles of the capacity of local authorities is an issue of national importance on which only the Riigikogu has competence to decide. In light of the above, the Chamber sees no reason to doubt the constitutionality of forming municipalities with at least 5,000 residents.*

At the same time, the Constitutional Review Chamber of the Supreme Court explains that the government has no obligation to merge all municipalities that have fewer than 5,000 residents. Where applicable, it is important to also analyse whether local authorities are able to ensure the professional capacity required for performing the tasks arising from law, and the capacity to provide high-quality public services to all residents of the municipality (paragraph 104). In the case of a dispute, the Court will have the right 'to examine whether the Government of the Republic has, when issuing a regulation pursuant to Article 9(9)2) of the Administrative Reform Act, correctly identified factual circumstances and correctly exercised the right of discretion' (paragraph 105). An examination was conducted later on which showed that, in the opinion of the Supreme Court, the government did not abuse its right of discretion, at least not in the cases against which an appeal had been lodged.

Another policy window for stopping the administrative reform was provided by the fall of the coalition government in the autumn of 2016. On 12 November 2016, twelve heads of local government submitted a joint

statement to that effect to the chairmen of the political parties conducting coalition negotiations. In it they question, among other things, the use of the criterion of the minimum number of residents as the basis for a structural administrative reform:

*In the course of the administrative reform, the capacity of municipalities is only assessed on the basis of the minimum size criterion, i.e. 5,000 residents, but **as a single criterion, this is not sufficient**, and the exemptions from it are too limited. Other criteria, which would allow taking into account the particular circumstances of a municipality and assess its administrative capacity, are not considered at all in the course of the administrative reform. Therefore, the administrative reform does not facilitate the distinguishing of capable local authorities from those not equally capable, and neither the minimum criterion for a municipality nor mergers by government based solely on the number of residents are appropriate.*

The heads of local government submitted a proposal to the parties holding coalition negotiations to make four amendments to the Administrative Reform Act. The first amendment should replace the minimum criterion for a municipality with substantive criteria for the capacity of a local authorities.

The proposal makes complete political sense, as the Centre Party, who led the coalition negotiations, had previously been in opposition and hence against mergers and the use of the minimum criteria. Thus, a discussion on the administrative reform as a matter of significant national importance was held in the *Riigikogu* on 15 September 2016 on the initiative of the Centre Party faction. Critical presentations were made by attorney-at-law Paul Varul, representing local authorities that had questioned the constitutionality of the Administrative Reform Act, Deputy Chairman of the Centre Party faction Mailis Reps, and Chairman of the Ida-Virumaa Local Government Association Veikko Luhalaid, who later became an adviser to the Minister of Public Administration.

Adviser to the Centre Party faction of the *Riigikogu*, Jaak Aab, who later became the Minister of Public Administration, published an opinion article, 'Haldusreformi vead tekitavad segaduse aastateks' (Mistakes of the administrative reform will create confusion for years to come), in the newspaper *Postimees* on 23 October 2016, in which he heavily criticised the Administrative Reform Act and the criterion of the number of residents:

Basing the assessment of the capacity of local authorities on the minimum number of residents is one of the biggest mistakes of the administrative reform. Surely there are capable local authorities, with fewer than 5,000 residents but they have no way of proving it. Likewise, there are local authorities with more than 5,000 residents which have poor administrative capacity, but this fact is ignored. With the Act adopted by the Riigikogu in the spring, the goal of the administrative reform will not be achieved, as the administrative capacity of local authorities will not have been assessed in substantive terms.

This mistake can still be corrected if substantive criteria for the assessment of local authorities are added to the Act, on the basis of which it can be decided if a municipality must merge with another one or if it can continue independently. These criteria can be established on the basis of the circumstances described in Article 7(5) of the Territory of Estonia Administrative Division Act: historical reasons; effect on residents' living conditions; residents' sense of cohesion; effect on the quality of public services; effect on administrative capacity; effect on the demographic situation; effect on the organisation of transport and communications; effect on the business environment; effect on the educational situation; and effect on the organisational functioning of the municipality as a common service area.

The number of residents, which can be 5,000 as proposed by the government or any other number, should be primarily treated as an assumption. Municipalities where the number of residents is below the minimum limit specified in the Act and which do not want to merge or

those that have already merged but remain below the minimum limit should be able to submit to the government a reasoned application for exemption.

The possibility of submitting a reasoned application, as described in the article, was provided for in the Administrative Reform Act and also referred to in the decision of the Constitutional Review Chamber of the Supreme Court. Nevertheless, the Centre Party as the leading party of the government considered it reasonable to proceed with the administrative reform based on the criterion of the number of residents. Thus, the opponents of the criterion-based administrative reform failed both on the legal and the political front, with no time or place left for continuing with the debates and establishing the final truth.

An important reason why the opponents of the reform were not successful is the fact that a large majority of Estonian municipalities accepted, for one reason or another, the theory that larger municipalities are more efficient than smaller ones and that 5,000 residents is a reasonable minimum criterion.

When the theory was applied in practice, 160 municipalities out of 213, or nearly 80 % of all municipalities, opted for a voluntary merger (forming 47 merger areas). Furthermore, 23 municipalities met the minimum criterion of the number of residents already before the mergers, and four marine islands (Vormsi, Muhu, Kihnu and Ruhnu) applied for exemption as provided for in the Act.

The three regional committees that were established for guiding the administrative reform, advised and assessed local authorities in a much wider context than the criteria of the number of residents. This was mainly done in the form of expert opinions, which provided the basis for an assessment of the local authorities of an existing municipality or one to be formed with regard to the following aspects:

- compliance with the criteria of the agreed minimum size and recommended size of a municipality;

- compliance in terms of the achievement of the goals of the administrative reform;
- territorial integrity (for details, see Veiko Sepp, 'The New Territorial Pattern in Estonia');
- need for including more local authorities in the preparations for the alteration of administrative-territorial organisation;
- justification for exemption.

All these points were considered for each decision made. As initially defined by the expert committee, the minimum criterion was treated as indicative, and not as a strict threshold. If required by the logic of the settlement system, mergers resulting in a municipality with a slightly smaller number of residents than 5,000 (4,600–4,900) were also accepted. However, the committees based their official opinions regarding voluntary mergers and recommendations for mergers initiated by the government on the Administrative Reform Act but complemented this with arguments based on the logic of the relevant settlement system. For example, with regard to the merger plans of the rural municipalities of Antsla and Urvaste, the regional committee of southern Estonia decided on 8 July 2015:

*to recommend to the rural municipalities of Antsla and Urvaste to continue and complete their merger negotiations, and to **find ways to meet the minimum criterion of 5,000 residents prescribed by the Administrative Reform Act** by merging with additional municipalities.*

In its opinion of 9 January 2017 on the merger applications approved by the municipal councils, the regional committee of southern Estonia admitted that 'the merger area does not meet the criterion of the minimum size prescribed by the Administrative Reform Act'; as of 1 January 2017, the combined number of residents in the two municipalities was 4,649. Nevertheless, *the regional committee supports the merger initiated by the councils because this will result in **the formation of a homogenous***

municipality, which will have a positive effect on the achievement of the goals of the administrative reform.

A proposal for an additional, mandatory merger with other rural municipalities is made allowing for a possible exemption:

*The regional committee makes a proposal to the Government of the Republic to merge the rural municipalities of Antsla and Urvaste with the rural municipalities of Lasva, Sõmerpalu and Võru. However, if the local authorities can justify that they can achieve the goals of the administrative reform without these additional mergers and that **the additional mergers would have a negative effect outweighing their positive effect**, then the termination of the merger procedure should be considered.*

Even after the government decides to initiate the additional mergers, the committee adheres to its original view that, in this particular case, the territorial circumstances outweigh the non-compliance with the minimum criterion. The committee justifies its view in its decision of 22 May 2017 regarding the merger of the rural municipalities of Antsla, Lasva, Orava, Sõmerpalu, Urvaste, Vastseliina and Võru as follows:

*The regional committee finds that Antsla is a separate third-level centre, and that the **additional merging** of the rural municipalities of Antsla and Urvaste **with other municipalities may hinder, due to the very large territory, the development of the centre of Antsla**. The rural municipalities of Antsla and Urvaste clearly **form a separate service area**, which has no commonalities with the other rural municipalities being merged. The residents do not consume services only in Võru but also in Valga and Otepää. The rural municipalities of Orava and Vastseliina are oriented towards Võru. Local authorities should not be assessed solely on the basis of their existing capacity to provide services but also on the basis of the possibilities for developing that capacity.*

*The regional committee proposes to the government that the **procedure for the alteration of the administrative-territorial organisation***

of the rural municipalities of Antsla and Urvaste be terminated, as the reasons presented by the local authorities for the termination of the procedure are valid, and to continue the procedure for the alteration of the administrative-territorial organisation of the rural municipalities of Orava, Sõmerpalu, Urvaste, Vastseliina and Võru, as the reasons presented by the local authorities for the termination of the procedure in this case are not valid.

The criterion for the recommended size of a municipality was treated in a similar way. Compliance with this criterion was recommended if this does not conflict with the logic of the settlement system or undermine the potential for other municipalities to merge into integrated territorial entities. For example, the regional committee of southern Estonia considered it important to record in the minutes of its meeting of 19 September 2016 under the agenda item 'Municipalities with more than 11,000 residents' that 'the effort to fulfil the criterion of 11,000 residents has resulted in negotiations in areas where it is unreasonable, in order to receive an additional grant.'

The criteria of the administrative reform were most radically ignored by the Government of the Republic itself. Granting exemption to the city of Loksa with its 2,738 residents prompted a major public outcry. Chancellor of Justice Ülle Madise expressed the view that this might be a serious abuse of discretion 'which may lead to a court decision finding some mergers by government unlawful'.

This is a question of equal treatment of rural municipalities and the prohibition of arbitrariness. If this is a national reform carried out in accordance with the law, then the decisions and argumentation of the government should be in alignment and based on the same logic.⁴³

⁴³ Estonian Public Broadcasting, 16.6.2017.

The former Chancellor of Justice, Allar Jõks, acting as the legal representative of the city of Keila in questions relating to the administrative reform, found that the government deceived all Estonian local authorities with its decision:

Yesterday, 15 June, the administrative reform in the Republic of Estonia came to an end, as after granting exemption to Loksa, it is not possible to talk seriously about the administrative reform being implemented as prescribed by the Act, and all municipalities with better financial capacity and a larger number of residents now have the legitimate expectation to be granted exemption ...⁴⁴

It was speculated in the media that this was a political agreement in order to ensure Värner Lootsmann, a veteran of the Centre Party, 'a place all of his own'. Jaak Aab, the Minister of Public Administration, and other Centre Party ministers rejected these accusations as unfounded.⁴⁵ Some well-informed people who stand close to the governing circles have indeed confirmed that this was not merely a question of Loksa but rather a broader political agreement – 'one exemption for each party'. Whether such discretion based on party politics should indeed be granted to governing parties under the Administrative Reform Act is, however, a question in its own right which has to do with legal theory and ethics. After the latest decisions of the Supreme Court, which maintained all the initiated merger decisions taken by the Government of the Republic in force, there was no practical need for finding an answer to that question for the purposes of the administrative reform.

⁴⁴ Estonian Public Broadcasting, 16.6.2017.

⁴⁵ 'Valitsus otsustas omavalitsuste ühendamisest: Loksa linn sai erandi' – *Postimees*, 15.6.2017.

Conclusion: conformity of the results to the goal of the administrative reform

As a result of the 2017 administrative reform, 79 municipalities were formed in Estonia, of which 64 (81 %) had 5,000 or more residents as of 1 January 2017. A total of 28 municipalities (35 %) had 11,000 or more residents.

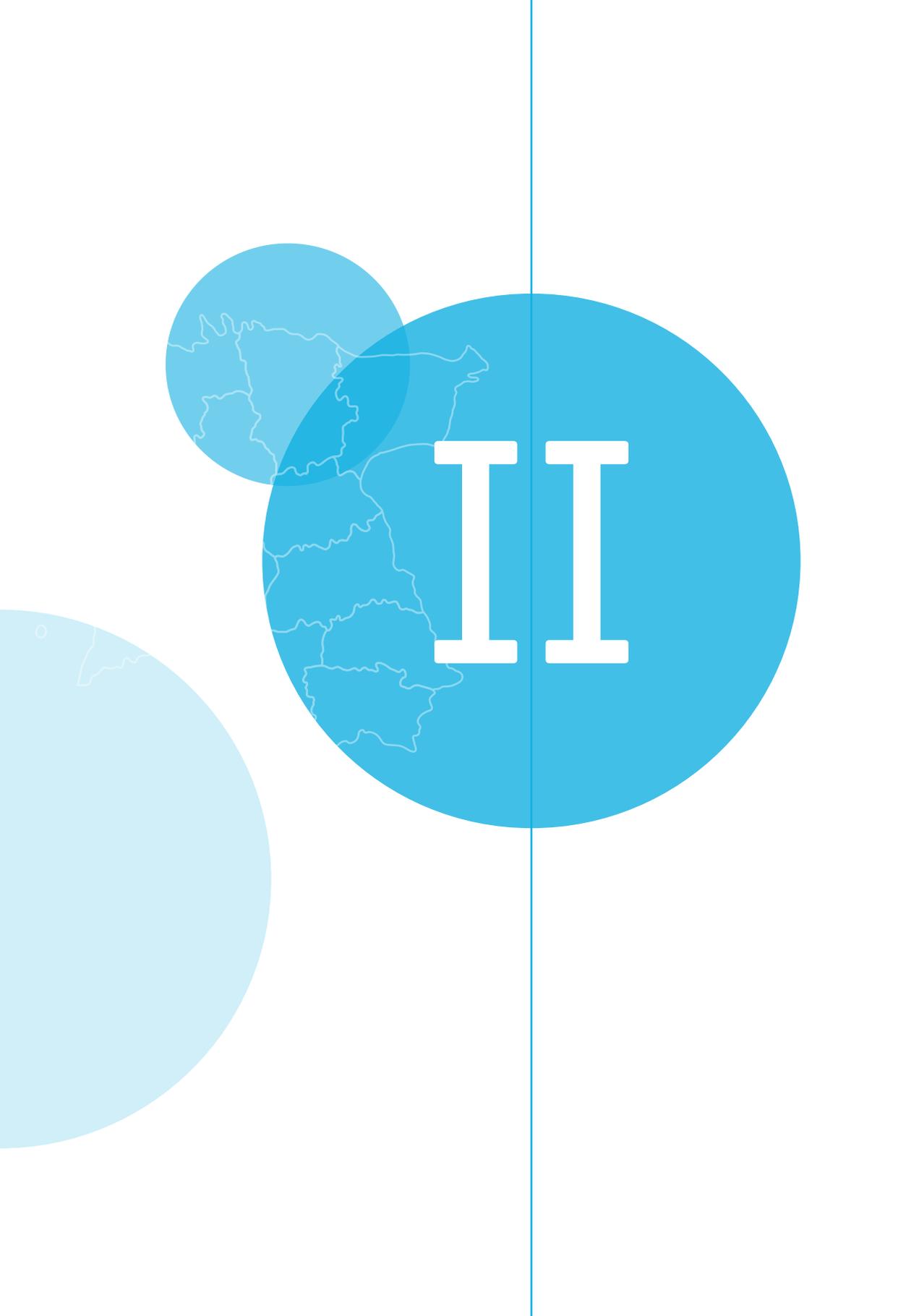
The government action programme defined the goal of the administrative reform in terms of the share of residents living in municipalities that meet the established criteria, the target being 95 % of the population. If we consider the minimum criterion as the criterion proper of the administrative reform, then the goal of the government that assumed office in 2015 was indeed achieved. In 2017, 96.2 % of the Estonian population lived in municipalities that met the criterion.

However, the share of the people living in municipalities exceeding the threshold of the recommended criterion was only 76.9 %. Hence, there is more than one possible interpretation with regard to whether or not the goal specified in the Administrative Reform Act was actually fully achieved.

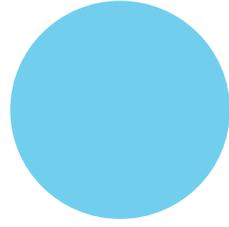
In the European context, based on the number of residents in municipalities, Estonia has been similar to the Nordic countries since 2017. As of 1 January 2018, the average number of residents in Estonian municipalities was 17,152. According to the average size of municipalities, Estonia occupies 13th place, right after Finland, among the countries of the European Union. At any rate, Estonia now belongs to those European countries where the share of very small municipalities is modest. Other countries, not counting Estonia, where less than 20 % of municipalities have fewer than 5,000 residents are the United Kingdom, the Netherlands, Denmark, Sweden, Lithuania, Latvia, Bulgaria and Belgium.

The territorial result of the administrative reform should thus be sufficient for removing the main obstacles to high-quality local government, which arose from the small size of some municipalities. However,

the professional and cost-efficient performance of some of the existing and a large number of potential local government functions (e.g. vocational and upper secondary education, public transport, and business development) requires more than 5,000 or even 11,000 residents. Indeed, effective regional cooperation between some local authorities in organising various important service sectors was a precondition for establishing and justifying the minimum criterion of 5,000 residents as sufficient. The problems of administrative capacity will continue to be an issue for small islands exempted from the criterion. They should resolve them through administrative cooperation with larger municipalities.



II



Municipal mergers

The Merger Negotiations Initiated by Municipal Councils

Five case studies

MIHKEL LAAN, KERSTEN KATTAI, RIVO NOORKÕIV, GEORG SOOTLA

Introduction

The outcome of the administrative reform of 2017 was largely shaped by the voluntary stage of municipal mergers.

In simple terms, this meant that during the first stage of the reform (before the deadline of 31 December 2016, as provided by law) the councils of municipalities that did not meet the minimum population size criterion selected their preferred negotiating partner(s) with whom they would form a new municipality. The only substantive restriction was the requirement of sharing an administrative boundary.

The voluntary stage of merger negotiations was a democratic process. The councils had absolute discretion to decide the direction and scope for attaining the objectives set by the reform. Such a possibility created a bustle among Estonian municipalities: a number of proposals to start negotiations were made, hundreds of discussions were held, many public rallies were arranged etc.

On the other hand, it meant that the main focus was on satisfying the population size criterion, while issues such as the existence of a clear local commuting centre or functional connections were given less attention. Subsequently the central government had no say in shaping the territory of a merger area. It was the municipal councils that were responsible for the rationality of the reform outcome.

Within a period of just six months municipal councils had to make their choice on a number of matters:

- with whom should the negotiations be held and for how long; this could include various alternative directions the merging process could go in;
- whether to negotiate only within the range of the minimum population size criterion (generally 5,000 residents), or seek to establish a municipality with a larger number of residents (e.g. a county-wide municipality);
- whether the decision should be based on the centre-and-hinterland principle, or the principle of partners with more equal centres (a 'network-based rural municipality');
- whether the decision should be based on previous cooperation experience, commuting and functional connections, history, political links, or the wealth of the potential partner, etc.

As the cases that are the focus of this article demonstrate, the motives driving the formation of merger areas were different. Sometimes these motives were inconsistent both within the municipality and between municipalities. On several occasions, decisions were reviewed at the last

moment, which meant that a number of mergers were put on hold until the second stage of the reform initiated by the central government in 2017. Moreover, a voluntary merger that resulted in the formation of a municipality meeting the minimum population size criterion did not necessarily ensure the final outcome if some of the neighbouring municipalities failed to meet the criterion. Regardless, the subsequent landscape of Estonian municipalities was largely shaped by the voluntary stage of the reform.

This article analyses the merger negotiations launched during the voluntary stage of the administrative reform, based on examples of different cases. The main body of the article focuses on five case studies, which reflect the progress of merger processes in different regions of Estonia: in the counties of Saaremaa (formation of Saaremaa rural municipality), Jõgevamaa (Põltsamaa rural municipality), Ida-Virumaa (Alutaguse rural municipality), Võrumaa (the five-municipality solution) and Pärnumaa (the newly formed Pärnu city covering a large area).

The cases were selected with a view to providing examples that were as different as possible, some being success stories of the reform, while others representing complicated cases. The details of these cases are provided by consultants who assisted in the implementation of the merger process: Kersten Kattai in Saaremaa, Rivo Noorkõiv in Põltsamaa, Georg Sootla in Pärnu and Mihkel Laan in Võrumaa and Alutaguse; the latter is also the main author of this article.

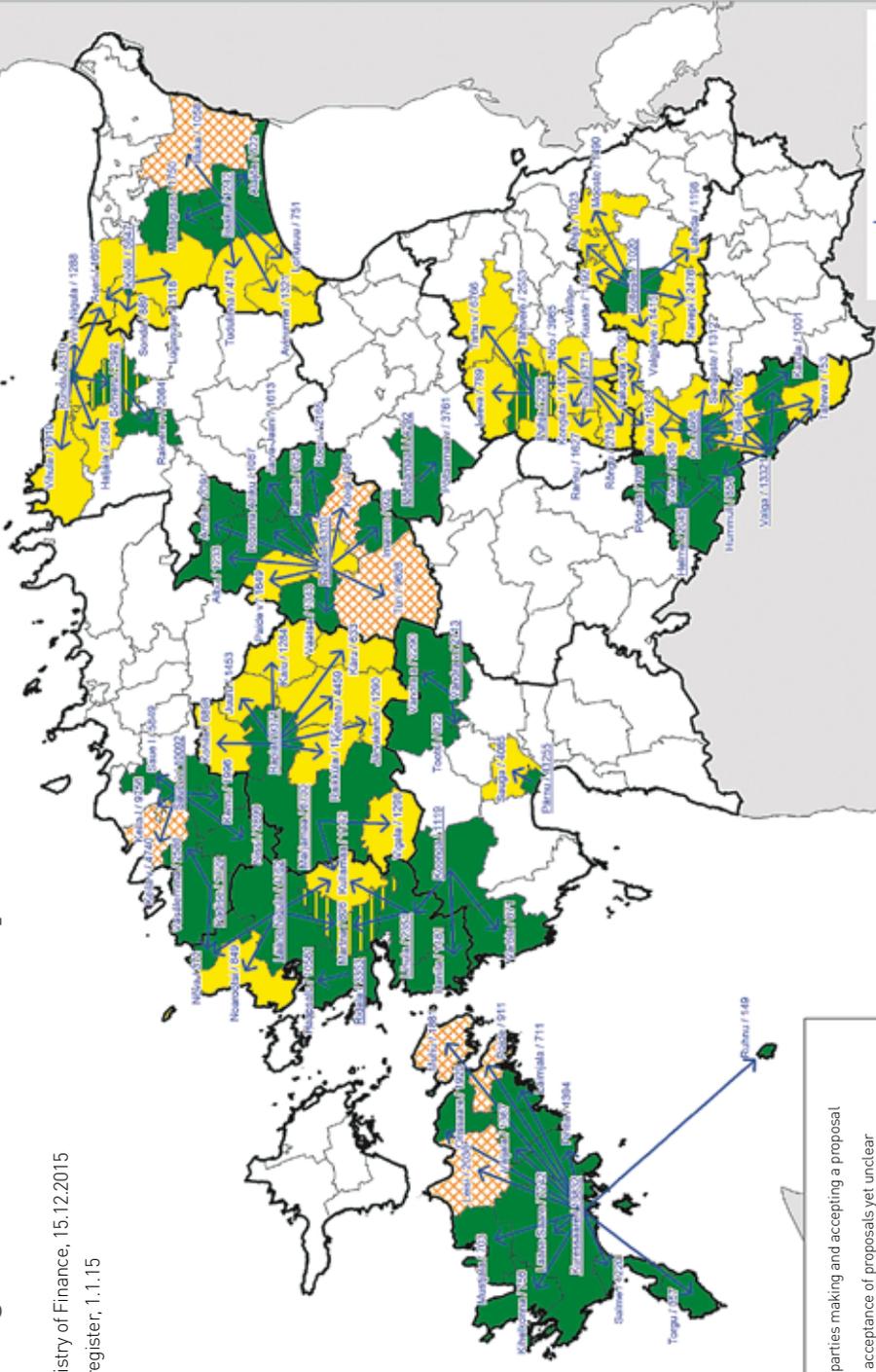
Before discussing any specific cases, the article provides a brief overview of the merger negotiations held during the voluntary stage of the Estonian administrative reform. The article ends with a discussion summarising the cases.

▼ **Figure 1.** Progress of merger negotiations between municipalities as of 15 December 2015¹

¹ Administrative reform newsletter, 22.15.2015; <https://haldusreform.fin.ee/static/sites/3/2014/04/hal-dusreformi-infokiri-detsember-2015.pdf>.

Merger negotiations between municipalities, 2015

Source: Ministry of Finance, 15.12.2015
 Population register, 1.1.15



- parties making and accepting a proposal
- acceptance of proposals yet unclear
- parties refusing the proposal
- addressee of the proposal
- Municipality / number of residents

Brief overview of voluntary merger negotiations

The official launch of the 2017 administrative reform and also the voluntary merger negotiations was on 8 April 2015, when following the parliamentary elections, the Reform Party, the Social Democratic Party and the Pro Patria and Res Publica Union signed a coalition agreement. Somewhat surprisingly, the agreement contained a provision on the implementation of the administrative reform; in particular, it reflected a change in the approach taken by the Reform Party thus far.

According to the agreement, the legislative amendments necessary to implement the administrative reform were to be passed by 1 July 2016. It was also specified that the process of voluntary municipal mergers within the framework of the administrative reform was to be completed before the local elections of 2017; that is, within a period of just over two years. The new government coalition, which came to power in November 2016, when the Centre Party replaced the Reform Party as the lead partner of the coalition, kept this objective². In terms of time, the negotiations initiated by municipal councils, or the voluntary stage of mergers, could be divided into three:

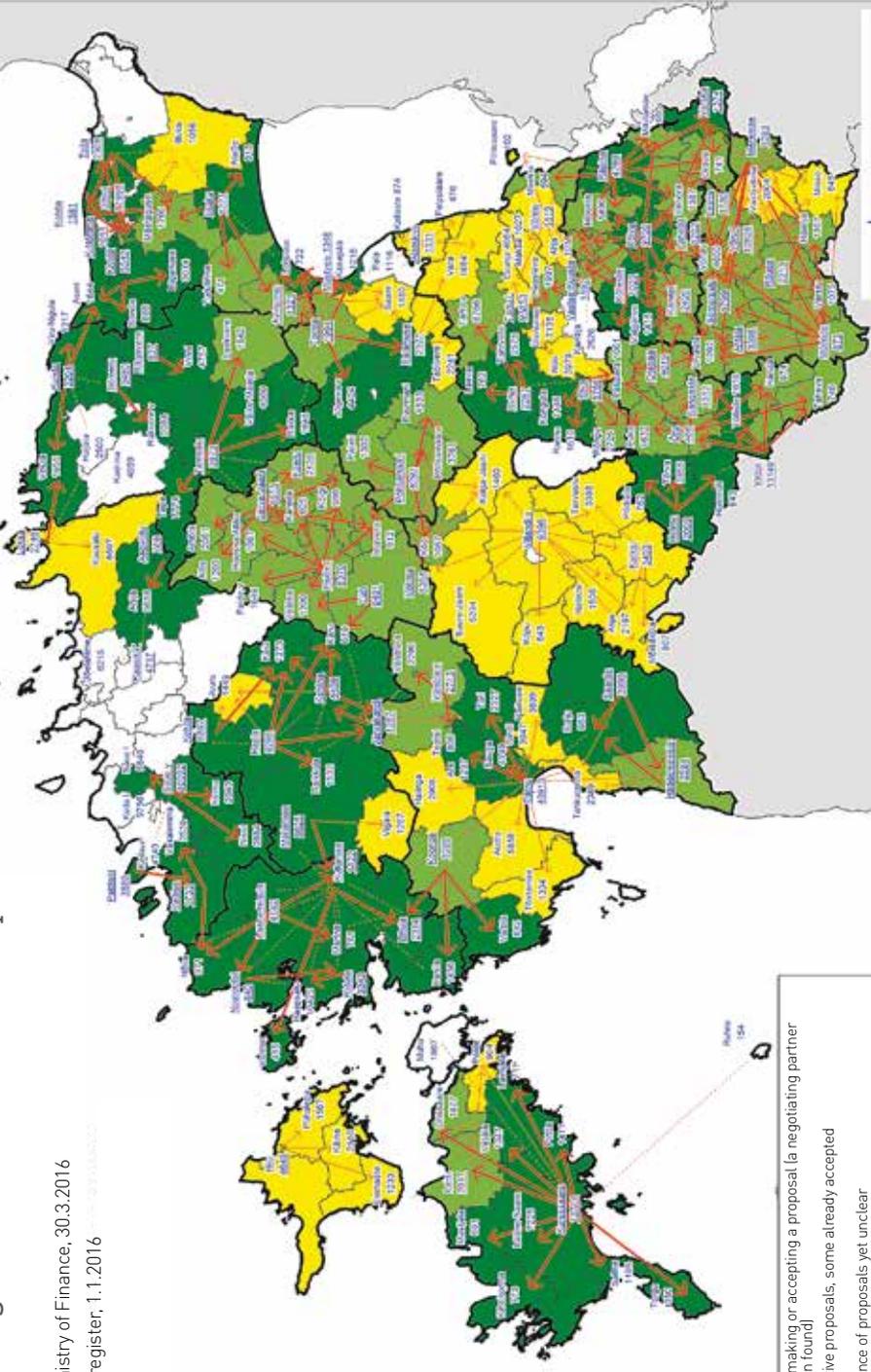
1. the setup stage (2015);
2. the stage for making active proposals and negotiating the mergers (from the beginning of 2016 to when the Administrative Reform Act came into effect on 1 July 2016);
3. the concluding phase of the talks (from when the Act entered into effect until the end of the voluntary stage on 31 December 2016).

▼ **Figure 2.** Progress of merger negotiations between municipalities as of 30 March 2016

² <https://www.err.ee/532757/taismahus-koalitsioonilepe>.

Merger negotiations between municipalities, 2016

Source: Ministry of Finance, 30.3.2016
 Population register, 1.1.2016



- parties making or accepting a proposal (a negotiating partner has been found)
- alternative proposals, some already accepted
- acceptance of proposals yet unclear
- accepted proposal
- refused proposal
- proposal, the acceptance or refusal of which is yet unknown
- unclear
- Name of the municipality / number of residents
- * - Raasiku made a proposal to change the boundaries

The voluntary stage was followed by the implementation of the mergers initiated by the Government of the Republic (from the beginning of 2017 until the local elections in November of the same year), which are analysed in the article by Kaie Küngas, 'The Execution of Government-Initiated Mergers'. At this stage it was not possible to initiate new negotiations between municipalities.

In 2015, during the **setup stage**, the process focused on the development of the concept of administrative reform and on the drafting of the relevant act, which was led by the Minister of Public Administration Arto Aas along with the respective expert committee. At the same time, municipal councils also submitted their first proposals for merger negotiations, but in most regions such proposals did not yet result in substantive negotiations. Nevertheless, nearly half of the municipalities in Estonia were in one way or another involved with proposals: they had either made a proposal themselves or received one (Figure 1).

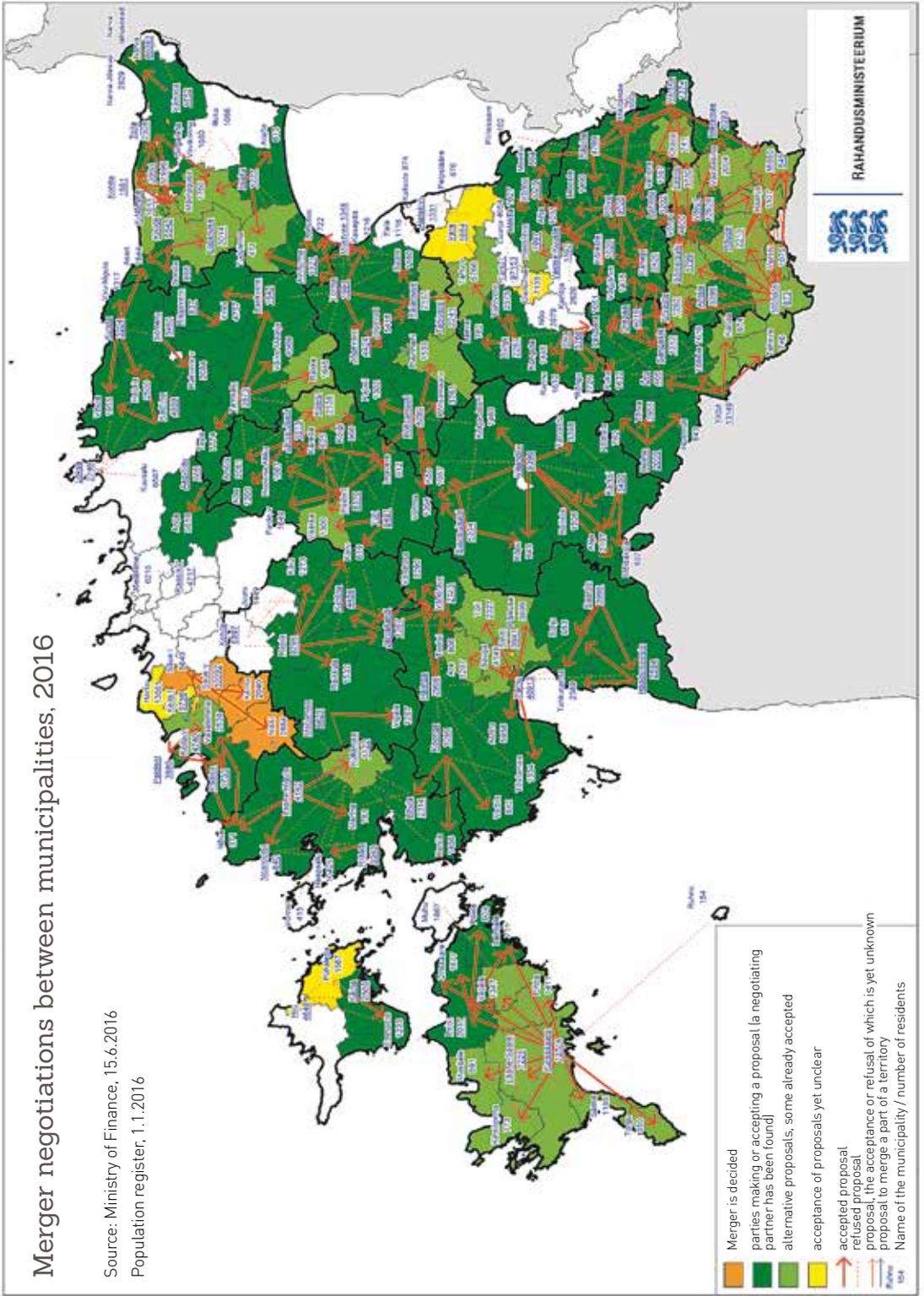
However, at this stage only a few groups of municipalities that were merging had started explicit negotiations, including some municipalities in Lääne-Harjumaa (the city of Saue and the rural municipalities of Saue, Kernu and Nissi) and the municipalities in the Tõrva region (the city of Tõrva and the rural municipalities of Helme, Hummulu and Põdrala), which had started negotiations earlier. Moreover, municipalities in Saaremaa had also been holding negotiations since 2014.

▼ **Figure 3.** Progress of merger negotiations between municipalities as of 15 June 2016³

³ Administrative reform newsletter, 22.06.2016; <https://haldusreform.fin.ee/static/sites/3/2016/06/hr-infokiri-suvi-2016-1.pdf>.

Merger negotiations between municipalities, 2016

Source: Ministry of Finance, 15.6.2016
 Population register, 1.1.2016



Active submission of proposals and substantive negotiations started to gain momentum in early 2016, as new initiatives were launched across Estonia every week. A major boost to this process came from the approval of the draft Administrative Reform Act by the Government of the Republic on 10 March.⁴ This laid out the direction of the reform in terms of the population size criterion, as well as the entire schedule of the reform.

At the same time, merger consultants and coordinators engaged by the Ministry of Finance, whose duty was to support negotiations locally, became actively involved in the process. This created a direct link between the negotiations taking place 'in the field' and the Ministry, given that the consultants' range of engagement covered most of Estonia, while they were in constant contact with representatives of the Ministry. The municipalities were not charged for the consultants' services, and were free to decide whether or not to engage the consultants. From the point of view of a merger consultant, building such a bridge was of the utmost importance to mitigate tensions between the regions and the central authorities.

By the spring of 2016, the map of Estonian municipalities was almost 90 per cent coloured: the majority of the municipalities had either made a proposal for negotiations, accepted another party's proposal, or had received at least one proposal. By mid-April, 188 municipalities out of 213 were involved in negotiations.⁵

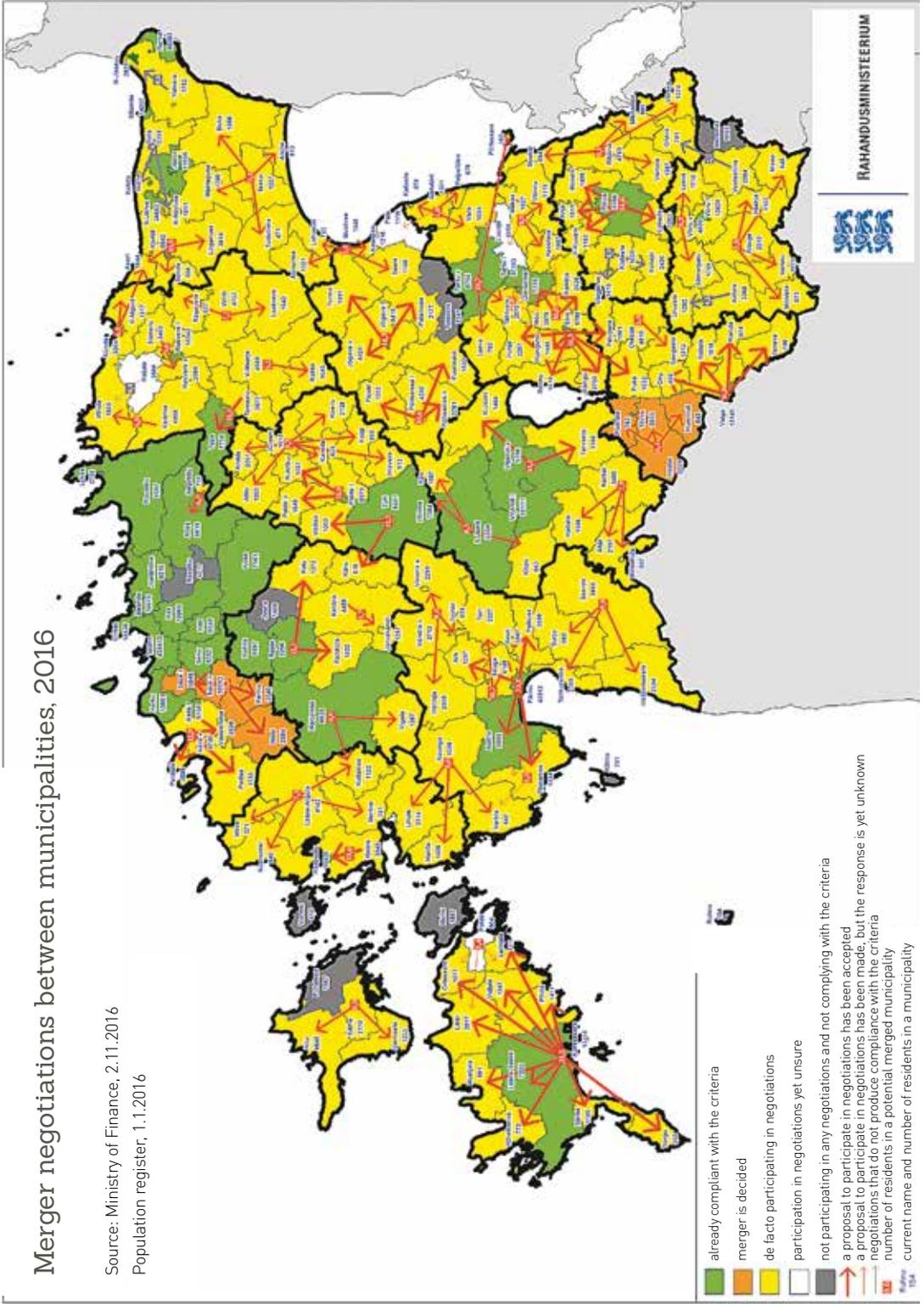
▼ **Figure 4.** Participation of municipalities in merger negotiations as of 2 November 2016

⁴ <https://www.valitsus.ee/et/uudised/valitsus-kiitis-heaks-haldusreformi-eelnou>

⁵ Administrative reform newsletter, 14.4.2016, <https://haldusreform.fin.ee/static/sites/3/2016/04/hr-infokiri-kevad-2016.pdf>

Merger negotiations between municipalities, 2016

Source: Ministry of Finance, 2.11.2016
 Population register, 1.1.2016



In spite of the fact that municipal councils were active in making proposals, the first half of 2016, as well as the entire process of negotiations, was characterised by a great deal of ambiguity and a multitude of alternatives. For instance, in nearly half of all the counties (including Järvamaa, Läänemaa, Pärnumaa, Saaremaa, Viljandimaa and Võrumaa), initiatives to form a county-wide municipality competed with alternative proposals and discussions in support of negotiations involving fewer parties.

It was not uncommon that one municipality was working on 3–4 alternative merger options.

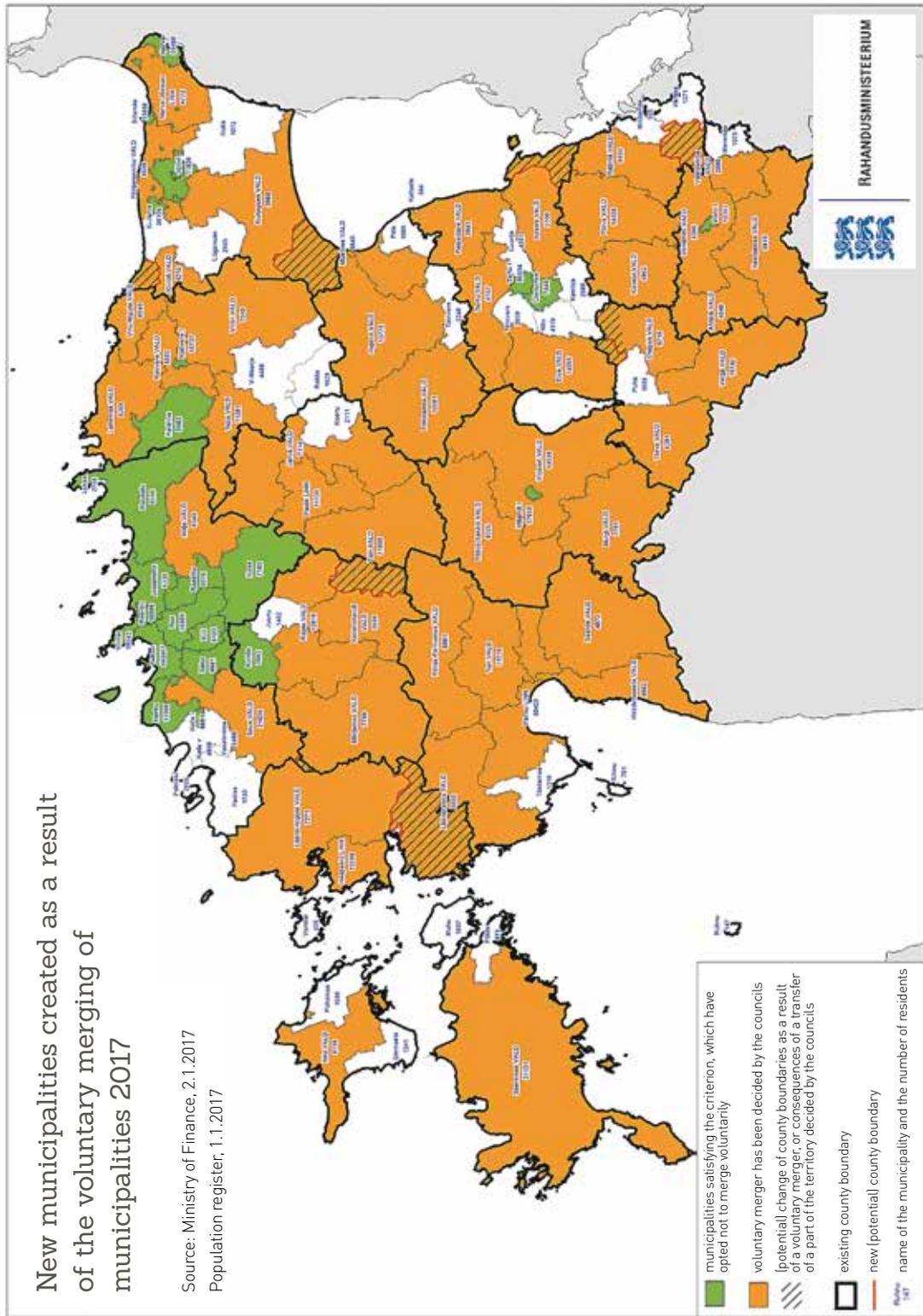
While in the spring of 2016 the *Riigikogu* (Estonian Parliament) started the legislative proceedings of the draft Act and in many regions the negotiations were already addressing key issues (including management, sectoral cooperation, drafting of the merger agreement), there were still some regions across Estonia which thought that the reform might not happen.

This was partly the reason why the result attained in the first half of 2016 was that a merger agreement was approved in only two regions, which had already previously reached agreement in principle: the merger agreement between Kernu rural municipality, Nissi rural municipality, the city of Saue and Saue rural municipality was approved on 31 March 2016, resulting in the formation of Saue rural municipality with over 21,000 residents; and the merger agreement between the rural municipalities of Helme, Hummuli and Põdrala and the city of Tõrva was approved on 21 June 2016, resulting in the formation of Tõrva rural municipality with nearly 6,500 residents.

▼ **Figure 5.** Municipalities created as a result of voluntary mergers by
2 January 2017

New municipalities created as a result of the voluntary merging of municipalities 2017

Source: Ministry of Finance, 2.1.2017
 Population register, 1.1.2017



- municipalities satisfying the criterion, which have opted not to merge voluntarily
- voluntary merger has been decided by the councils
- (potential) change of county boundaries as a result of a voluntary merger, or consequences of a transfer of a part of the territory decided by the councils
- existing county boundary
- new (potential) county boundary
- name of the municipality and the number of residents

It is necessary here to admit that in neither case was the merger completely unanimous. The formation of Saue rural municipality was characterised by dissenting opinions in the city of Saue, where 73 per cent of the residents participating in the poll voted against the merger (the turnout was 41 per cent of residents with the right to vote). The opposition to the merger resulted in the formation of a new coalition in the city of Saue just a couple of weeks before the approval of the merger agreement.⁶ The hunger strike of the former deputy chair of the Saue city council, opposing the formation of the new merged municipality, also caught the media's attention.⁷

In the case of the merger of Tõrva rural municipality, discussions were held in a constructive atmosphere, but there was quite a bit of disagreement about its name. Therefore, the name of the newly formed rural municipality was decided only on the day of signing the merger agreement, on 21 June 2016 when the councils took a vote on it. The alternative names discussed for the municipality were 'Helme' and 'Lõuna-Mulgi'.

The conclusive phase of the negotiations started after the Administrative Reform Act entered into force in the summer of 2016. This was when the majority of the regions were given a decisive boost to proceed with the talks substantively and swiftly. However, the Act entered into force in the middle of the summer holiday season, and therefore only a couple of months (August to October) were left for the negotiations, given that November and December had to be left for procedural matters associated with the merger (polling of residents, publication of merger agreements).

It is likely that such a short negotiating period was one of the reasons why almost all wider initiatives involving entire counties were disregarded in Estonia. Pragmatically, finding a consensus among a larger number of participants in this situation seemed more difficult.

⁶ <https://etv.err.ee/v/eesti/6cb7eb44-a34a-4623-a0b0-5d508060562f/sauel-avaldati-linnapeale-umbusaldust-ja-loodi-uus-koalitsioon>

⁷ <http://www.delfi.ee/news/paevauudised/eesti/video-ja-fotod-saue-linnavolikogu-aseesimees-alustas-naljastreiki-laane-harju-suurvalla-loomise-vastu-mul-on-plaanis-siinseista-kui-tervis-lubab-31-m?id=73939769>

It could also be maintained that most of the negotiating municipalities had a clear objective of negotiating the minimum terms needed for drafting the merger agreement, to set aside major changes and leave the more complex matters for the new municipalities to resolve. Considering the time schedule and the objective of bringing the talks to a successful conclusion, such an approach was quite understandable.

A certain impact was made on the conclusive phase of voluntary mergers by the fact that 26 municipalities decided to file an application with the Supreme Court seeking that the Administrative Reform Act be declared unconstitutional. The Supreme Court judgment in this matter⁸ came at the last minute, on 20 December, or ten days before the final deadline for voluntary mergers. Although the judgment did not amend the content of the Administrative Reform Act, most of the parties who had gone to court stayed out of the voluntary merger process.

Some confusion resulted from the change of the governing coalition in November 2016, but from the standpoint of the implementation of the administrative reform, the positive aspect was that the new government coalition soon sent the signal about going on with the reform. However, the new Prime Minister Jüri Ratas implied that certain flexibility could be expected in respect to the minimum population size criterion.⁹ This was taken as a lifeline in a number of regions across Estonia, where there was still hope that at the coercive merger stage the central government could decide not to merge municipalities that do not satisfy the minimum criterion. In addition to municipalities just falling short of the threshold of 5,000 residents, such a hope was also entertained by several much smaller municipalities.

Merger negotiations initiated by municipal councils culminated in December 2016, when the majority of the merger agreements were

⁸ <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-3-16>

⁹ <https://www.postimees.ee/3952317/riigikohus-tunnistas-sundliidetavate-omavalitsuste-uhinemiskulude-ulempiiri-pohiseadusvastaseks>

approved. Due to last-minute changes, agreements were amended up to the very last days; for example, Häädemeeste and Tahkuranna only approved their final merger agreement on 2 January 2017.

As a result of voluntary mergers, 160 municipalities out of 213 (47 merger areas) decided to merge at their own initiative, which meant that nearly 80 per cent of the municipalities participated in the voluntary merger process. A further 23 municipalities already met the minimum population size criterion without having to merge and four islands (Vormsi, Muhu, Kihnu, Ruhnu) applied for exemption in accordance with the Act.

Therefore, as a result of the voluntary stage of the reform, only 26 municipalities remained at the beginning of 2017 that did not meet the minimum population size criterion and had not applied for a merger. However, for the purposes of coercive merging this was further complicated by the fact that 25 municipalities in ten areas had in fact merged, but still failed to meet the minimum criterion even after the merger.

cess, while not meeting the minimum criterion, can be divided into two groups. First, there were those that did not participate in any negotiations and essentially boycotted the administrative reform (e.g. Juuru, Kambja, Pala). Second, there were municipalities that participated in negotiations to a greater or a lesser extent (in certain cases up to the completion of the merger agreement), but for different reasons decided to opt out of the merger process, or did not find suitable partners (e.g. the rural municipalities of Illuka, Lügánuse and Setomaa, as well as the municipalities of the Keila region).

The map (Figure 5) shows that only Läänemaa and Viljandimaa counties were not affected by coercive mergers; while each of the remaining counties had at least one unresolved case.

Five merger negotiation case studies

The following five case studies illustrate the progress of merger negotiations in different regions of Estonia, as seen through the eyes of merger consultants. The cases were selected to be as different as possible, both

in terms of geography (eastern, southern, western and central region of Estonia) and in terms of the smoothness of the administrative reform. The first case study analyses the formation of Saaremaa rural municipality, which has been seen as a positive example within the administrative reform context: the largest rural municipality in Estonia covering the entire island, with around 32,000 residents (the sixth largest in terms of population size), and being a rather logical functional area, was established largely on a voluntary basis.

The second case analysed, Põltsamaa rural municipality, can also be considered a success. The merger of a logical centre and its hinterland resulted in a municipality with around 10,500 residents; moreover, the parts of the region also have a long-term experience in cooperating with each other.

The remaining three cases are complicated rather than successful. In Võrumaa, the process required several coerced mergers, of which the formation of Setomaa rural municipality created a clear precedent. In the case of Alutaguse rural municipality (with an area of nearly 1,500 square kilometres, but just 5,000 residents) tensions were stirred up by the withdrawal of Illuka rural municipality during the voluntary stage, and the unexpected proposal made by the central government for a much more wide-ranging coercive merger. The merger in the city of Pärnu (over 50,000 residents) also required some merging by the central government (Tõstamaa rural municipality), moreover, the reform did not address the desire of certain villages in Sauga rural municipality, adjacent to the city, to merge with Pärnu (Sauga rural municipality as a whole became part of Tori rural municipality), and therefore this matter needs to be settled after the administrative reform.

The location of the municipalities included in the case studies on the administrative map of Estonia after the reform is shown in Figure 6.

Example of Saaremaa rural municipality

Earlier merger attempts and experience

There is hardly any doubt that Saaremaa is an integrated functional area, which is perhaps most clearly illustrated by a customarily highlighted fact: while on the island, the residents of Saaremaa identify themselves as being from Kihelkonna or Laimjala, but when they come to the mainland, then they are all from Saaremaa.

As early as in 2001, the administrative reform plan proposed by minister Tarmo Loodus provided for the merger of all rural municipalities of Saaremaa, only the city of Kuressaare was to remain a separate entity. In his article Madis Kaldmäe explains how the reform plan, developed under Tarmo Loodus, was underpinned by a vast body of analyses and extensive discussions. The processes of that reform plan resulted in a merger of Kuressaare rural municipality and Kaarma rural municipality in 1999. Later more merger plans were discussed, which however never reach the stage of concrete preparatory actions.

In the context of the reform model based on local commuting centres, the governor of Saaremaa county Kaido Kaasik, acting through the development think tank operating in the county government, relaunched the Greater Saaremaa concept. The discussions held within the framework of the think tank resulted in organising a development related seminar for the Saaremaa municipalities, which took place on 7 May 2013, and where participants were presented the idea of a Greater Saaremaa, the potential merger process and a preliminary draft of the management structure.

As it was clear that due to disagreements within the central government, the local commuting centre-based reform model will not be implemented, and due to imminent local elections, the merger plan was voted down, most eagerly by the leaders of smaller rural municipalities. Their arguments were the usual ones: the state must first provide the municipalities a proper revenue base, the focus should be placed

on rural development, merging around local commuting centres would trigger peripheralisation etc.¹⁰

Subsequent analyses of the county governor's initiative, carried out in the course of the interview process, revealed that the heads of local authorities were offended that discussions, led by the county government and held in a relatively small circle of participants, immediately produced rather concrete solutions. For instance, the draft of the potential management structure of the merged municipality was proposed in a situation where even the possibility of a merger had never been widely discussed. Those who had not participated in the process felt that what was being suggested looked like an obligatory solution, which they were not happy to accept. It was also thought that the county governor wished to make the merger his personal project. This became the most important lesson to learn when the subsequent reform initiative and process were devised: maximum communication with local opinion leaders, their involvement, and an opening of the process.

Nevertheless, the initiative of the county government resulted in the merger of the rural municipalities of Kaarma, Kärla and Lümända in 2014. The merger of these three rural municipalities was decided just a short time after the regular local elections (2013). This was a unique example in the merger process in Estonia. The process of merging the three rural municipalities was excellently planned and managed, and the participants shared a future vision for the merged municipality.

There was, however, one significant throwback. The parties wanted to name the merged municipality Saaremaa rural municipality. This caused political opposition within the central government from the Social Democrats, and therefore for several months the central government was unable to approve the merger application of the rural municipalities. Finally, the merging municipalities agreed to use the name 'Lääne-Saare

¹⁰ Development seminar for the municipalities of Saaremaa, 7 May 2013. Stenographic records of the discussions.

rural municipality'. In spite of this negative episode, the discussions about the name of Saaremaa rural municipality and the active opposition to that shown by other municipalities on the island, was a sign that the willingness to create the Greater Saaremaa municipality may exist.

The beginning of the Greater Saaremaa merger negotiations

The local elections of 2013 were a surprising, yet complete victory for the Social Democrats headed by Hannes Hanso, who was also elected mayor of Kuressaare. On 7 April 2014, the mayor called a meeting,¹¹ attended by all heads of local authorities, where behind closed doors the participants confirmed in principle their willingness to consider the merger prospects. Based on this result, in May 2014, the Kuressaare city council submitted a proposal to all municipalities of Saaremaa county to 'start negotiations and a search for possible common elements, with a view to form one single municipality in the county of Saaremaa'.

Over time, all rural municipalities, except Pöide and Muhu, agreed with the proposal (the Ruhnu municipal council concluded the talks later). The municipalities sought assistance from key merger consultants, the process continued with face-to-face meetings and preliminary consultations with heads of local authorities and municipal councils, and preparations were started for merger negotiations.

The opening meeting was held on 7 November 2014 in a neutral venue – Marta-Lovise guesthouse – and was attended by the heads of local authorities. Presentations were made by the President of the *Riigikogu* Eiki Nestor, merger consultants and a representative of the Saaremaa development centre. No substantive discussions were held; the meeting focused rather on the benefits of a municipality of the size of a county, as well as the impact of the merger, while also outlining the key options for holding merger negotiations.

¹¹ ERR, a news report in 'Aktuaalne kaamera', 8.4.2014, <https://www.err.ee/510903/koik-saaremaa-omavalitsused-on-uhinemiskonelusteks-valmis>.

The heads of the local authorities presented their initial opinions; the most widely raised issue concerned the role of the county government in a municipality the size of a county. It was decided that an application to create a county merger coordinator position for this specific case would be made. The ministry satisfied the request and at an open application procedure Taavi Kurisoo, the current deputy mayor of Kuresaare, was elected to the merger coordinator's position.

It is possible that based on the experience obtained in Saaremaa, county and regional merger coordinators were appointed elsewhere in Estonia as well.

Negotiation process

The merger negotiations were held between 11 participants (without the rural municipalities of Põide, Muhu and Ruhnu). Generally, the parties attending the talks were the head of the rural municipality and the chair of the rural municipal council, and often some other relevant official. In the case of Saaremaa, this would have meant a group of at least 22 people. It was obvious that such a large number of politicians at one negotiating table would, in any case, channel the discussions toward abstract political statements. This would make the holding of substantive merger negotiations quite difficult.

It was decided that the negotiations steering committee will include the heads of rural municipalities and the city mayor who have the best understanding of everyday matters. Negotiations with 11 participants, in a context where so many municipalities were involved in the process, was the best working option. Of course, in certain cases the absence of chairs of municipal councils caused some problems. Their attitude, either supporting or opposing the merger, largely depended on their relationship with the head of the rural municipality, how much information they shared and how much they participated in the talks in different formats.

The key question was, who prepares for the discussions at the different rounds of the merger negotiations, and how. The apprehension

that Kuressaare will dominate the process was justified; rural municipalities shared certain common elements on the basis of individual regions. Therefore, forming a leadership group was proposed whose duty was to select the matters to be negotiated, draught the agenda, pre-select issues, assign preparatory tasks to specialists, and so one.

The members of the leadership group were the mayor of Kuressaare (first Hannes Hanso, later Madis Kallas), the head of Kihelkonna rural municipality (Raimu Aardam) representing western Saaremaa, the head of Pihtla rural municipality (Jüri Saar) representing central Saaremaa, the head of Orissaare rural municipality (Vello Runthal) representing eastern Saaremaa and the had of Lääne-Saare rural municipality, who was the most experienced in the merger process (initially Andres Tinno).

The leadership group was active in the first months of the talks, later the need for such a format disappeared because it was rather easy to control the negotiations with 11 participants. As the talks progressed, the leadership of Kuressaare strengthened as well (including the mayor chairing the meetings), moreover, the merger coordinator and consultants, working in conjunction with specialists from rural municipal and city governments, helped to prepare the meetings in a balanced manner. Even if challenges were submitted, they were driven rather by specific individuals or interests than by more general issues.

Three sectoral committees were formed. On the one hand, this created the option of engaging as many specialists and activists in the merger process as possible. On the other hand, it facilitated obtaining maximum input from specialists, and presenting a number of options for the decision-taking process to the steering committee of the negotiations. Furthermore, committees provided a format facilitating discussions on the strengths and weaknesses of the merger and developing a consistent understanding.

The committees did not become a regular work format that lasted throughout the entire merger process. At the first round, the committees convened 2 or 3 times, covering the full range of topics they were

assigned to discuss. This served as the basis for preparing relatively comprehensive records and inputs, which were used to draft the merger agreement and to prepare for steering committee meetings.

Afterward, there was some criticism about the fact that the sectoral committees met so infrequently and that their potential was not sufficiently realised. Nevertheless, it should be taken into consideration that a sectoral committee, consisting mostly of specialists, and the political steering committee were often not necessarily of the same opinion, and therefore the committees (who did not take decisions, but made proposals instead) did not have sufficient gravitas. At the same time the sectoral committees performed their role as the shapers of the discourse quite well.

There was a case where a representative of one rural municipality in the committee colourfully expressed their opposition against the merger. That person was not willing to discuss matters substantively and was rather disruptive at the meeting. When other participants did not play along with their criticism, the participant left the meeting demonstratively and never participated in them again. The sectoral committees undoubtedly had a significant role in formulating the inputs for the merger negotiations, and serving as an engagement format provided a platform for dozens of specialists in their respective areas to make their contribution.

With regard to the format and the schedule, the process of negotiations had been thought through in detail. It was characterised by a clear framework for the format, a strictly managed agenda and documents prepared for the talks. It became clear that without a concrete base document – a text or the principles submitted for the discussions – the talks would turn into a talking shop where no decisions are taken.

Of course, not everything that was planned materialised fully: merger negotiations are a communicative process where the impact of an individual or an event is quite significant. Even the political composition of the steering committee (heads of rural municipalities) provided

a certain political undertone. But it was also possible to discern certain Saaremaa-specific, region-specific and ideological preferences and coalitions.

One of the most complicated and most debated topics of the talks was the management structure of the future municipality. This matter was discussed essentially throughout the entire period of the negotiations, and the parties repeatedly returned to previously rejected solutions. Rural areas rather supported a decentralised structure with rural municipal district assemblies, while representatives of Lääne-Saare rural municipality preferred the sector-based structure¹² along with a strengthening of the village elder institution and establishing community assemblies. In spite of a large number of prepared discussion papers and actively managed agenda, no decisions on concrete options were made.

The initial draft of the merger agreement was completed as early as autumn 2015. However, discussions about strategic options in individual areas of the agreement still went on, as the participants were not prepared to enter into any final arrangements. The factor that caused the talks to halt was suspicion about whether or not the *Riigikogu* will pass the Administrative Reform Act, and what the exact criteria and deadlines will be.

As the certainty that the Act will indeed be passed grew stronger, the merger negotiations gained new momentum. One of the key factors was the mayor of Kuressaare Madis Kallas' taking the initiative, and his active leadership in the process after Kuressaare proposed to resume talks in spring 2016. The negotiations were taken to a level where much more binding arrangements were concluded.

¹² M. Lõhmus, G. Sootla, K. Kattai, R. Noorkõiv, Soovituslikud juhised detsentraliseeritud valitsemis- ja juhtimiskorralduse mudeli ülesehitamiseks kohaliku omavalitsuse üksuses. Ministry of Finance, 2016.

Public engagement and communication

Broader public engagement tended not to be used in the merger process in Saaremaa.

At certain pivotal stages, engagement and communication were targeted more towards the decision-makers; that is, the council members. For instance, on 18 March 2016, a joint seminar was held in Valjala for municipal councils to discuss the current progress of the merger talks and further activities. The meeting was attended by the Minister of Public Administration Arto Aas, who confirmed the implementation of the administrative reform; Madis Kallas, who presented the draft of the merger agreement; and the County Governor Kaido Kaasik, who stated encouragingly that the formation of a united Saaremaa municipality is the right step in the development the island. Nevertheless, the council members who took the floor mostly addressed the risks stemming from the merger.

Naturally, public meetings were held in all rural municipal centres (in some municipalities even in several centres) in order publicise the agreement. However, few attended these meetings.

Two local newspapers in Saaremaa had been keeping their eye on the process and had been regularly publishing news and opinion pieces about the most significant developments. Furthermore, Saaremaa was repeatedly covered in the national media as an example of the merger process. All information about the merger negotiations; for instance, the minutes and drafts of completed documents, were available on the Saaremaa county government website. The fact that there had been sufficient disclosure of information, and that the progress of the negotiations was frequently featured in the media, could have been one of the reasons for the relatively passive turnout of residents in the opinion polls. The turnout was quite modest (4.2 per cent): the number of participants was 1,109 out of 26,343 of which 573 (51.7 per cent) supported and 535 (48.3 per cent) opposed the merger.

Critical moments

After the *Riigikogu* started the legislative proceedings for the Administrative Reform Act, and it became clear that the minimum population size criterion for the mergers was going to be 5,000 residents, a number of competing merger proposals popped up in Saaremaa as alternatives to the Greater Saaremaa idea. The most serious of them was the Ida-Saaremaa (East Saaremaa) initiative. In February 2016, the council of Leisi rural municipality submitted such a proposal to the rural municipalities of Orissaare and Pöide.

The merger of the three municipalities would have produced a population of 4,798, falling just short of the criterion. When in the course of the consultations it became obvious that the central government would not accept the formation of municipalities below the threshold (among others such a message was communicated by the Minister of Public Administration at the seminar of municipal councils held in Valjala on 18 March 2016), the council of Leisi proposed in April 2016 to include the rural municipalities of Laimjala and Valjala in the talks. As a result of this the number of residents in the merging Ida-Saaremaa would have reached 6,856. The latter did indeed agree with the proposal. The mitigation of risks in a situation where the Greater Saaremaa concept had started faltering also caused the council of Lääne-Saare rural municipality to make a merger proposal to their neighbours (with the exception of the city of Kuressaare) and the rural municipality of Torgu (see Table 1). There was a real risk that the Greater Saaremaa municipality would not be formed. The rural municipalities, including Laimjala and Valjala, did not want to be merged or to merge without provisions for mitigating their own risks (i.e. without a merger agreement).

It is not exactly clear to what extent the merger initiatives of Lääne-Saaremaa (West Saaremaa) and Ida-Saaremaa (East Saaremaa) were coordinated to serve as an alternative to Kuressaare, but this was how it seemed. Representatives of several small rural municipalities were

fearful that the mergers would reach a deadlock in all directions, and the possibility of meaningful participation in a merger would cease to exist.

Active talks were under way in the Ida-Saaremaa merger area. They were organised and implementing things professionally (a designated website, regular meetings, comprehensive preparations, disclosures, etc.). Several management structure options and a draft merger agreement were prepared.

The Lääne-Saaremaa proposal did not find such a positive response: this result was actually predictable because the neighbours were invited to join the municipality, rather than initiating a full-blown merger. One of the motives behind the new negotiating initiative was certainly the fact that the discussions about different structural models at the Greater Saaremaa merger negotiations had become quite intense. The representatives of Kuressaare, along with small rural municipalities leaned rather more towards a decentralised model with municipal districts, while the representatives of the Lääne-Saare municipality preferred a structural arrangement that was more centralised and more inclusive for villages. Moreover, there were several points of disagreement between Kuressaare and Lääne-Saaremaa, for instance regarding a common education area.

What caused the breakthrough in the merger negotiations for the formation of the Saaremaa rural municipality?

Madis Kallas, mayor of Kuressaare:

The breakthrough occurred about two years ago, when, after long bilateral meetings, the largest municipalities in Saaremaa agreed to start moving in this direction. Before that there had been discussions and talks, but something was always missing in order to take the decisive next step. Which means that major decisions can be taken voluntarily only when the vast majority starts working towards that direction. Luckily for us this was what happened!

2017 local election results in the Saaremaa rural municipality

Electoral list	Votes (%)	Mandates (%)	Mandates (number)
Social Democratic Party	27,1	32,3	10
Reform Party	23,2	25,8	8
Election coalition Saarlane	21,4	25,8	8
Centre Party	8,3	9,7	3
Conservative People's Party on Estonia	6,6	6,5	2
Pro Patria and Res Publica Union	4,0	0,0	0
Election coalition Meie Saaremaa	3,8	0,0	0
Independent candidates	3,0	0,0	0
Election coalition Sõrvemaa	2,6	0,0	0
TOTAL	100	100	31

Table 3.

First, the merger route initiated by Lääne-Saare municipality was brushed aside by all participants. It was even said that if the municipalities in Ida-Saaremaa merge, then – if required – Kuressaare could merge with small rural municipalities without having a common border, which on the islands was allowed by law. At the same time, the actual political reality rather led to the assumption that if the Greater Saaremaa option does not materialise, then the city of Kuressaare would not merge at all. Ultimately, Lääne-Saaremaa had been a positive merger case, and as a whole there was support for the formation of a united Saaremaa municipality. Differences in understanding and opinion rather originated from individual actors. Second, when the rural municipalities realised that Kuressaare could stay aside all together, and their

alternative would be to merge with the Lääne-Saare municipality, they tended to support the Greater Saaremaa option. Third, as a result of Valjala and Laimjala leaving the Ida-Saaremaa negotiations, it was impossible to form a rural municipality there that would satisfy the minimum criterion. Fourth (and this is likely the most important matter), was the role of the leaders. All of the major political parties and political leaders adopted the attitude that they would support the formation of the Saaremaa rural municipality. Compromises were made and agreements reached with hesitant heads of local authorities, many of them politically aligned. There were also cases where internal disagreements caused sceptics to step away or be side-lined.

A clear political position was certainly a decisive factor in the Greater Saaremaa merger.

Results and future challenges

The significant role of the political parties in the merger process was also revealed in the election results (Table 3), where the political parties won nearly three quarters of the seats in the council, and also formed a coalition. The election coalition Saarlane, which mostly included former non-partisan rural municipal leaders (but also some members of the Pro Patria and Res Publica Union) did get a good result, but was left in opposition in the council. This was despite the fact that the winner of the elections, the Social Democratic Party, and its local leader Madis Kallas, had suggested the idea of forming a coalition that would include all groups represented in the council, in order to foster the successful launch of the merged municipality.

The major challenges for the largest municipality in Estonia lay in the need to bind such a large organisation (nearly 1,500 people earning their salary from the municipal budget – as a comparison: the number of employees in all government ministries of Estonia in 2016 was 1,900) into an integrated system. Furthermore, there is the matter of how to ensure an optimum balance between administration and resolving local

(territorial) issues alongside national (sectoral) issues so that local activity, engagement and community spirit would not be lost, while benefiting from national strategic capabilities.

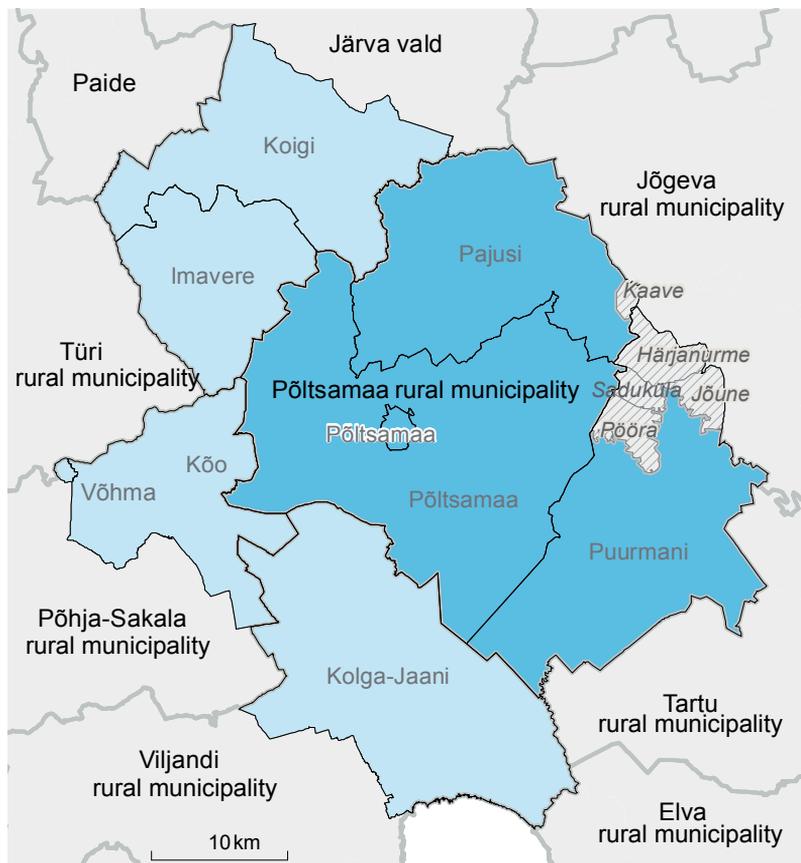
A significant matter in terms of development is whether the state is actually prepared to transfer public administrative duties (including those of a regional nature) to the municipalities after the county governments are abolished. Saaremaa rural municipality, which practically covers the entire county, would certainly be willing to take these duties, and could be a good partner for the government. Whether or not this will happen could in the long run serve as the litmus test for the entire process of the merger in Saaremaa.

Conclusions

- It could be argued that the role of (political) agreements, clear leadership and command by the leaders, underpinned by a well-designed and well-managed merger process, were the main factors behind the formation of the Saaremaa rural municipality. Without political agreements, as well as agreements between individuals, such a wide-scale merger would not have materialised.
- Even though the merger negotiations had started well before it was certain that the ruling coalition had agreed on the implementation of the administrative reform, in hindsight it seems that without it (the Act, and the second stage of mandatory mergers), a united Saaremaa rural municipality would have been unlikely.
- Heads of municipal councils should have been engaged in the merger negotiations (steering committee) from the very start. Given that the merger decision is after all a decision taken by the council, the councils should have been involved in the entire process right from the beginning.

The initial idea of not making the circle of negotiators too wide, and excluding the heads of the municipal councils from the negotiating process, was not a good one.

Participants in the merger negotiations in the Põltsamaa region



— Pajusi	Municipal boundaries and name before the administrative reform
— Türi rural municipality	Municipal boundaries after the administrative reform
■	The municipalities that merged with Põltsamaa rural municipality
■	The municipalities that were given the option of merging with Põltsamaa rural municipality, but did not merge
▨	Villages that became part of Jõgeva rural municipality

Figure 7.

The example of Põltsamaa rural municipality

The merged municipalities are situated in the county of Jõgevamaa. The city of Põltsamaa is the westernmost of the three centres in the county (the others are Jõgeva and Mustvee), and before the reform this fact had a significant bearing on the development of both Põltsamaa rural municipality, which was a circular rural municipality around an urban municipality, and the other surrounding municipalities (above all, the rural municipalities of Pajusi and Puurmani,¹³ and to a lesser extent Kolga-Jaani, Imavere and Kõo).

Due to its upper secondary school, commercial services and health care services, the city of Põltsamaa exerts a strong pull on the neighbouring municipalities. Põltsamaa is where the regional upper secondary school, kindergartens, hobby schools, primary health centre, most of the stores, pharmacies, the rescue service and the police are located for the region. Quite a bit of work-related commuting takes place between the municipalities, and the residents of the region are linked to each other through personal and working ties.

The development of the Põltsamaa region benefits from its location in terms of traffic geography: 127 kilometres from Tallinn, 59 kilometres from Tartu, 26 kilometres from Võhma and 30 kilometres from Jõgeva. Although Põltsamaa's development has lagged behind that of the county's capital Jõgeva, it is a centre with considerable potential.

Experience of cooperation between municipalities

On 3 January 1997, the city of Põltsamaa, Põltsamaa rural municipality, Pajusi rural municipality and Puurmani rural municipality signed a development and cooperation agreement (4P Cooperation Agreement). The objective was to tackle regional issues, such as education and social welfare, and together build a modern health centre. At the same time, it

¹³ Põltsamaa linna kui tõmbekeskuse mõjuapiirkonna uuring. Alphex, 2009.

was deemed important to work together in organising regional cultural and sporting events. Mutual assistance was provided in the development of the hardware and technological capabilities of the rescue service and, where necessary, participating in rescue operations in other administrative territories. Another objective was to cooperate in the field of tourism, and to work together to find solutions to the conservation and restoration of Põltsamaa Castle.

The agreement was renewed in December 2002. It was decided to work out the principles for future development in the region, and to recruit a specialist needed for such regional development.

Janne Veski, Põltsamaa rural municipal secretary:

It is possible that in 2017, thanks to the well-established cooperation experience in the region over the past decades, the process of merging the municipalities in the Põltsamaa region was friendlier than in many other regions. The region perceived itself as an integrated community, and therefore it was possible to hold merger talks in a relatively composed atmosphere. The advantage of the region is that the former Põltsamaa rural municipality used to be a circular rural municipality around Põltsamaa city, and the city was clearly a local commuting centre in the middle of a large merged municipality. This facilitated the merging of the somewhat smaller rural municipalities of Pajusi and Puurmani because the people had become accustomed over time to finding certain services in the city of Põltsamaa.

Earlier merger initiatives

There have been three merger initiatives in the Põltsamaa merger areas. The first merger attempt was made when Estonia was about to regain its independence. On 5 November 1990, the deputies of the Põltsamaa city council and Põltsamaa village council came together in order to decide whether to continue existing as separate entities, or as a united municipality. During the talks, the participants admitted that the city of

Põltsamaa and its rural hinterland were intertwined through the daily activities of their residents, and there was no point in keeping two costly administrative bodies. A proposal was made to merge within the first quarter of 1991. The decision was adopted on the basis of one abstention and all the remaining votes in favour. Moreover, the meeting also raised the question of why this area should be part of the county of Jõgevamaa. However, the discussion of this issue never led to any actions.

The second merger attempt was made when the city of Põltsamaa proposed on 26 January 2004 that the rural municipalities of Põltsamaa and Pajusi join the three municipalities into one before the local elections of 2005. The argument given was that there is a lot of work-related commuting between the municipalities of the region, and that residents are linked to each other through personal and work ties. Pajusi rural municipality dismissed the proposal right away, and Põltsamaa rural municipality followed suit a bit later.

The third attempt to merge took place between October 2010 and June 2012 (the city made a proposal to the rural municipalities of Põltsamaa and Pajusi; Pajusi rejected it right away). A public opinion poll was taken in the city and the rural municipality of Põltsamaa, and a merger agreement was drafted. However, the entire process ended with the merger agreement being dismissed by a meeting of the council of Põltsamaa rural municipality.

Merger of 2017

The core of the Põltsamaa merger area initially consisted of the city of Põltsamaa, and the rural municipalities of Põltsamaa, Pajusi and Puurmani (all municipalities of Jõgevamaa county). As the merger talks progressed it seemed advisable to widen the area of potential mergers, and therefore proposals were made to Kolga-Jaani rural municipality, Kõo rural municipality and the city of Võhma, all in Viljandimaa, as well as to Imavere rural municipality and Koigi rural municipality in Järvamaa. This resulted in a situation where a number of municipalities

were holding parallel negotiations in several potential merger directions. This complicated the talks, as solutions that had been agreed upon were not always consistently understood or achievable.

Kolga-Jaani rural municipality was the first to consider that participating in these merger negotiations was not appropriate. The city of Võhma abandoned the merger as well because the Põltsamaa merger area – in particular, with the hub of the actual merger being in Jõgevamaa – was not consistent with the habitual travel routes, historical ties and cooperation experience of the residents of the city of Võhma, or the centre-and-hinterland principle. The rural municipalities of Koigi and Imavere also decided to suspend the negotiations in the Põltsamaa direction.

The refusal of Kõo rural municipality prompted the most debate. On the one hand, in 2015 the councils of Kõo and Võhma had approved the cooperation agreement, one of the clauses of which explicitly stipulated that the signatories participate in any merger talks together, regardless of the direction. On the other hand, the matter of whether the Põltsamaa region is eligible for an additional bonus, depended on Kõo rural municipality, as in such a case the number of residents in the new municipality would exceed 11,000.

Choosing a merger region was on the agenda of the Kõo rural municipal council meeting of 28 July 2016. The meeting was attended by the chair of Põltsamaa rural municipal council Indrek Eensalu, the head of Põltsamaa rural municipality Toivo Tõnson and the head of Puurmani rural municipality Margus Möldri, who each presented their views about why it was advisable for Kõo rural municipality to merge with Põltsamaa. The discussions also raised the question of which county the new municipality should be in: the city of Põltsamaa and the rural municipalities of Põltsamaa and Pajusi are situated in the historical territory of the Põltsamaa parish, which was originally part of the county of Viljandimaa. Today most of the parish is part of the county of Jõgevamaa; however, some territories are also in Järvamaa and the former territory of Tartumaa.

Several politicians – of whom Helir-Valdor Seeder was the one with the most gravitas – supported the municipality becoming part of Viljandimaa county. The central government was sent a letter to find out whether it would be conceivable that the new Põltsamaa rural municipality could become part of the county of Viljandimaa. The regional committee for southern Estonia discussed the request of the five municipalities and decided not to express an opinion about which county they should join after they had merged. The reason was that the affiliation of a municipality with a county falls within the discretionary remit of the central government.

At a meeting of the steering committee handling the merger of the city of Põltsamaa and the rural municipalities of Põltsamaa, Pajusi, Puurmani and Kõo, which was held at the Kirivere secondary school, a proposal was made to amend the draft merger agreement such that the preferred regional centre for the newly formed rural municipality would be Tartu, and that in terms of county affiliation the Viljandimaa option would not be ruled out. Such an approach was a compromise to convince Kõo rural municipality to continue the merger talks in the Põltsamaa direction. At the meeting of Kõo rural municipal council on 26 August 2016, Erich Palm, governor of Viljandimaa county, informed the participants of the discussions about the matter of their affiliation with a county, held by the regional committee of southern Estonia. He also maintained that there are many unclear aspects with regard to counties and transfers of villages. In his opinion, it was advisable that municipalities merge within one particular county. The county governor pointed to Viljandi, which was functioning successfully as a county capital, and to cooperation within that county. Acting on the proposal of council member Hermann Kalmus, the meeting decided to wait for the decisions of those municipalities of the Põltsamaa merger region that were located towards Jõgeva, and to make their final decision after that. Given that by the time the council meeting was held, the position about Puurmani rural municipality council vis-à-vis its county affiliation was

still unknown, and so the final decision about the choice of the merger region was postponed again. On the same day (26 August 2016), Puurmani rural municipal council decided at a meeting to give their consent to Puurmani rural municipality being a part of Viljandimaa, provided that Kõo rural municipality also merges with the Põltsamaa region.

The topic was once again discussed by Kõo rural municipal council on 15 September 2016. The merger of Kõo rural municipality in the direction of Põltsamaa was linked with history, and with the fact that the city of Põltsamaa was a strong centre and that residents had established well-functioning connections with the centre in terms of the consumption of services. In support of the northern Viljandimaa option it was argued that Kõo rural municipality will have a stronger presence in the new council, and that there will be more people involved in formulating the development of the region. One of the positive aspects pointed out was the experience of cooperation within the association of local authorities of Viljandimaa, where county-related matters have been successfully resolved. The fact that Suure-Jaani has had a positive experience with mergers and that the lessons learned could be benefitted from now, was also deemed an important element. The meeting emphasised the will to be part of Viljandimaa because the previous experience of cooperation had demonstrated that it would be easier to find common areas of interest with municipalities in northern Viljandimaa.

In order to decide whether to opt in the direction of Põltsamaa or Suure-Jaani, the council took a vote. Six council members voted for the merger towards Suure-Jaani, while five council members voted for the Põltsamaa direction; therefore, a narrow majority tipped the decision of Kõo rural municipality in favour of Viljandimaa.

A steering committee, and four sectoral committees – for education; culture, sports and leisure; social welfare and health; and economic affairs – all consisting of municipal representatives, were formed to organise the merger talks and draft the merger agreement. These committees worked actively and addressed matters substantively. The

Results of the public opinion poll of residents

	Number of residents with the right to vote	Respondents	Turnout (%)	YES (%)	NO (%)
Pajusi	1069	70	6,5	61,4	38,6
Puurmani	1299	32	2,5	75	25
City of Põltsamaa	3593	112	3,1	92	8
Põltsamaa rural municipality	3043	60	2	86,7	13,3

Table 4.

atmosphere of cooperation was sometimes disrupted by the fact that participants held merger negotiations in several directions. Merger rallies were held in different municipalities; this provided a better understanding of the partners. The implementation of the merger process was supported by the merger coordinator and the merger consultant.

The residents of the Kaave village in Pajusi rural municipality initiated a change to the municipal boundaries, as they wanted to be a part of Jõgeva rural municipality. On 18 August 2016, Pajusi rural municipal council proposed commencing the procedure for changing the boundaries of the municipality, so as to move the village of Kaave from Pajusi rural municipality to Jõgeva rural municipality. The municipal council of Jõgeva agreed with this proposal. An agreement on changing the boundaries of the Pajusi and Jõgeva rural municipalities was concluded; this agreement regulated the organisational and budgetary, as well as other commitments and rights, associated with the change of the boundaries.

On 31 May 2016, Jõgeva rural municipal council proposed transferring the villages of Härjanurme, Jõune, Pööra and Saduküla to Jõgeva rural municipality. The council of Puurmani rural municipality agreed with the proposal. The number of residents in Kaave village was 26, and the area of the village is 3.9 square kilometres. The total number of residents in the villages of Härjanurme, Jõune, Pööra and Saduküla was 403, and the total area of these villages is 53.4 square kilometres.

The agreement for the merger of the four rural municipalities was displayed publicly from 31 October till 20 November 2016. The draft of the merger agreement was also available on the website of the respective municipalities and rural municipal or city governments. The participants organised eight public rallies together and published a designated merger newsletter.

The published merger agreement received 28 written feedback responses. All proposals and objections were discussed by the steering committee. The questions raised addressed various issues related to the management of agencies administered by the local authority, the provision of services, the municipal boundaries, the formation of electoral districts, investment objects and the name of the rural municipality.

In order to sound the opinion of the residents on merger related matters, an opinion poll was held from 25 to 27 November. In Põltsamaa rural municipality residents could also vote online at www.volis.ee. Although the number of participants in the poll was modest, the merger was given a strong mandate (Table 4).

The formation of Põltsamaa rural municipality

Based on the results of the negotiations and the procedural actions taken, on 20 December 2016 in the Puurmani Manor, the councils of the rural municipalities of Pajusi, Puurmani and Põltsamaa, and Põltsamaa city council adopted the decisions for the formation of a new administrative division – Põltsamaa rural municipality – by merging the respective municipalities.

Põltsamaa rural municipality was named after the historical parish. A new administrative division – Põltsamaa rural municipality, with 10,611 residents¹⁴ and an area of 949 square kilometres – was formed by a government regulation of 6 January 2017 as a result of the merger of Pajusi rural municipality, Puurmani rural municipality, the city of Põltsamaa and Põltsamaa rural municipality.

Summary and conclusions

- The merger of the municipalities in the Põltsamaa merger area produced a municipality with a strong centre, a logical hinterland and long-term close ties and cooperation experience between the participants.
- In the course of the merger talks, several of the municipalities negotiated in more than one direction, which made reaching a consensus difficult.

Ultimately, three municipalities withdrew from the Põltsamaa merger area, above all justifying this on the basis of the desire to preserve their county-related identity: the Imavere rural municipality preferred to be part of Järvamaa county, while Kõo rural municipality and the city of Võhma wished to be part of Viljandimaa county.

- The expectation, which had appeared for a while, that the new municipality would be formed covering a larger territory and with a population exceeding 11,000, did not materialise.
- The merger produced a change in the municipal boundaries. The transfer of villages was smooth, and in the course of the process, the conditions of the transfer and acceptance of the territory were agreed.
- The turnout of residents in the merger related public opinion polls was modest, but those who did participate gave their strong support to the merger of the four municipalities to form Põltsamaa rural municipality.

¹⁴ The number of residents according to the population register as at 27 December 2016.

- The steering group led the merger process well and all topics raised were discussed comprehensively by the steering committee and the sectoral committees. The merger process was supported by the merger coordinator and the merger consultant.
- Communication with the general public was active throughout the merger process. The topics discussed at the meetings were recorded in the minutes and press releases, and all the analyses and work materials were published on the website of the city of Põltsamaa. Moreover, a merger newsletter was published with the joint effort of four rural municipalities. A public opinion poll was taken to explore the views of the residents regarding the merger and the transfer of villages. Some stir was created by the video by Kõo rural municipality,¹⁵ where Tarmo Riisk and Helir-Valdor Seeder promoted the idea of a Greater Viljandimaa.

Example of Võrumaa county

In Võrumaa county, the 2017 administrative reform turned out to be a rather complex process, even though all municipalities in the county participated in the voluntary stage of the reform, either by making or accepting proposals. Although none of the municipalities in Võrumaa stayed out of the reform, the participants failed to find a common understanding about the future of the county. During the coercive merger stage, the final outcome required the involvement of the central government.

The central government's intervention was not exceptional, considering that at the voluntary stage of the reform only two counties (Lääne-maa and Viljandimaa) reached a conclusive outcome. Nevertheless, there was a case in Võrumaa where the central government exceptionally carried out a coercive merger involving a municipality (Setomaa rural municipality) that had not requested an exception during the voluntary stage.

¹⁵ <https://poltsamaa.kovtp.ee/video>

Municipalities of Võrumaa county after the 2017 administrative reform



Figure 8.

The sections below describe the course of the process that took place in Võrumaa, as seen through the eyes of a consultant who in 2016 was also the merger coordinator with the association of local authorities of Võrumaa.

Prologue to the reform

Before the administrative reform of 2017, the hierarchy of administrative territorial entities in Võrumaa had remained unchanged since 1999, when the city of Antsla and Antsla rural municipality merged to form Antsla rural municipality with the then population size of nearly 5,000.

On the one hand, it was a logical merger of a city and its hinterland, on the other hand even after the merger the municipality was not successful in combating peripheralisation, and in less than two decades the number of residents had dropped by nearly one-third.

Before the administrative reform of 2017, Võrumaa county consisted of 13 municipalities with around 34,000 residents in total.¹⁶ The county had and continues to have one obvious local commuting centre – the city of Võru (about 12,000 residents) – which functions as a centre both in terms of employment and various services, for nearly all the municipalities of Võrumaa county. Furthermore, Antsla,¹⁷ with its pre-reform population of 3,376,¹⁸ has been seen as an ancillary commuting centre.

Rõuge and Vastseliina were also identified as local commuting centres, and in the plans for the administrative reform based on the local commuting centre-based-model of 2013 designed by Siim Kiisler, the county had designated these two as centres. At the same time, before the 2017 administrative reform, Rõuge and Vastseliina were rural municipalities with merely approximately 2,000 residents, and the small towns with populations of about 500–600 forming the centre of the municipalities did not function as local commuting centres.

Leaving aside the islands, one could maintain that within the context of Estonian counties, Võrumaa is one of the most clearly shaped functional areas consistent with the logic of the centre-and-hinterland principle. This is because of the lack of other major centres, but also because of strong functional ties and a clearly distinguishable identity (*võrokesed*).

¹⁶ Population register, 1.1.2017.

¹⁷ P. Kamenjuk, 'Võru maakonnaplaneeringu teemaplaneeringu "Võru maakonna sotsiaalne infrastruktuur" analüüs. Sisend Võru maakonna toimepiirkondade määramiseks', 2014.

¹⁸ Population register, 1.1.2017.

The formation of negotiation groups during the 2017 administrative reform

In Võrumaa, the administrative reform was launched rather late: the first proposals for talks were submitted by councils in January 2016. Interestingly, the first moves were made by two small municipalities situated in different corners of the county – Meremäe rural municipality, situated in the historical county of Setomaa, and Mõniste rural municipality bordering on the country of Valgamaa and Latvia. Although the distance between the central settlements of the two municipalities mentioned was nearly 70 kilometres, on 15 January 2016, the councils of both these municipalities submitted a proposal to all the rest of the municipalities across the county to start talks about forming a county-wide municipality.

Some time after the first official proposals were made, the media picked up what was most likely the widest initiative that had ever been made within the context of Estonia's 2017 administrative reform: the Võro Association (Võro Selts) VKKF put forward the idea of forming a new municipality on the basis of the municipalities of the historical Vana-Võromaa.¹⁹ This initiative incorporated 25 municipalities from four counties (Võrumaa, Valgamaa, Põlvamaa, Tartumaa) with a total population of nearly 60,000. Although such an administrative division had existed in 1783–1920, none of the municipalities supported the initiative and such large-scale merger negotiations never materialised.

In January and February 2016, a number of other proposals for putting together smaller negotiating groups were made, in the southern region of Võrumaa county (Rõuge's proposal to Mõniste, Haanja and Varstu) as well as in the northern part of the county (e.g. Lasva's proposal to Sõmerpalu and Võru). The municipalities of the peripheral regions of the county were also approached by municipalities

¹⁹ <https://tartu.postimees.ee/3476413/selts-tegi-ettepaneku-taastada-haldusüksusena-vana-voromaa>

from neighbouring counties with negotiating proposals; for example, Urvaste received a proposal from Valgamaa (Sangaste and Otepää) and from Põlvamaa (Kanepi); Võru rural municipality was approached by Laheda rural municipality (Põlvamaa), while Lasva, Meremäe, Misso and Vastseliina received an invitation from Värskä (Põlvamaa). Antsla rural municipality also made a proposal for holding wider negotiations with the participation of four municipalities from Võrumaa (Mõniste, Sõmerpalu, Urvaste, Varstu) and three from Valgamaa (Karula, Taheva, Tõlliste).

In turn, on 9 March 2016, the Võru city council made the most wide-ranging official proposal for negotiations, which would have included all the municipalities of Võrumaa county as well as four municipalities from Põlvamaa (Kanepi, Laheda, Orava, Veriora). In spite of different proposals that were made in the first months of the year, no actual talks were held and the situation in the county was muddled.

In January 2016, the association of local authorities of Võrumaa, headed by the chair of the board Mailis Koger, assumed the duty of coordinating the administrative reform process in the county. The association submitted an application to Enterprise Estonia (EAS) to recruit a merger coordinator and engage a merger consultant. This was likely one of the reasons why the municipalities were in a wait-and-see position at the beginning of the year and no actual steps were taken toward starting negotiations because it was expected that the association of local authorities will start driving the process forward.

Indeed, on 8 April 2016, at the initiative of the association and with the leadership of the merger consultants Mihkel Laan and Kadri Tilleman, the first administrative reform forum of Võrumaa was called, followed by four more, which took place in the period from April to October 2016. The forum was attended by the heads of the local authorities of the county (heads of rural municipalities and the city mayor, plus most of the council heads) as well as representatives of the Võrumaa association of local authorities and the county government, and they discussed three

alternatives: whether to form one county-wide municipality (Greater Võrumaa), two municipalities (the city of Võru and the municipality combining all the remaining municipalities) or a 'Võrumaa of regions' (3 to 5 municipalities). The discussions revealed that 9 of the 11 heads of local authorities, who were present at the close of the forum, preferred the 'Võrumaa of regions' model.

The main reasons given were that this would keep the decision-taking process closer to the people and reduce the risk of peripheralisation, it was also thought that this option is the easiest to implement, because it was 'the right size step'. Some votes (including the votes of the county government representatives) were cast in favour of the 'Greater Võrumaa' solution, with its strong strategic capability to develop the region as a whole, and the possibility of avoiding another administrative reform in the coming decades.

Following the forum, the municipalities had to find out, at the latest by early May, which of the alternatives the municipal councils wanted to pursue.

However, a joint decision about the alternative was taken by all the municipalities of Võrumaa county (plus Orava rural municipality from Põlvamaa) only at the third administrative reform forum that was held on 21 June 2016. By that time the Administrative Reform Act had also been passed. The forum declared unequivocally that the option to be pursued will be the Võrumaa of regions model,²⁰ because the Greater Võrumaa option did not find wide support. The weaknesses of a county-wide municipality included, on the one hand, a pragmatic approach – it was probably quite difficult to find a solution that would satisfy all 13 participants in just 3–4 months; moreover, councils of a number of municipalities ruled this option out right away. On the other hand, the Greater Võrumaa idea had no active and capable leaders: Meremäe and

²⁰ <http://vorumaa.ee/vorumaa-omavalitsuste-uhinemislaboraakimised-jatkuvad-vaiksemates-ringides/>

Mõniste, having first proposed this idea, were small and to a greater or lesser extent split internally. The idea also found support from Vastseliina rural municipality, but this support was rather passive, while the city of Võru did not take the plan to form a single municipality seriously and strongly enough, and their support would have been necessary to launch actual negotiations.

By the summer of 2016, the Võrumaa of regions option had produced two groups: the municipalities of southern Võrumaa (Haanja, Rõuge, Misso, Varstu), headed by Rõuge rural municipality (it was also intended to include Mõniste, which first rejected the proposal), and the Võhandu community (Võru rural municipality, Sõmerpalu, Lasva). Vastseliina and Orava (Põlvamaa), and initially Urvaste, also expressed their wish to hold negotiations in the Võhandu direction, but the rural municipalities of Võhandu ruled out involving any additional partners and stood by their 'tripartite union'. Therefore, Urvaste rural municipality continued negotiations in the direction of Valgamaa with Otepää and Sangaste. The county was in a situation, in the summer of 2016, where five municipalities (the rural municipalities of Antsla, Mõniste, Meremäe and Vastseliina, as well as the city of Võru that was the only one to meet the population size criterion) had not yet found partners for negotiations. The region-based solution had reached a dead end: although it was decided jointly to form smaller municipalities, one-third of the municipalities of the county failed to find a suitable partner.

The case of Setomaa

Prior to the 2017 administrative reform, the historical Setomaa areas in Estonia were divided between four municipalities and two counties: Mikitamäe and Värska rural municipalities in Põlvamaa county, and Meremäe and Misso rural municipalities in Võrumaa. Before the reform, there were a number of attempts to merge rural municipalities in Setomaa, the most recent in 2015, when Mikitamäe and Värska drafted a merger agreement, which was approved by Värska, but rejected by Mikitamäe.

However, for the future of the rural municipalities across Setomaa, the breaking point was the Administrative Reform Act, which provided an exemption for Seto rural municipality that did not satisfy the minimum population size criterion (5,000).²¹

Nevertheless, during the voluntary stage of the administrative reform in 2016, no negotiations for the formation of Setomaa rural municipality were ever held in the format prescribed by law (i.e. by the municipalities of Meremäe, Mikitamäe, Värska and a part of Misso), as in addition to the wavering Mikitamäe, the seriously split municipal council of Meremäe ruled it out by voting consistently 5–6 against this option, and supported merging with Võrumaa instead (the Greater Võrumaa alternative). This happened in spite of consistent attempts by those who supported the Seto rural municipality, and promises by entrepreneurs to contribute an additional one million euros to the development of a Seto rural municipality.²²

The main argument of those who stood behind the Seto rural municipality in the administrative reform was the desire to preserve the distinctive identity and culture of the region, while those against were focused on its ties with Võrumaa and the city of Võru. This passionate opposition was highlighted, for instance, when the police were called to a meeting of Meremäe rural municipal council as they held an unsuccessful vote of no confidence against the head of the municipality Rein Järvelill who supported the option of forming the rural municipality of Setomaa.²³ Meanwhile, in August 2016 Järvelill stepped down on his own accord. However, this did not produce any changes in the negotiations.

Yet this internal strife in Meremäe rural municipality meant that both the other neighbours of the municipality (Vastseliina, Orava) and the rest of the municipalities in Võrumaa county did not wish to start

²¹ Article 9(3)2) of the Administrative Reform Act; <https://www.riigiteataja.ee/akt/121062016001>.

²² <https://www.err.ee/571066/setomaa-ettevotjad-on-valmis-andma-piirkonna-heaks-miljon-eurot>

²³ <http://uudised.tv3.ee/eesti/uudis/2016/03/29/mass-setomaal-vallavolikogu-istungile-tunGINud-inimesed-kruvisid-tuurid-niivord-ules-et-kohale-tuti-politsei/>

meaningful merger negotiations with Meremäe, fearing that they could find themselves mixed up in the controversy. Therefore, by autumn 2016, it was obvious that the future of both Meremäe and Seto rural municipality will have to be decided by the central government.

The process and results of negotiations initiated by municipal councils

Ultimately, four regions in Võrumaa county reached the stage of substantive negotiations and merger agreements. The most lengthy and comprehensive negotiations were held by the **municipalities of the southern part of Võrumaa**: Haanja, Rõuge, Misso and Varstu, who, after the Greater Võrumaa option was rejected, were officially joined at the end of the summer of 2016 by Mõniste (that had previously been participating in meetings as an observer). To conduct the merger negotiations with a view to forming a new municipality with a territory of approximately 1,000 square kilometres and a population below 6,000, a steering group, and four sectoral working groups were formed (a working group dealing with financial, economic and development matters, a working group for culture, sports and the third sector, a working group for education, and a working group to tackle social welfare and health care matters), which all convened on at least two occasions. The working groups had 11–13 members; in addition to that, two merger bulletins were published, a number of public rallies were held and a fact-finding trip was taken to municipalities that had merged earlier (Türi and Lääne-Nigula).

In late December 2016, all of the participants approved the merger agreement, but there were still some problems that cast shadows over the merger. One of the substantial difficulties was finding functional common ground. Although at first glance it was a geographically united border region, the former Misso rural municipality, above all, was functionally much more connected with Vastseliina and the city of Võru (the Luhamaa highway), rather than in the direction of Rõuge. Furthermore, Misso had historical ties with Vastseliina and Orava because they had

been a part of the same parish. Nevertheless, the council of Misso rural municipality stood by their decision and approved the merger agreement.

Mõniste rural municipality also proposed alternative ideas; for instance, they suggested that the centre of the new municipality could be situated in the city of Võru, since it is a natural local commuting centre. Finally, however, they agreed that the centre will be in Rõuge. Also, one of the most emotionally charged topics of dispute was the name of the new municipality.

In the course of drafting the merger agreement the parties agreed on the name 'Haanjamaa' – at the final vote this was supported by 24 of the council members of five municipalities – 23 council members were in favour of the competing name, 'Rõuge'. Finally, the newly formed rural municipality was named Rõuge, because in 2017, based on the suggestion of the Place Names Board, the central government changed the locally agreed name of the new rural municipality, which had also been included in the merger agreement.

The merger negotiations to form **Võhandu rural municipality** (between the rural municipalities of Lasva, Sõmerpalu and Võru) went smoothly. The substantive matters in the negotiations were handled efficiently and quite swiftly at three discussion events that took place within a couple of weeks, where the topics covered were divided into four groups: education and culture, social matters, economic affairs, and management issues.

Heads of rural municipalities, council members and specialists in the respective fields were involved in the discussions. The meetings were organised by the merger coordinator who, based on the results of these meetings, also prepared a rough draft of the merger agreement. In addition, two meetings were held to elaborate the merger agreement.

Even though the negotiations were uncontroversial and progressed without major disputes, the process was tarnished by the inflexible attitude of the participants towards the widening of the circle of the negotiating parties. In spite of the fact that as early as August 2016 it was

obvious that the rural municipalities of Vastseliina and Orava only wished to negotiate in the direction of Võhandu rural municipality, and were prepared to compromise, Võhandu did not agree to include them. They disregarded the recommendations of the merger coordinator and the governor of Võrumaa Andres Kõiv, as well as the opinion of the regional committee of the administrative reform that the likely direction of any coercive merger of Vastseliina and Orava is Võhandu.

The involvement of the general public in the negotiations of Võhandu rural municipality was modest, this was also demonstrated by the small number of participants in the public opinion poll that was attended by fewer than 200 of the 7,000 potential voters (three quarters of them were in favour of the merger). All the municipalities approved the merger agreement unanimously. As in the case of Haanjamaa rural municipality, the central government, pursuing the recommendation of the Place Names Board, changed the name of Võhandu rural municipality, which was ultimately named **Võru rural municipality**. This was substantiated by the fact that Võhandu as a name is geographically misleading, because the river (from which it takes its name) crosses a much larger territory and several other municipalities. The Place Name Board had presented such a preliminary opinion to the parties involved already before the start of the substantive negotiations, but despite this the merging municipalities decided unanimously to take their chances with that name.

In the summer of 2016, the **Antsla rural municipality**, which had been rather passive in the administrative reform context, assumed a more active position and aimed to merge with the Urvaste rural municipality (nearly 4,700 residents in total), and in August renewed their respective proposal for negotiations. By that time there were no other realistic alternatives for Antsla. However, Urvaste rural municipality had already reached the stage of a working draft of the merger agreement with Otepää and Sangaste municipalities in Valgamaa (the negotiations also included Kanepi from Põlvamaa) because the latter had not wished to be a bystander (among others, Võhandu had also rejected Urvaste).

However, the matter was determined by the active community in Urvaste which gave their vocal support to the idea of Urvaste staying part of Võrumaa, and to starting negotiations with Antsla rural municipality. Considering the wishes of the community, Urvaste rural municipality decided to hold a poll among its residents to find out whether they wish to merge towards Otepää or Antsla. Given that 256 people supported the merger with Antsla and 121 supported the merger with Otepää (the total number of voters was 1,093), on 26 September 2016 Urvaste rural municipality decided to end the negotiations towards Otepää and negotiate only with Antsla.

The negotiations were swift and the merger agreement was approved before Christmas. Again, among the most challenging topics in the negotiations was the name of the new municipality, and again the name was decided by a mere one vote majority: 12 of the council members who took the final vote supported the name Antsla, while the name Urvaste was supported by 11. Both the municipalities hoped that although by law the municipality was undersized for the purposes of the Act, the population size fell below the threshold of 5,000 residents by a mere 300, and therefore the central government would not make the merged municipality any larger.

The fourth voluntary merger was that of Vastseliina and Orava (Põlvamaa) that resulted in the formation of **Vastseliina rural municipality** with just 2,745 residents. The decision to merge was obviously pragmatic – this allowed to them access merger grant funds, and besides it seemed more likely to reach a suitable outcome in the case of a coercive merger with Võhandu rural municipality.

This means that in Võrumaa county the voluntary stage of the administrative reform resulted in four mergers of which only one group (southern Võrumaa) had reason to expect that their merger would be final. Two mergers that fell short of the minimum criterion waited for the government merger, and Võhandu rural municipality merged knowing that they are likely to be merged with a neighbour they did not wish to



Following the reform, the former leader of the Võrumaa association of local authorities Mailis Koger became the head of the merged Rõuge rural municipality. Photograph: Tomi Saluveer / LEPM.

negotiate with during the voluntary stage. Meremäe rural municipality, which was not involved in any voluntary negotiations, was waiting for their merger by the central government.

In 2017, at the stage initiated by the central government everything occurred as expected:

- The coercive merger procedure of Antsla and Urvaste was terminated because they fell short of the minimum criterion by about 300 residents;
- The rural municipalities of Vastseliina and Orava were merged with Võru (Võhandu) rural municipality;
- in the case of the Seto rural municipalities, the central government acted on the basis of the results of the public opinion poll, which showed that everybody was in support of merging within the Seto rural municipality, and the majority of the residents wished to be a part of Võrumaa county.

As a result of the reform, five municipalities of Võrumaa county began work on 1 January 2018 (Figure 8), and the newly added regions increased the number of residents in the county by around 3,000 residents, while the area grew by nearly 500 square kilometres.

Mailis Koger (chair of the Võrumaa association of local authorities until November 2017, and later the head of Rõuge rural municipality) assessed the process as follows:

Even though the merger process in Võrumaa started a bit late in comparison with the rest of the counties, still by the end of 2016 four merger groups did conclude their merger agreement during the voluntary stage. The process was not easy for any of the parties, but in spite of this considerable credit should be given to the heads of the local authorities who negotiated making their best efforts and standing for the interests of their municipalities. The coming years will be decisive.

Summary and conclusions

- The 2017 administrative reform was characterised by a number of disagreements:
Although most of the municipalities thought that within the given time frame it was more reasonable to form smaller municipalities, they failed to find a model that would have included all partners. On the one hand, this was caused by cultural differences (Seto vs. Võru) and contradictions, and on the other hand, by the inflexibility of partners.
- Nevertheless, the outcome in Võrumaa so far could rather be seen as a success because the solution was generally reasonable, and presumably helped avoid subsequent major conflicts. Although a realistic outcome seemed to be clear as early as four to five months before the deadline for voluntary mergers, it was nevertheless not motivating enough for the municipalities that formed Võhandu rural municipality.

- The analysis of the formation of Seto rural municipality by way of an exemption allowed for by law requires a separate approach. The decision of the central government to merge a group that was unable to negotiate voluntarily was a clear precedent within the 2017 administrative reform. It would be interesting to observe the development of such a municipality – with a strong cultural identity, but weak geographical and functional cohesiveness and modest economic potential – in the coming years.
- In terms of the future, the fact that the centre of the county, the city of Võru has been left out, could be seen as one of the weaknesses of the Võrumaa solution, given that the rest of the county is mostly hinterland with strong ties to the centre. The will of the municipalities to cooperate is of critical importance. As the number of residents in two of the newly formed municipalities (the rural municipalities of Seto and Antsla) fell short of 5,000, and that in the case of Rõuge the population is likely to drop to 5,000, one could question the future competitiveness of these three peripheral areas, which is what could lead to a new wave of mergers.

Example of Alutaguse rural municipality

Ida-Virumaa county is a region full of contrasts. Differences and diversities within the county have made it an interesting region; for example, in terms of its tourism potential, as well as in the context of the administrative reform. The image of the northern part of the county is shaped by the industrial towns (Narva, Kohtla-Järve, Sillamäe, Kiviõli) and industrial heritage with the Estonian speaking population being clearly in the minority. However, the coastal limestone bluff, beautiful sandy beaches and Narva-Jõesuu, a resort with long traditions, are also situated in the northern part of the county.

On the other hand, the southern part of the county features large sparsely populated areas, indigenous population, the primeval forest of Alutaguse, the vicinity of Lake Peipus and vast marshes. The

The new Alutaguse rural municipality in Ida-Virumaa county

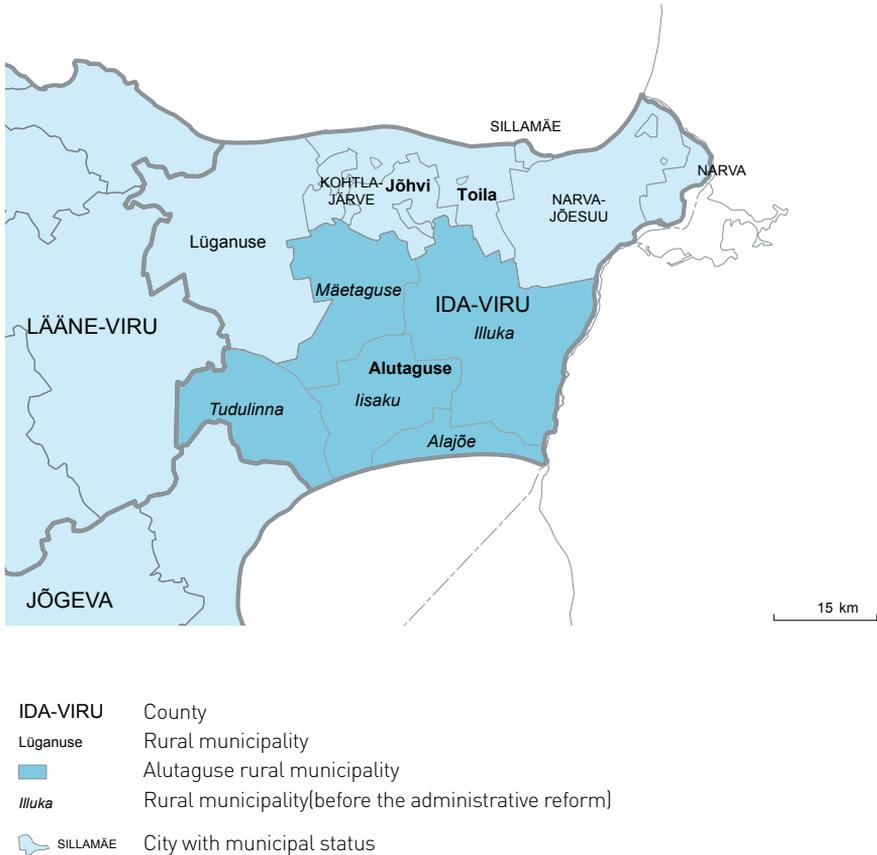


Figure 9.

municipalities in the southern part are also characterised by their economic potential: Thanks to the natural resources tax, the rural municipalities of Mäetaguse and Illuka were the most prosperous municipalities in Estonia, while their neighbours – Alajõe and Tudulinna – were at the other end of the spectrum in terms of financial capacity. For instance, the 2017 budget for Alajõe rural municipality was more

than ten times smaller than that of Mäetaguse (460,000 euros vs. 5 million euros), although the difference in the number of residents was merely threefold (582 vs. 1746).

Due to such diversity, Ida-Virumaa has not developed into a single functional area. Before the administrative reform of 2017, the county was – both geographically and functionally – divided into four parts: The Kiviõli region (the former western municipalities of the county – the rural municipalities of Aseri, Lügause and Sonda, and the city of Kiviõli), the central region (the rural municipalities of Jõhvi, Illuka, Kohtla, Kohtla-Nõmme, Toila and Mäetaguse, and the city of Kohtla-Järve), the eastern region (Vaivara rural municipality and the cities of Narva, Narva-Jõesuu and Sillamäe) and the southern region (the rural municipalities of Alajõe, Avinurme, Iisaku, Lohusuu and Tudulinna). However, for a number of purposes (e.g. the joint Leader action group) Mäetaguse and Illuka have identified themselves as municipalities of the southern region.

In the course of implementing the 2017 administrative reform, an acute question was raised:

what pattern should be applied in order to move further to the next period? The following case study focuses on the southern region of the county: the formation of Alutaguse rural municipality.

Prologue to the reform

The municipalities of Ida-Virumaa counties (Alajõe, Avinurme, Iisaku, Lohusuu, Tudulinna, as well as Illuka and Mäetaguse) have been known to cooperate closely since the 1990s. A sparse population (around 7,000 residents and nearly 1,800 square kilometres), the lack of major centres, vast marshlands and forests, and the proximity of Lake Peipus were the shared traits when the Leader action group uniting seven municipalities (Peipsi-Alutaguse Chamber of Cooperation) was formed in 2006. The formation of the Chamber has been seen as the crucial factor that drove the municipalities towards tighter and more multifaceted cooperation. Historically, Iisaku, Alajõe and Tudulinna were located on the former

territory of the Iisaku parish; some areas of the current Mäetaguse and Illuka rural municipalities had also been a part of the Iisaku parish. Avinurme, however, was a separate parish (the smallest in Estonia), and with Lohusuu (Torma parish) was a part of the historical Tartumaa.

In 2004, geography students of the University of Tartu analysed the merger options for the municipalities in the southern region of the county (comprising six municipalities, excluding Mäetaguse rural municipality).²⁴ Even then it was admitted that the objective should be the formation of more viable municipalities, improving the quality and accessibility of local services, and ensuring the balanced development of the region because, above all, small and peripheral municipalities have insufficient financial and human resources.

However, no actual merger negotiations started before the end of the year.

The formation of negotiation groups

In the southern region of Ida-Virumaa county, the initiative in the administrative reform of 2017 was taken by Iisaku rural municipality who in October 2015 proposed that the rural municipalities of Alajõe, Illuka, Mäetaguse, Tudulinna, Lohusuu and Avinurme start merger negotiations.

Lohusuu rural municipal council rejected the proposal from Iisaku rural municipal council, and chose the direction towards Jõgevamaa county (Mustvee); the process ended with the formation of Mustvee rural municipality and the changing of the county boundaries. Illuka rural municipal council dismissed the proposal but agreed to participate in the negotiations as an observer. Therefore, from the very start of the negotiations, Illuka became the black sheep sitting at the negotiating table but whose readiness to participate in the substance was not clear

²⁴ http://www.iisaku.ee/img/image/Louna_regiooni_arenguvoimalused.pdf

for the partners. The remaining municipalities (Alajõe, Avinurme, Mäetaguse, Tudulinna) accepted Iisaku's proposal, and the merger negotiations started in February 2016.

Therefore, the negotiating group had not been established quite yet, considering that Avinurme, Mäetaguse and Illuka were also considering alternative proposals.

Avinurme participated in parallel negotiations in the Mustvee region until May 2016, when they finally decided in favour of the Mustvee direction and ended their negotiations in Ida-Virumaa. On the one hand, the motive for Avinurme could have been the restoration of its historical position (in Tartumaa), on the other hand, Iisaku and Avinurme were equal and, in certain respects, competing centres; the matter of selecting which would be the centre could have been more difficult had Avinurme stayed in Ida-Virumaa.

On the other hand, the negotiating group that had formed in the central part of the county (Jõhvi, Toila, Kohtla, Kohtla-Nõmme) was extremely interested in including Mäetaguse and Illuka.

Understandably, one of the motives was the very strong financial position of both Illuka and Mäetaguse; for instance, in 2017 the budget revenues of the two municipalities with an aggregate population of around 2,800 amounted to 7.5 million euros, which was over one-half of the budget of Jõhvi rural municipality in the same year (14.7 million), while the population in Jõhvi was over four times larger (nearly 12,000). Initially, Mäetaguse rural municipality also decided to participate in the negotiations of the central region, but Illuka rural municipality took neither substantive nor formal part in these negotiations.

The initiative of including the entire southern region in the negotiations came from Toila rural municipality in the central region of Ida-Virumaa, where the chair of the rural municipal council, Roland Peets, had a vision of creating a municipality 'stretching from the sea to the lake'. The initiative did not find support from other partners, and no formal negotiations to establish such a large municipality were launched.

After the Administrative Reform Act had been passed, it was decided that the circle of negotiating parties should be re-established, and that any parallel negotiations should end. Therefore, in September 2016 Iisaku rural municipality made the rural municipalities of Alajõe, Illuka, Mäetaguse and Tudulinna a new merger proposal, which was accepted by all of them. At the same time, Mäetaguse rural municipality ended their negotiations with the central region.

So, by autumn 2016 it seemed that the formation of a new municipality in the southern region of Ida-Virumaa county, Alutaguse rural municipality, was becoming a reality. The merger of these five municipalities would have resulted in a municipality of around 5,000 residents and the territory of about 1,500 square kilometres.

However, it was well known that Illuka (as well as Mäetaguse and Tudulinna) rural municipality had decided to have recourse to the Supreme Court to contest the constitutionality of the Administrative Reform Act. The partners were slightly reassured by the message of the chair of the Illuka rural municipal council, Paul Kesküla, that the merger would be completed if the Supreme Court does not produce a positive solution and they need to merge.

Negotiation process

The merger negotiations of the rural municipality of Alutaguse was coordinated by the merger consultant who prepared and conducted all the meetings and prepared the first draft of the merger agreement. The activities were organised by the steering group consisting of the heads of rural municipalities and council heads, although Iisaku rural municipality, which had initiated the negotiations, had more members in the steering group.

In addition to the steering group, discussions were held in sectoral committees. These discussions took place in three sector-based groups: education, youth work, culture and leisure; social services and subsidies, and health care; environment, utilities, business and public transport. The sectoral committees convened twice, and in addition to

the specialists in the respective fields were also attended by the majority of the steering group members. Negotiations were held in all the merging municipalities, which reinforced the general understanding that all partners are of equal importance, and that there are no stronger or weaker participants.

The negotiations were quite smooth, it was obvious that as the negotiations progressed the negotiators obtained a clearer picture and the original cautious attitude and inflexibility disappeared. The issue of the centre, the future of oil shale mining (natural resources tax) and the formation of the electoral districts evoked more discussions.

Finally, Iisaku was selected as the centre (although Mäetaguse also offered to be the centre); with regard to the natural resources taxes, the parties agreed on a principle acceptable for all – those territories where resources are mined or processed would receive 50 per cent of the fee for mining rights to mitigate the concrete effects and development of the living environment, while 50 per cent would be used towards the development of the municipality as a whole.²⁵

The matter of electoral districts was not settled until the very last moment: the smaller municipalities (above all, Illuka and Tudulinna) wished to have separate electoral districts that would be based on the former municipalities, the larger municipalities supported the formation of a single district. Some assistance in resolving the dispute was provided from outside by Georg Sootla, professor at Tallinn University, who prepared calculations and explained to the steering group the reasons for which separate districts would constitute a complicated solution (the council would become too large, and involve too many small lists). The final decision was to form one electoral district.²⁶

²⁵ By early 2018 it had become clear that this principle is difficult to apply in practice. By the time this article was prepared, it was still not clear exactly how the natural resources tax would be calculated in the individual regions.

²⁶ One of the reasons for this was that Illuka decided against the merger at the last minute.

In the autumn of 2017, after the rough draft of the merger agreement had been prepared, the rural municipal secretaries were also included in the process; their input resulted in a considerable change in the technical quality of the merger agreement. Thus far, the steering group had been clearly focusing on wider substantive issues, while nobody had been looking at the text of the merger agreement from a legal perspective. The supplemented version of the merger agreement, drafted largely with the help of the rural municipal secretaries, was made public in October-November 2017.

At the same time the opinion of the residents was polled. The merger found support among the residents of Alajõe, Iisaku and Tudulinna, the percentage of supporters in Mäetaguse rural municipality was 26.4 per cent (the voter turnout was 18.9 per cent) and in Illuka rural municipality it was supported by only 7 voters out of 150 (4.5 per cent of the voters, the voter turnout was 16.9 per cent). The voter turnout was low, as expected, the general public was rather poorly included in the merger process as a whole.

In December 2016, the parties were keenly waiting for the Supreme Court judgment. According to the schedule this was supposed to be awarded right before Christmas, which meant that after the judgment there would be just a few working days before the voluntary stage of the administrative reform ended. The most hesitant of the three participants in Alutaguse rural municipality, which had filed the case to the Supreme Court (Illuka, Mäetaguse, Tudulinna), was Illuka that was not ready to confirm any more that even if the Supreme Court handed down a negative judgment (the Act was not going to be amended) they would go through with the merger. The standpoint of Mäetaguse was not clear-cut, but it was likely that if the Act was not amended they would be prepared to merge. For Tudulinna, not merging was never a serious option. While waiting for the Supreme Court judgment, Mäetaguse and Illuka scheduled the meetings of their rural municipal councils for 21 and 22 December respectively in order to make the final decision on

whether or not to go through with the merger.

The Supreme Court judgment published on 20 December 2016 declared the Administrative Reform Act essentially compatible with the Constitution. However, by that time the messages coming from Illuka rural municipality had changed and there was rhetoric about 'remaining independent', and 'considering the will of the people'. Therefore, it was no great surprise that on 21 December the council of Illuka rural municipality decided to exit from the negotiations (with six council members for and one council member against), to apply to the central government for an exemption and to go on as a rural municipality with around 1,000 residents.

The same council meeting adopted a decision in principle to establish the Illuka development foundation SA Illuka Arengufond. The purpose of establishing this development foundation was to ensure that should a merger by the government occur, the rural municipality of Illuka would keep a considerable share of the yet unused funds. Finally, by decision of the council three million euros were allocated to the fund, and it would be applied towards the development of the former Illuka rural municipality after the end of the administrative reform in 2018.

Regardless of the withdrawal of Illuka rural municipality at the council meeting on 22 December, the council of Mäetaguse rural municipality decided with seven votes in favour, and four against to support the formation of Alutaguse rural municipality, and thus it was clear that there will be four remaining partners.

On 23 December the four rural municipalities of Alutaguse (Alajõe, Iisaku, Mäetaguse, Tudulinna) met and agreed on the amendments to the merger agreements resulting from the withdrawal of Illuka rural municipality. No amendments were targeted against Illuka rural municipality, in addition to technical aspects, only sections pertaining to the development of objects in Illuka rural municipality were amended (taken out).

The amended merger agreement was approved in the last days of the year by the councils of all four rural municipalities.

A decision to apply for an exemption under Article 9(3)1) of the Act was appended to the agreement; since even with the four partners, the number of residents in the municipality only exceeded 3,500 and the territory was 900 square kilometres, and so such an application for an exemption was justified. At the same time, on 29 December 2016, when entering into the merger agreement, the participants were quite unperturbed: they expected that Illuka rural municipality would surely be merged with the four municipalities which had merged voluntarily, or if this did not happen, the rural municipality of Alutaguse would be allowed to function with the reduced size.

Coercive mergers and the outcome of the reform

The schedule of the administrative reform made it clear to everyone that by 15 February 2017 the Government of the Republic will take a decision about those municipalities who had not merged during the voluntary stage of the reform and who did not satisfy the population size criterion. With regard to the southern part of Ida-Virumaa county, it was assumed that Illuka rural municipality, which at the last minute had decided against the merger, would receive a proposal for a coercive merger with Alutaguse rural municipality. Such a solution was also supported by the regional committee of the administrative reform, who made the respective proposal to the central government. In the central region of Ida-Virumaa county the committee supported the merger of the rural municipalities of Toila, Kohtla-Nõmme and Kohtla, which had merged voluntarily (in total around 4,800 residents) with Jõhvi rural municipality, which is the natural centre for the region.

However, the Government of the Republic took a step that neither the regional committee, nor the municipalities had anticipated: the proposal of the central government envisaged a merger of eight rural municipalities (the four municipalities that had formed the rural municipality of Alutaguse, Illuka rural municipality, and Toila, Kohtla and Kohtla-Nõmme), leaving out the county capital – Jõhvi rural municipality. This would have

resulted in a doughnut municipality with a vast territory stretching from the Gulf of Finland to Lake Peipus, with two municipalities – Jõhvi rural municipality (124 square kilometres) and the city of Kohtla-Järve with its city districts (Kukruse, Järve, Ahtme, Sompä) – inside it.

From the start the proposal of the central government was met with sharp criticism from the media as well as the local community. In addition to the county newspaper, *Põhjarannik*, a critical article was also published by, for example, *Eesti Päevaleht*, that described the proposal as ‘absurd’.²⁷ It was speculated in different discussions that one of the reasons for such a proposal could be the intent of the Minister of Public Administration Mihhail Korb to shape the political power lines in Ida-Virumaa to benefit himself (his father is a long-serving politician in Kohtla-Järve who would allegedly have been interested in merging Kohtla-Järve and Jõhvi). Of course, these speculations were never conclusively proven, but residents of the rural municipalities, as well as the representatives of municipalities, were quite stirred up against it. The municipalities that had received such a proposal retained a top-level attorney to formulate their counter-arguments.

All eight municipalities prepared a coordinated response to the proposal of the central government, sharing information about the arguments and the structure of the letter. A 16-page long response, in which all eight rural municipalities sought to overturn the central government’s proposal, was submitted in the first half of May.

In April 2017, the residents were polled on the coercive merger proposal. In comparison with the voluntary stage, the turnout was significantly more active, reaching 50 per cent in a number of municipalities; on average 97–98 per cent of the respondents opposed such a merger:

- in Alajõe rural municipality the proposal was voted down by 97.4 per cent of the respondents (148 against, 4 in favour);

²⁷ <http://epl.delfi.ee/news/eesti/haldusreformi-absurd-valitsus-surub-ida-virumaa-vallad-loogikavastaselt-kokku?id=77617710>

- in Iisaku rural municipality the proposal was voted down by 97.8 per cent of the respondents (489 against, 11 in favour);
- in Mäetaguse rural municipality the proposal was voted down by 97.5 per cent of the respondents (432 against, 11 in favour);
- in Tudulinna rural municipality the proposal was voted down by 98.2 per cent of the respondents (167 against, 3 in favour);
- in Illuka rural municipality the proposal was voted down by 96.2 per cent of the respondents (479 against, 19 in favour);
- in Kohtla rural municipality the proposal was voted down by 97.2 per cent of the respondents (342 against, 10 in favour);
- in Kohtla-Nõmme rural municipality the proposal was voted down by 89.5 per cent of the respondents (137 against, 16 in favour);
- in Toila rural municipality the proposal was voted down by 97.4 per cent of the respondents (379 against, 10 in favour).

In total, the poll resulted in 2,573 votes against the merger, and only 84 of the voters were in favour. Therefore, the communities had delivered a clear message, which again exceeded the media threshold. For instance, the headline in the report by ERR said that 'Ida-Virumaa Rural Municipalities Unanimously Turn Government Down'.²⁸

The ERR live programme, 'Suud puhtaks', which aired on 24 May and focused on the coercive merger stage of the administrative reform, including the case of Alutaguse rural municipality, was quite interesting to watch. It was scheduled to be attended, among others, by the Minister of Public Administration Mihhail Korb who, however, stepped down due to a statement on NATO just a few hours before the programme was aired.²⁹ The overall attitude of the programme was unequivocal: all believed that in some regions the central government should not follow through their original coercive merger plan.

²⁸ <https://www.err.ee/595542/ida-viru-vallad-andsid-valitsusele-uksmeelse-korvi>

²⁹ <https://www.err.ee/597957/mihhail-korb-astus-ministriametist-tagasi>

On 15 June 2017, the central government passed their decision on the further course of the coercive merger. With regard to a number of locations, the government amended their original proposal, among others there was the decision about Alutaguse rural municipality: to complete the coercive merger partly, i.e. to merge Illuka rural municipality with Alutaguse rural municipality, and to keep Toila rural municipality (Kohtla, Kohtla-Nõmme and Toila) as a separate municipality. Therefore, the process circled back to a reasonable solution, at least for Alutaguse rural municipality. Nevertheless, in the case of Alutaguse rural municipality, the administrative reform solution was still not final because the council of Illuka rural municipality contested the decision on their coercive merger.

Again, the the Supreme Court judgment came at the last minute – right before the local elections in October 2017. The Court found in the case of Illuka, as in the case of other municipalities that had challenged the government-initiated merger, that the alteration of the administrative-territorial organisation took place in compliance with statutory requirements, and the court dismissed all applications submitted by local authorities. Therefore, the administrative reform had reached its final outcome, and Alutaguse rural municipality was able to go into the local elections in its new configuration. The new municipality with about 5,000 residents and a territory of nearly 1,500 square kilometres started functioning on 1 January 2018.

*The process was described in a nutshell by **Tauno Võhmar**, the last head of Mäetaguse and the first head of the Alutaguse rural municipality: The start of the negotiations was promising, but its culmination was frustrating, when Illuka rural municipality withdrew from the negotiations. Later, they were merged by the government with Alutaguse, which caused quite bit of confusion and needles concern. Four municipalities – Iisaku, Mäetaguse, Tudulinna and Alajõe – went through the negotiating process together, many differences of opinion were recognised and many wishes were taken into consideration. We can function*

together much better now, as opposed to the alternative situations – had we all been merged by the government. Should future decisions be smart, then life will be nice. Looking ahead, merging was the only right course of action.

Summary and conclusions

- In Ida-Virumaa, the administrative reform turned out to be problematic. Although functionally the county consists of four regions (Kiviõli, and the central, southern and eastern regions), no definitive solutions were found during the voluntary merger process. Although a great deal of confusion was caused, the first unsubstantiated and illogical proposal of the Government of the Republic for the coercive merger of eight rural municipalities, the entire process for Alutaguse rural municipality ultimately ended sensibly, and now it is a logical municipality.
- The newly formed rural municipality of Alutaguse is unique in Estonia in a number of aspects. In terms of territory, it is the largest rural municipality on mainland Estonia (nearly 1,500 square kilometres), which is extremely sparsely populated (3.4 people per square kilometre) and where optimum organisation of services is therefore complicated.
- However, it is assumed to be one of the most capable of the municipalities in Estonia, at least in the coming years because due to the natural resources tax revenue the municipality has significant funds to apply towards the development of a larger region. In particular, the municipality has a potential in the coming years to take a leap in development along the northern part of the coast of Lake Peipus (the rural municipality has a 35-kilometres-long shoreline) where within the previous 25 years the public sector has made virtually no investments.
- In the longer run, the future of Alutaguse rural municipality depends on the future of oil-shale mining. Today, it is clear that

the rural municipality is not capable of carrying out development efforts without the natural resources tax revenue. Therefore, this could lead to a new merger, and it is likely to include the central region of Ida-Virumaa, along with Jõhvi.

The example of the city of Pärnu

Prologue and formation of the merger group

Pärnu has been an interesting region in terms of cooperation between municipalities and joint activities. On the one hand, tensions have emerged over the years in the Pärnumaa association of local authorities between Pärnu and the other municipalities, and therefore the city of Pärnu has from time to time stayed away from the association. This is only natural because of the dominance of the city of Pärnu as a successfully developing centre.

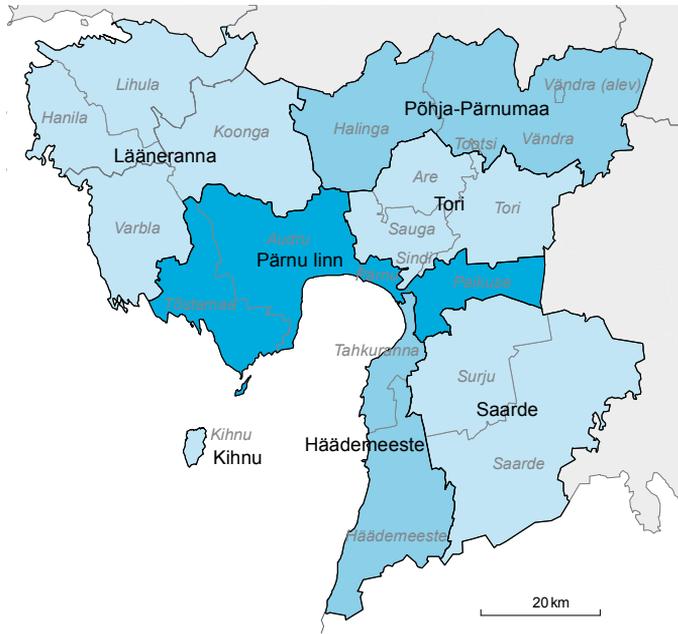
At the same time, it was Pärnu county where the first merger of municipalities took place (the formation of Halinga rural municipality in 1996), followed by the successful merger of three municipalities to form the rural municipality of Saarde in 2005. On the other hand, the merger of Kaisma and Vändra rural municipalities (2009) was a rare, but often referred to example where some of the key provisions of the merger agreement have been ignored.

Although in the case of Pärnu, voluntary mergers within the county were discussed quite frequently and loudly, historical experiences and, above all, the geographical profile of Pärnumaa were not in favour of the formation of a single first-tier municipality on the basis of the county.

The 2013 reform plan based on local commuting centres had identified the following centres: the cities of Pärnu and Kilingi-Nõmme, and the towns of Vändra, Tõstamaa, Pärnu-Jaagupi and Häädemeeste – the distinction logic of which essentially matched the configuration of the municipalities of Pärnumaa with the exception of Tori rural municipality.

Nevertheless, on 18 February 2016, the city of Pärnu proposed that twelve rural municipalities and the city of Sindi start merger

Former and new municipalities in Pärnumaa county



- Tori The boundaries and name of the municipality before the reform
- Tori The administrative reform of the municipality after the reform

Figure 10.

negotiations. At the initiative of the city of Pärnu and the Pärnumaa association of local authorities, the first meeting to launch the merger process was held on 8 April 2016. The meeting was attended by representatives of ten municipalities.

Halinga and Tahkuranna rejected Pärnu's proposal outright, and thus Häädemeeste (because of the lack of border due to Tahkuranna's rejection) was also unable to give their consent. The first meeting was also not attended by Saarde rural municipality, because Kilingi-Nõmme was to become one of the logical centres of the merger region. Moreover,

Vändra and Varbla rural municipality did not back the proposal, as they had already become involved in preliminary negotiations in their respective regions. Of the participants at the first meeting, the rural municipality of Koonga withdrew from the process right away because the council had decided to join the negotiations in the Lääneranna region; the same applied to Tootsi rural municipality, which joined the negotiations in the Halinga-Vändra direction.

On 14 April, Sindi city council decided to abandon the negotiations held at the initiative of the city of Pärnu, and in turn made a proposal to the rural municipalities of Paikuse, Tori, Sauga and Are to start merger negotiations, but this proposal was rejected.

The immediate vicinity of the city of Pärnu (more than 30 per cent of residents have ties with the city) covers a territory that comprises Sindi city and Tahkuranna rural municipality (except the region of Võiste), as well as Surju rural municipality. Tõstamaa rural municipality and the Jõesuu region of Tori rural municipality lie outside this zone. The scope of a geographically optimal merger region is illustrated by the work-related commuting of residents. On the other hand, the same trend is also illustrated by education-related migration.

Based on all these indicators, the area that was the least linked with the configuration that had joined the negotiations was the rural municipality of Tõstamaa. For them it made no sense to join the negotiations on the formation of the new Lääneranna rural municipality, with its potential centre in Lihula, that had rather weak ties with Tõstamaa. At the same time, in the direction of the city of Pärnu, Tõstamaa is clearly an autonomous peripheral area with a strong identity. Had Tõstamaa participated substantively in the negotiations, it would certainly have been offered special provisions to compensate for their remote location. But the government of the rural municipality preferred what was essentially obstructive tactics, and up to the very end betted on the failure of the merger (the rural municipality was coercively merged by the central government immediately after the negative ruling of the court).

Work-related commuting of residents of Pärnu urban region

Municipality	Employees from Pärnu (%)	Employees from the municipality to Pärnu (%)
Sindi	20,5	80,4
Tori	9,4	27,4
Tõstamaa	11,3	36,1
Audru	29,9	38,2
Paikuse	27,6	56,3
Are	11,9	50,2
Sauga	32,2	61,6
Surju	10,5	71,8
Tahkuranna	21,9	53,8

Table 5.

Source: Pärnu City Government

School places in the city of Pärnu

Rural municipality	Children in the schools of Pärnu in the 2013/14 academic year	Share of children studying in the schools of Pärnu
Are	45	27,7
Audru	268	57,3
Paikuse	159	36,0
Sauga	327	64,9
Sindi	135	35,7
Tõstamaa	11	8,1
Tori	60	39,2
Tahkuranna	136	65,7

Table 6.

Source: Pärnu Pärnu Government

It is quite difficult to understand the motives of heads of the local authorities who opposed the mergers right to the end, and therefore were not able to realise their political potential through merger negotiations, let alone the fact that they forfeited their right to the merger grants. At the same time, one could understand the political tactics of such local authorities which through manipulations tried to win the most favourable merging terms and positions in the newly established municipality.

In several respects the weakest link in the negotiating process turned out to be Sauga rural municipality. Its government did not enjoy clear support in the council. Economically active residents of Sauga as a surrounding municipality have ties with the city of Pärnu. People started paying attention only after they were about to become residents of Tori rural municipality. Consequently, it is understandable that the carriers of the identity of the rural municipality were the residents of the rural areas and the elderly, whose voice in the council was therefore proportionally much stronger than that of the residents of those villages that had close ties with the city of Pärnu and were effectively suburbs of Pärnu.

On 22 September 2016, the council of Sauga, after extremely chaotic discussions and voting, passed a decision to not abandon the negotiations with Pärnu, and by way of a compromise decided to initiate negotiations with neighbouring rural municipalities (Tori, Are, Sindi, Paikuse). The meeting was built around a comprehensive presentation by the mayor of Pärnu, Romek Konsenkranius about the benefits gained by the residents of Sauga through a merger with Pärnu. At the same time, this decision has left considerable tension in the relationship between Sauga and the city of Pärnu.

However, on 20 October the Sauga rural municipal council decided to suspend negotiations with the city of Pärnu. This also blocked the merger between Pärnu and the rural municipality of Are, which viewed their merger with Pärnu as a positive option. The decision by Sauga caused resentment among residents of several villages in the rural

municipality (above all, Tammiste, but also later Eametsa and Sauga), and the village of Tammiste (which was home to around 25 per cent of the residents of the rural municipality) immediately filed an application with the municipal council to initiate the transfer of the village into the city of Pärnu. The council dismissed the application, even though they had time to process such applications. In late 2016, the rural municipalities of Sauga, Tori and Are, and the city of Sindi merged voluntarily with the rural municipality of Tori on the basis of a hastily drafted merger agreement with the centre being located in Sindi.

Consultants prepared analyses and regional committees issued recommendations for the merger of both the city of Sindi and Sauga rural municipality with Pärnu, illustrating the natural merger directions. Nevertheless, it should be recognised and appreciated that the Sindi city council made a deliberate and conscious political choice even though consultants recommended the opposite. However, the decision of the council of Sauga rural municipality was backed by very shallow arguments and was rather capricious, the majority of the council members were passive, and in the author's opinion their decision was also short-sighted and unfavourable for the majority of the residents of the municipality.

Pärnumaa as a whole was one of the most complicated merger areas, given that a municipality (Lääneranna rural municipality) was created in its north-western part, which included two rural municipalities from Läänemaa county (Lihula and Hanila), and this extended the county of Pärnumaa up to Matsalu Bay, even though Varbla had historically been part of Läänemaa. In the southern region of Pärnumaa, however, two (reasonable) exceptions were made – the merger of Saarde and Surju rural municipalities, and Häädemeeste and Tahkuranna rural municipalities, because these two fell slightly short of the minimum population size criterion. Põhja-Pärnumaa rural municipality is shaped quite awkwardly in terms of geography and communications.

Negotiation process

A steering committee that included one official representative from every rural municipality, and preferably another representative (either the council chair or head of the rural municipality) was formed for the negotiations. Four sectoral committees: a committee for education, culture, leisure and civil development; a committee for financial affairs, investment and assets; a committee for economic affairs (housing and utilities, waste management etc.), transport and roads; and a committee for social affairs were also formed.

The plan was to have the steering committee focus on strategic matters of a general nature, for which a separate list was prepared, while the sectoral committees handled everything within that sector. All committees started working as early as on 25 April 2016.

Following the recommendations of experts, the agreements of successful mergers were taken as the basis for the talks. Such a recognition of past experience facilitated the negotiations considerably also for other merger areas. The committees worked at different speeds and were very thorough. Owing to the fact that the heads of the sub-committees were also members of the steering committee, any sectoral issues that raised a dispute were brought quickly to the steering committee to be settled there. The partial overlap of the topics of discussion was one of the pre-conditions for efficient policy-shaping. Topics were rather complex, in particular in social matters because of the very different demographic structure and social policies of the municipalities in the merger region (particularly in terms of subsidy policies). For instance, the new municipality could not take over the much higher subsidies offered by rural municipalities (vis-à-vis those provided in cities) automatically, because it would have put a colossal strain on the new budget (as happened in Haapsalu, for instance).

One could say that negotiations in Pärnu were rather less inclusive, being dominated by specialists (at least in the initial stages), including leading politicians of the city who had in their command a very

comprehensive body of data and who were good negotiators. The format of the negotiations was such that talks were moderated by a consultant, which improved (maybe even too much) the efficiency of the debates.

Over time the negotiations spontaneously adopted a format whereby the mayor of Pärnu shaped a single logic of argumentation regarding key issues, attempting to mitigate any apprehension in the rural municipalities toward the city of Pärnu, while arguing for placing realistic limits on the pressure of interests from the different rural municipalities. At the same time, representatives of rural municipalities raised specific questions, which were not visible through the lens of the logic of the city governance, thereby supplementing the agenda of the policies of the new municipality.

The overall atmosphere of the discussions was rather friendly and meaningful, with the exception of recurring statements made by Tõstamaa about the motives of the negotiations and the reform itself. Nevertheless, from time to time, some of the participants raised a question that was difficult to respond to. The consultant on the merger agreement, who was an employee of the Pärnumaa association of local authorities, provided technical support to the negotiations, and assumed responsibility for organising merger events and communication.

At the same time, the steering committee members from critical rural municipalities (Tori and Sauga) were not able to take the key matters of discussions to their councils. This was also one of the mistakes made in the organisation of the merger negotiations; for instance, consultants did not recognise the importance of personal participation in council meetings dealing with the merger agreement, and started participating only when Sauga was already withdrawing from the process. This contrasted with the practise in Saaremaa, where consultants (admittedly, during the voluntary phase) met with most of the rural municipal councils that debated relevant issues, sometimes rather intensely.

In hindsight it is obvious that initial agreements were not seen as binding enough, and therefore negotiations were not dragged out by

obstructions, instead old topics were revisited from time to time. The participants had clearly discussed matters at home and had considered new nuances. The tendency was that the problems of a particular municipality were addressed in detail, negotiations lasted longer and were much more protracted than in other regions. Therefore, the merger agreement was rather detailed and overloaded with promises. In this respect they differed, for example, from the negotiations in Saaremaa: there the initial debates were extremely detailed, even in the sectoral committees, but the outcome was a rather general merger agreement. At the same time, many of the issues there were worked through extremely comprehensively. This highlights the fact that lengthy negotiations do not represent merely time spent, but also provide a platform for building mutual trust. Such trust is essentially an investment in the cohesion of the new municipality.

One such intractable topic (in other regions across Estonia as well) was the issue of rural municipal districts and their representative bodies (or community bodies).

On the one hand, some leaders of smaller rural municipalities (in particular Tõstamaa in the Pärnu region) were pushing a model of a rural municipal association, a softer version of which was accepted by local authorities, for example, on the island of Hiiumaa. This model was an attempt to interpret the merged municipality as a form of cooperation, an umbrella organisation for rural municipalities (or districts thereof), where a considerable part of the decision-making power would stay in the rural municipality, to keep a budget model based on the former municipality's revenue base, and to keep most of the administrative agencies under the jurisdiction of the rural municipal district. Such a model makes the formation of a new large rural municipality into a coherent entity rather difficult.

However, before approving the text of the agreement, the negotiators in Pärnu came up with a reasonably decentralised model. The consultant proposed the option of a fairly autonomous service centre, being

an administrative sub-unit (service) of the rural municipal government, which was indeed accepted.

On the other hand, across Estonia many heads of small rural municipalities acted unpredictably by rejecting the plans – rather comprehensively drafted by consultants and presented in writing – to establish representative and community bodies for rural municipal districts (e.g. at the beginning of the negotiations in Saaremaa, Elva and the Setomaa region). This revealed a certain management culture adopted across Estonia:

governing a simple, direct contact-based organisation (which is referred to as a family/clan-type organisation) via a direct chain of command/power, which was a typical management style in small rural municipalities. It turned out later that such an aversion to service centres also revealed the career plans of the leaders and specialists of small rural municipalities: qualified public servants did not wish to essentially become a public servant assigned to handle all issues alone in a small service centre of a large rural municipality. This indicated that the taller career ladders in large rural municipalities are a considerable source of motivation in the public service.

One important conclusion drawn from all the merger negotiations (least of all in Pärnu) was that the discourse culture in Estonia; in other words, the skill to listen to other partners who hold different views, and debate substantively on disagreements in order to find a consensus (that is, common ground) are quite modest.

Such moments rather revealed an attitude that opinions can be either right or wrong, which is exactly what prevents finding a common ground. One of the key areas in the training provided to heads of local authorities could be the shaping of a discourse culture that is oriented towards listening and seeking a consensus.

In Pärnu, the central issue was the size of the council, and the formation of electoral districts, which was quite understandable given that it was a region with such a dominant city centre. It was decided to

choose the option with two electoral districts, but with a smaller council. It is likely that due to such differences between urban and rural areas, electoral districts need to be created even though the level of integration with the city is rather high (in some regions more than 50 per cent of the population commutes to Pärnu for work). After the mergers there are still quite big differences between the administration of urban and rural regions, and therefore any political input coming from the former rural municipalities is crucial to govern a large municipality in a balanced manner. The new city government has two deputy mayors from outside the city. Nevertheless, the rural electoral district lost at least one mandate because all significant lists were represented in both districts.

In this respect it would be appropriate to compare Pärnu with Põlvamaa. There both rural municipalities held simultaneous negotiations in three to four directions. But by the end of September 2016, all councils made a promise to take a final decision in favour of one direction, and did so. This was followed by swift but very practical negotiations on the core issues in the final merger areas (Põlva and Kanepi rural municipality), while insignificant details as well as political positioning were cast aside.

The events in Pärnu occurred in a reverse manner. The outcome of the initial orderly participation and commitment was a rather detailed draft merger agreement, after which the parties moved towards new directions of negotiations, effectively thwarting the negotiations in the Pärnu region, and finally withdrawing from the negotiations, blocking the road for others (the rural municipality of Are). It is obvious that such hectic behaviour towards their neighbours and their own people caused quite a lot of tension, in particular in Tori rural municipality (and indirectly in the city of Pärnu as well), which could create obstacles in shaping the structure of the new rural municipality, and could even end with a new territorial configuration in that region.

At the negotiations in Pärnu, it became evident how much confusion is created by the wording of Article 155 of the Constitution, which stipulates that 'The entities of local self-government are rural municipalities

and cities', given that in practice the term 'city' is interpreted not as a municipality, but rather as a type of settlement. As is well known, all municipalities in Estonia have the same status, and it is unclear why it was necessary to make separate references to cities and rural municipalities, while their status is identical. (Such a differentiation is understandable in such countries where cities and rural communities have a different status.)

It was most difficult to overcome this ambiguity in the case of, for instance, the rural municipality of Tõstamaa, which should have been given the status of a city district. Luckily, the formal wording of the law permitted the use of the concept of 'rural municipal district', acceptable for residents of rural areas, although with regard to the bigger picture it created a rather absurd situation – rural municipal districts were formed within the city of Pärnu.

This serves as a valuable lesson: when such discrepancies emerge, the regulatory environment has to be brought in line with real-life patterns, instead of trying to go on manoeuvring (e.g. the requirement that at least 50 per cent of the residents of a city with municipal status must live in an urban area) until real life starts distorting the wording of laws sometimes to a point of absurdity, thereby reducing the legitimacy of the law.

Another glitch was more substantive – this was connected with the transfer of the eligibility for Agricultural Register and Information Board (ARIB) subsidies into the merged rural municipal districts of the city of Pärnu (Paikuse, Audru, Tõstamaa). Formally, the existing rules did not prevent them from retaining their status as rural regions eligible for ARIB grants. But as the Ministry of Rural Affairs took their time providing final explanations, this topic kept slowing the negotiations down creating a nervous atmosphere. This showed that the political coordination and leadership of the administrative reform was not efficient enough.

It is appropriate here to make a more significant generalisation about the skills involved in managing reforms. The central government

should actively coordinate any institutional reforms – such as the administrative reform – through ministerial committees, and not just at the launch stage of the reform, but also at the stage where changes are implemented after the merger decisions have taken effect. Generally, in other European countries these duties are fulfilled by permanent ministerial committees ('sub-cabinets'). In Estonia, however, the provisional government committee took a passive stance immediately after the Administrative Reform Act had been passed.

Results

The draft merger agreement was completed in August 2016, and was submitted for preliminary discussions. The results of public discussions varied, in particular, in Sauga rural municipality, where many questions/amendments were submitted by a member of the steering committee, who was always present at negotiations.

Moreover, the council of Tori rural municipality submitted some unrealistic demands, which the participants were unable to accept. It was likely one of the tactics to justify the withdrawal of Tori from the negotiations. This also delayed the public opinion polling in the Pärnu city region, which finally took place in early November 2016. The turnout for the opinion poll was only high in Tõstamaa rural municipality (34 per cent) where 90 per cent of the voters were against the merger. An opinion poll was also taken in Are rural municipality, which was already blocked from merging with Pärnu by Sauga (Table 1).

The merger agreement was signed on 27 December 2017. After the decision passed by the central government to merge Tõstamaa with the city of Pärnu, a municipality comprising a city and three rural municipal districts (Paikuse, Audru, Tõstamaa) was established.

The geographical shape of the municipality is rather peculiar. Paikuse rural municipality and Audru rural municipality have quite a short common boundary, while the Sauga rural municipal district of Tori rural municipality lies between them. However, a certain pattern of

Public opinion poll results in the merging city of Pärnu

	City / rural municipality	Residents with the right to vote	Turnout	Turnout (%)	Yes	No
1.	Are rural municipality	1055	138	13,08	86	52
2.	Audru rural municipality	4784	476	9,95	90	386
3.	Paikuse rural municipality	3057	243	7,94	61	182
4.	Pärnu city	33 733	345	1,02	161	184
5.	Tõstamaa rural municipality	1144	394	34,44	35	358
		43 773	1596	3,65	433	1162

Table 7.

2017 election results in the city of Pärnu

Electoral list	Share of support (%)	Total mandates received	Incl. in city electoral district	Incl. in rural electoral district
Reform Party	22,8%	9	7	2
Centre Party	19,1%	7	7	0
Pro Patria and Res Publica Union	18,9%	9	4	5
Election coalition Pärnu Ühendab	16,9%	7	7	0
Conservative People's Party of Estonia	15,4%	6	5	1
Social Democratic Party	5,4%	1	1	0
Election coalition Meie Pärnu	1,1%	0	0	0
Election coalition Ellujäämise Kogukond	0,3%	0	0	0
	100%	39	31	8

Table 8.



Mayor of Pärnu Romek Kosenkranius was one of the key individuals in negotiations with neighbours. Source: Pärnu Postimees.

communication has already emerged in the region, where all transport flows pass through the city of Pärnu, including those between different parts of Sauga rural municipality.

The elections produced a governing coalition that also drove the merger negotiations: the electoral coalition Pärnu Ühendab (Romek Kosenkranius, Rainer Aavik) and the Pro Patria and Res Publica Union (Meelis Kukk, Kuno Erkmann, Siim Suursild). Romek Kosenkranius, who was leading the negotiations, received 13.4 per cent of the votes in his electoral district, which is a strong mandate given to the head of the new municipality, and he stayed in the office as mayor.

It should be pointed out that in Pärnu, votes were cast mostly to the top candidates of the electoral lists; in other words, observing the partisan voting principle which predicts that the council will pursue well-structured and consistent policies. The rural municipal district centre

of Paikuse will be led by Kuno Erkmann, the former head of the rural municipality, who was also an active participant in the negotiating process and who earned the highest share of votes in the electoral district (8.8 per cent of votes). Toomas Rõhu, the former head of Tõstamaa rural municipality is also a member of the council.

*In summary: **Romek Kosenkranius**, mayor of Pärnu, and the leader of the negotiations:*

The process of merging municipalities was complex and involved quite a lot of ambiguity: essentially the state threw the municipalities into the water and told them to swim. In my opinion, the municipalities that worked together and tried to find common ground applying the best practices as much as possible, emerged as winners in this challenge – hereby I would like to express my sincere gratitude to the consultants who advised us. The losers turned out to be, above all, those municipalities and politicians who started a fight against the process itself, and tried to hold on to their own position in the municipality. Naturally, quite a lot of work is still ahead, and I believe that in the coming four years there will be more changes in the administrative division: protest votes in the former Sauga rural municipality (now Tori rural municipality), which is closely integrated with the city of Pärnu, brought a large number of individuals into the council who support the merger with Pärnu city.

Summary and conclusions

- All mergers in Pärnumaa involved more or less serious problems, and therefore the results do not completely satisfy the participants. Nevertheless, if the merged municipalities set up a flexible management structure and ensure rural municipal districts sufficient autonomy, and allow the governing bodies of rural municipal districts to contribute sufficiently to the decision-making process in the new municipality, such territorial patterns which have been formed

on a voluntary basis are, even if they are sometimes sub-optimal, still preferable vis-à-vis any mechanical merger by the government.

- It was unrealistic to form a single municipality/county within the context of the now-completed reform. However, if Pärnu demonstrates their capability to integrate the newly formed municipality in a manner that satisfies the rural as well as the urban population, while other merged municipalities face problems with integration or peripheralisation (in comparison with the rural municipal districts in Pärnu), it is not inconceivable that in the future there could be one single municipality that covers most of Pärnumaa county.
- At the same time, the mere formation of county-wide municipalities is not an answer to the government vacuum in shaping Estonia's regional policy. Balancing regional development requires the consolidation of much larger territories, larger even than such a large county as Pärnumaa. It is to be hoped that the current county-wide association of local authorities will be able to unite into optimal regional unions, so that they could be delegated duties in regard to regional coordination and the regional development process that are currently centralised.
- When organising negotiations, it is advisable in the beginning to take a more conservative approach toward the actual attitudes/intents of the participants, and not assess possibilities based on initial attitudes that are often aimed at feeling out the boundaries and maintaining the status quo. Negotiations represent a delicate political process and the respective skills of local leaders are impressive.
- It could be maintained that the outcome of the mergers in Pärnumaa represents the political optimum of the possibilities, and has many more prospects vis-à-vis a situation where large county capitals stay out of mergers (Võru, Viljandi).
- The negotiating process should be much more inclusive and informative than it was in Pärnu, even if this requires more time.

The process should take place in parallel at several levels and, in addition to committees, councils as well as civil society actors should be engaged. Had the councils of the rural municipalities of Sauga and Tori been appropriately informed and had there been village meetings, then failures in such a complex region could have been avoided.

A summarising discussion of the mergers initiated by municipal councils

- The administrative reform in Estonia was undeniably necessary. Without the Administrative Reform Act, which also included the coercive merger stage, there would have been no significant changes: the Act served as the impetus that caused municipalities in different regions across Estonia to negotiate and actively look for solutions.
- At the voluntary stage of the administrative reform the municipalities had different motives driving them to form negotiating groups: in some areas they were based on regional and functional connections, in others on the quality of (political) relationships, while in some areas they were based on who was in command of more funds. It should not be said that one motive was more appropriate than another, but the spatial cohesion of municipalities should be a mandatory precondition for any merger. However, in a situation where the principle of voluntary participation is applied in full, it is difficult to lay down such a requirement, and would have warranted the imposition of additional rules by the legislature. Earlier reform attempts that had included such conditions had indeed failed.
- The practical outcomes of the voluntary stage of the administrative reform showed that no analyses or studies produce mergers; the key to solutions is clearly held by the local leaders. Most of the coercive mergers were carried out in municipalities where local leaders were unable or unwilling to find solutions, and objected

to the merger, and sometimes to the reform, in principle. After the end of the administrative reform, the impact of the reform and the development of municipalities will also largely depend on their leaders: whether sights are set on what is ahead, or whether there are setbacks and disagreements, for instance within the boundaries of former rural municipalities.

- During the voluntary stage, the more pragmatic solutions ultimately prevailed. More ambitious initiatives (e.g. the formation of county-wide municipalities) died out, and solutions mostly involved the nearest neighbours. However, in many cases this meant that the mergers did not follow the logical centre-hinterland model because smaller municipalities were apprehensive about larger centres dominating, or the large centre itself was not prepared to be involved. Pragmatic solutions are evident on the post-reform landscape, where a number of regions have adopted the rural municipal district-based model, which essentially copies the structure of former municipalities. This has probably been a necessary compromise as a transitional solution, but in the longer perspective the experience provided by such practices should offer an answer about whether such solutions are sustainable.
- The mergers have shown that, with regard to the inclusion of the general public and the promotion of democracy, there is ample room for improvement in Estonia's municipal environment. In practice, the organisation of the administrative reform was entrusted to a fairly small circle of municipal leaders, and wider participation was negligible. Often a few dozen people participated meaningfully in the specific merger process. The development of a culture of engagement and substantive discussion is certainly one of the tasks for the future.
- From a forward-looking point of view, the new municipalities will face the need to take many challenging decisions. For instance, regarding the organisation of a network of educational institutions,

the majority of the merger areas agreed not to change anything within the coming four years. At the same time, it is obvious that changes are needed, and there has to be the courage and willingness to implement them in the municipalities.

- A positive aspect in the process of realising the administrative reform is the support the government ministries provided to regions in the form of merger consultants and coordinators. In many locations, it was the consultant or coordinator who helped to steer discussions, handle the weighing of pros and cons, and reach agreement. The fact-finding days, seminars and other supporting activities organised by the Ministry of Finance were extremely important (and popular), offering the decision-makers support and clarity for the solutions.
- Despite the fact that rather a large number of municipalities were merged at the initiative of the central government, voluntary mergers and the definition of the future municipal boundaries through a bottom-up process is the most sustainable approach to the development of the future local government system.

The Execution of Government-Initiated Mergers

KAIE KÜNGAS

Ministry of Finance

According to the Administrative Reform Act, the councils of all municipalities with fewer than 5,000 residents were required to submit an application to the relevant county governors by 1 January 2017 for the alteration of administrative-territorial organisation (that is, for a merger). Thereafter, by 15 February, the Government of the Republic was to initiate mergers of those municipalities that still had fewer than 5,000 residents – the minimum size of a municipality provided for in the Act and referred to below as the minimum size criterion – in order to ensure compliance with the criterion.

The aim of government-initiated mergers was to ensure the completion of the reform if municipal councils failed to agree on mergers required by the Act. This also set a clear deadline for municipal council-initiated mergers, allowing enough time for their completion, so that by the local elections in October 2017, the new administrative-territorial organisation would be in place and mergers initiated by municipal councils would not be held up by potential court disputes.

After the first stage of mergers, initiated by municipal councils, the government was to make merger proposals to all municipalities with fewer than 5,000 residents. It could also make a merger proposal to municipalities with more than 5,000 residents if this was necessary for merging some of its neighbouring municipalities that fell short of the minimum size criterion. The Act only provided for a few possible exemptions for the government when it did not have to initiate a merger. For example, the government could decide not to initiate mergers of maritime island municipalities with fewer than 5,000 residents or low-density municipalities with very large areas.

However, the government did have the right, after receiving feedback from local authorities on its proposals, not to proceed with a particular merger, based on counterarguments presented by local authorities if the merger did not have a positive effect on the circumstances listed in the Territory of Estonia Administrative Division Act¹.

The need, considerations and justifications for government-initiated mergers are described in more detail in the article 'Principles and Legislative Choices Underlying the Administrative Reform' by Olivia Taluste.

¹ Both local authorities and the central government were required by Article 7(5) of the Territory of Estonia Administrative Division Act to consider the following when making proposals to initiate mergers: (1) historical reasons; (2) effect on residents' living conditions; (3) residents' sense of cohesion; (4) effect on the quality of public services; (5) effect on administrative capacity; (6) effect on demographic situation; (7) effect on the organisation of transport and communications; (8) effect on the business environment; (9) effect on the educational situation; and (10) effect on organisational functioning of the municipality as a common service area.

The situation after the stage of mergers initiated by municipal councils

At the stage of mergers initiated by municipal councils, 160 local authorities in 47 merger areas had submitted merger applications (including the formation of the rural municipalities of Saue and Tõrva, which were approved by the government in July 2016, right after the Administrative Reform Act had entered into force).

The government approved the mergers of 157 municipalities in 46 areas. The government could not approve a merger application submitted by the authorities of three rural municipalities – Rapla, Raikküla and Kaiu – at that stage, as Kaiu rural municipality lacked a shared border with the other two. Instead, the government initiated an additional merger to merge Juuru rural municipality (which was situated between the others and did not meet the minimum size criterion) with the above-mentioned municipalities.

There were several reasons why some municipal councils failed to initiate mergers.

- Although merger negotiations were held, no consensus was reached on the terms and conditions of the merger agreement. Thus, at the end of the year, a decision was taken not to merge (e.g. the rural municipalities of Lügánuse, Illuka and Koeru).
- Some local authorities were against the administrative reform in principle and hoped that it would be possible to continue without being merged by government despite not meeting the minimum size criterion (e.g. Loksa city and Nõo rural municipality).
- In 2016, some local authorities filed an application with the Supreme Court to declare the Administrative Reform Act unconstitutional, and refused to participate in negotiations while proceedings were ongoing (e.g. the rural municipalities of Juuru, Pala and Luunja). Several local authorities waited for the final result of the proceedings of the Supreme Court and had suspended merger negotiations until then, expecting a positive decision with regard to their application.

- Some municipalities were willing to merge with neighbouring municipalities, while the latter either refused to participate in the merger negotiations entirely or to finalise the merger (e.g. Tabivere rural municipality, Kallaste city).
- Other local authorities did start merger negotiations at the end of 2016, but could not complete them due to the requirements set for the procedure (e.g. Tähtvere rural municipality, which decided to end negotiations with the rural municipalities of Tartu and Laeva in November 2016, and to start negotiations with Tartu city).
- A few merging municipalities failed to meet the minimum size criterion, as some of their negotiation partners decided against the merger at the end of 2016 (e.g. the rural municipalities of Iisaku, Alajõe, Mäetaguse and Tudulinna due to the negative decision of Illuka rural municipality; the rural municipalities of Toila, Kohtla and Kohtla-Nõmme due to the negative decision of Jõhvi rural municipality.)
- Yet other municipalities could not find additional partners with which they would have had common ground for their merger negotiations (e.g. the rural municipalities of Kõlleste, Kanepi and Valgjärve, or the rural municipalities of Antsla and Urvaste).

Local authorities could apply for exemptions from the application of the criterion for the minimum number of residents only at the stage of mergers initiated by municipal councils. The councils of the municipalities that were eligible for exemptions had to submit an application to the relevant county governor by 1 January 2017, explaining how they would ensure quality public services and increased capacity without a merger. By the deadline, such applications were submitted by the maritime island municipalities of Kihnu, Ruhnu, Muhu and Vormsi, and the rural municipalities whose mergers would result in low-density municipalities with large territories, such as Saarde and Surju (whose merger resulted in Saarde rural municipality), and the rural municipalities of

lisaku, Alajõe, Mäetaguse and Tudulinna (whose merger resulted in Alutaguse rural municipality).

The government decided to satisfy the applications for an exemption of all island rural municipalities. Although the relevant regional committee made a proposal to merge Ruhnu rural municipality (a separate island) with the merging municipalities on the island of Saaremaa, the government decided to apply an exemption, taking into account the remoteness of Ruhnu from Saaremaa and the mainland. Consequently, although the four maritime island municipalities did not meet the minimum size criterion, the government did not make a merger proposal to them.

The government-initiated mergers for 26 municipalities that did not meet the criterion and that had not submitted merger applications to the relevant county governors by 1 January 2017 are as follows: the cities of Kallaste (844 residents), Loksa (2,738 residents) and Paldiski (3,806 residents), and the rural municipalities of Emmaste (1,241 residents), Illuka (1,072 residents), Juuru (1,462 residents), Kambja (2,586 residents), Keila (4,906 residents), Koeru (2,111 residents), Luunja (4,251 residents), Lüganuse (2,945 residents), Meremäe (1,075 residents), Mikitamäe (985 residents), Nõo (4,170 residents), Padise (1,740 residents), Pala (1,089 residents), Puka (1,556 residents), Pöide (876 residents), Pühalepa (1,590 residents), Rakke (1,626 residents), Tabivere (2,240 residents), Tõstamaa (1,310 residents), Tähtvere (2,609 residents), Vasalemma (2,498 residents), Väike-Maarja (4,486 residents), and Värska (1,371 residents).

Apart from these, there were ten municipalities that would not have met the criterion set by the Administrative Reform Act even after mergers initiated by their municipal councils:

- (1) Alutaguse rural municipality (formed as a result of the merger of the rural municipalities of lisaku, Alajõe, Mäetaguse and Tudulinna, 3,968 residents);
- (2) Narva-Jõesuu city (formed as a result of the merger of Vaivara rural municipality and Narva-Jõesuu city, 4,772 residents);

- (3) Toila rural municipality (formed as a result of the merger of the rural municipalities of Toila, Kohtla and Kohtla-Nõmme, 4,849 residents);
- (4) Haljala rural municipality (formed as a result of the merger of the rural municipalities of Haljala and Vihula, 4,389 residents);
- (5) Kanepi rural municipality (formed as a result of the merger of the rural municipalities of Kõlleste, Kanepi and Valgjärve, 4,962 residents);
- (6) Häädemeeste rural municipality (formed as a result of the merger of the rural municipalities of Häädemeeste and Tahkuranna, 4,982 residents);
- (7) Saarde rural municipality (formed as a result of the merger of the rural municipalities of Saarde and Surju, 4,873 residents);
- (8) Peipsiääre rural municipality (formed as a result of the merger of the rural municipalities of Alatskivi, Vara and Peipsiääre, 3,843 residents);
- (9) Antsla rural municipality (formed as a result of the merger of the rural municipalities of Antsla and Urvaste, 4,649 residents);
- (10) Vastseliina rural municipality (formed as a result of the rural municipalities of Vastseliina and Orava, 2,690 residents).

For all these municipalities, the government initiated, as required, additional mergers so that they would meet the minimum size criterion. Although in two cases – in the formation of the rural municipalities of Saarde and Alutaguse – the local authorities had submitted an application for an exemption and they formally met the required conditions, the government could not apply the exemption, as it had initiated additional mergers with their neighbouring municipalities that fell short of the minimum size criterion.

The government approved the submission of merger proposals to the authorities of all the municipalities listed above in its session of 9 February. On 15 February, the Ministry of Finance submitted the proposals in the form of a draft government regulation to the relevant municipal councils for comments.

For the formation of Setomaa rural municipality, the government exceptionally initiated a merger that did not meet the minimum size criterion. The number of residents in what would become Setomaa was just above 3,500 at the time the proposal was made, but at the same time it satisfied the requirements for the granting of an exemption as provided in the Administrative Reform Act².

Including the municipalities that met the minimum size criterion but were also proposed as merger partners (e.g. the merger proposal for Põide rural municipality included all 11 other municipalities on the island of Saaremaa), proposals were made to 104 municipalities in 22 areas. In addition, proposals were made to Kohtla-Järve city and Misso rural municipality for the transfer of a part of their territories to the rural municipalities of Narva-Jõesuu and Setomaa, respectively.

In accordance with the Administrative Reform Act, local authorities had to submit their opinions within three months from the receipt of a merger proposal. In their opinions, local authorities could accept the proposal made, or provide their reasoned objections and arguments if, in their view, the effect of the merger was not positive as expected.

In accordance with the Act, the government had the right, after reviewing the opinions submitted by local authorities, to terminate a merger procedure in exceptional cases. However, disagreement by a local authority and its justified negative opinion did not directly mean that the national government could not proceed with the relevant merger, provided it had reasoned arguments.

The rural municipalities of Koeru and Rakke decided only in December 2016 to start merger negotiations, and submitted their merger application to the government in April 2017. As the Administrative Reform

² A municipality bordering a temporary control line of the Republic of Estonia for the purposes of Article 22(1) of the State Border Act on land that has a total of at least 3,500 residents according to the data of the population register as at 1 January 2017 and is formed of the administrative territories or parts thereof of at least four municipalities that are connected historically, culturally and geographically.

Act did not provide for the possibility of holding negotiations initiated by municipal councils in parallel with those initiated by the government, the application submitted by these two rural municipalities was lawful and it was too late for the government to take it into account. Furthermore, by that time, the government had already suggested different merger proposals. Moreover, the merger of the rural municipalities of Koeru and Rakke would not have satisfied the minimum size criterion and therefore would not have achieved the goal of the administrative reform.

Background to the merger proposals made by the government

When making merger proposals and analysing objections raised by local authorities, the government considered, apart from the minimum size criterion prescribed by the Administrative Reform Act, the circumstances described in Article 7(5) of the Territory of Estonia Administrative Division Act³.

At the same time, the government had to explore alternative merger directions and options in order to find solutions that would achieve the goals of the administrative reform in the best possible way and would ensure the formation of capable and cohesive municipalities.

For the preparation of merger proposals, the Ministry of Finance involved regional committees that were established for the implementation of the administrative reform and whose task was to submit to the Ministry their opinions regarding the justification of the merger proposals made and exemptions applied by the government, as well as their positions and expert assessments regarding the most appropriate directions for mergers. The explanations below are based on the views

³ Justification from the historical point of view; effects on residents' living conditions; residents' sense of cohesion; effects on the quality of public services, administrative capacity, demographic situation, the organisation of transport and communications, business environment and educational situation; and organisational functioning of a municipality as a common service area.



A meeting of the Western Estonia Regional Committee in Haapsalu. This region included Hiiu, Saare, Lääne, Rapla and Pärnu counties. Photograph: Rivo Noorkõiv.

expressed by the regional committees and in the expert assessments drafted for committee meetings.

In its proposals made to local authorities, the government took into account the suggestions of the regional committees and the particular characteristics of each municipality. On the island of Hiiumaa, for example, there was no alternative to making a proposal for merging the rural municipalities of Pühalepa and Emmaste with those of Hiiu and Käina, as it was not possible to form more than one integrated municipality that would meet the minimum size criterion prescribed by the Administrative Reform Act and be in line with the goals of the administrative reform. There would have been no logical centre-hinterland system, or functional area, without the inclusion of all the municipalities.

On the island of Saaremaa, the authorities of every municipality apart from Põide rural municipality had applied for a merger with one another. Therefore, there was no alternative to merging Põide rural

municipality with the rest of them in order to form an integrated municipality. Furthermore, being an island, Saaremaa is one functional space.

Kallaste city, for example, had a common border only with Alatskivi rural municipality, and was connected to the other municipalities making up Peipsiääre rural municipality through a road network. These local authorities had also already held negotiations.

In several cases, local authorities had been aware of the formation of a common functional area with other municipalities, and they had already held negotiations at the stage initiated by municipal councils. However, for a number of reasons, they had decided not to complete their negotiations and not to submit a merger application.

There are several examples here. In Hiiumaa, the rural municipalities of Emmaste, Käina and Pühalepa had held trilateral negotiations without involving Hiiu rural municipality.⁴ Paldiski city and the rural municipalities of Keila, Vasalemma and Padise had prepared a draft merger agreement. The rural municipalities of Alajõe, Iisaku, Illuka, Mäetaguse and Tudulinna had held negotiations but at the end of 2016, Illuka rural municipality had decided against approving the merger agreement and thus the application had been submitted by the authorities of the remaining four municipalities. Lügane rural municipality had held negotiations with Sonda rural municipality and Kiviõli city, and they had also prepared a draft merger agreement. However, they could not agree on its terms and conditions, including the name of the new municipality. The rural municipalities of Koeru, Järva-Jaani, Albu, Ambla, Imavere, Kareda and Koigi wanted to merge into Järva rural municipality. At the end of the negotiations, however, Koeru rural municipality rejected the agreement as there was no consensus reached regarding the centre of the new rural municipality. Without Koeru rural municipality, however,

⁴ The rural municipalities of Emmaste and Pühalepa did not agree to inviting Hiiu rural municipality to the negotiations, as proposed by Käina rural municipality. Thereafter, the negotiations were continued between the rural municipalities of Hiiu and Käina, which merged on the initiative of the municipal councils.

the new Järva rural municipality would not have been complete. Negotiations had also been held between the rural municipalities of Rakke and Väike-Maarja; the rural municipalities of Tahkuranna, Häädemeeste, Saarde and Surju; and Tõstamaa rural municipality, Pärnu city and the rural municipalities of Audru and Paikuse.

The central government also made merger proposals to those local authorities that had completely refused to participate in negotiations at the stage of mergers initiated by municipal councils, despite receiving a proposal to start merger negotiations. Another example here is the proposal to merge Loksa city and Kuusalu rural municipality, where the parties had previously proposed starting negotiations but had actually not met. Tabivere rural municipality had made a proposal to join the negotiations between the rural municipalities of Tartu, Piirissaare and Laeva several times, but this had been declined. Pala rural municipality had received several negotiation proposals from Alatskivi rural municipality but had rejected them. The previous proposals in these areas were of course not the only reason the government made its own proposals, but they show that the local authorities concerned were aware of their interconnections before.

Several proposals were based on potential links between the centre and the hinterland, as well as the existing close cooperation between the regions and the movement patterns of their residents. For example, the government made a proposal to merge Lüganuse rural municipality with Kiviõli city and Sonda rural municipality, as there were geographical and functional links between these municipalities. The residents of Koeru rural municipality travelled primarily towards the municipalities in Järvamaa. The residents of Rakke rural municipality were more connected with the service area of Väike-Maarja rural municipality, and the local authorities had cooperation experience with each other. The fact that a majority of the population of Juuru rural municipality were in the functional space of Rapla rural municipality was an additional reason for merging Juuru rural municipality with the rural municipalities of Rapla,

Raikküla and Kaiu. The rationale behind the proposal to merge the rural municipalities of Luunja and Tähtvere with Tartu city was the latter's suburbanisation and the widening of the city area to the surrounding municipalities, as well as the extremely strong cohesion of their residents with Tartu city. The eastern villages of Puka rural municipality and the surroundings of Puka had connections with Sangaste and Otepää through commuting, regional cooperation arrangements and a common newspaper (i.e. they shared a common field of information).

Merger proposals were made to municipalities with similar characteristics. For example, large parts of the territories of the rural municipalities of Häädemeeste, Tahkuranna, Saarde and Surju are low-density areas that have similar problems and service needs. The rural municipalities of Tabivere, Tartu, Laeva and Piirissaare are all closely connected with Tartu city, as their residents commute daily for working and learning mobility (due to the road network, the residents of Tabivere rural municipality move through the territory of the former Tartu rural municipality). Kallaste city and Pala rural municipality, together with the rural municipalities of Peipsiääre, Alatskivi and Vara, are located in the common functional area of Tartu city. All of these municipalities are closely interconnected through a road network. Similarly, the rural municipalities of Mikitamäe, Meremäe and Värskä were merged as they form a common Seto cultural space.

In several cases, the future potential of the authorities of the municipalities to be merged for the development of services and the region in general was assessed. For example, these concerned the mergers of Tõstamaa rural municipality with Pärnu city and the rural municipalities of Audru and Paikuse, as well as the mergers of the rural municipalities of Orava and Vastseliina with the rural municipalities of Lasva, Sõmerpalu and Võru.

In the process of preparing merger proposals, analysis was also done for alternative solutions and their feasibility. For example, instead of merging the rural municipalities of Haljala and Vihula with the rural

municipalities of Sõmeru and Rakvere, the former could have also been merged with Kadrina rural municipality. However, the three rural municipalities lacked a common functioning public transport system and connectivity. Possible merger partners for Koeru rural municipality were either the rural municipalities of Järva county, or the rural municipalities of Rakke and Väike-Maarja. In the end, it was found that Koeru rural municipality was more closely connected with the municipalities of Järva county. It would not have been practical to merge Tõstamaa rural municipality with those of Lihula, Hanila, Koonga and Varbla, as the territory of this merging rural municipality was already very large, the area was sparsely populated and there were no commonalities. Considering historical and socioeconomic aspects, the rural municipalities of Antsla and Urvaste had more connections with Sõmerpalu rural municipality (which merged with the rural municipalities of Lasva and Võru). Furthermore, there was hardly any movement of population between the rural municipalities of Mõniste, Varstu, Rõuge, Haanja and Misso. The rural municipalities of Orava and Vastseliina had more connections and cohesion with the rural municipalities of Sõmerpalu, Lasva and Võru than with the five municipalities in southern Võrumaa (the rural municipalities of Haanja, Misso, Mõniste, Rõuge and Varstu).

In the case of Juuru rural municipality, the government relied on the merger application submitted by its neighbouring municipalities, as the rural municipalities of Kaiu, Rapla and Raikküla had applied for a merger on the initiative of their municipal councils, although Kaiu rural municipality had no common border with the rural municipalities of Rapla and Raikküla. In order to apply the exemption foreseen by the Administrative Reform Act and complete the merger initiated by the municipal councils, the government had to make a proposal to merge Juuru rural municipality (or a part of its territory) with the rural municipalities of Rapla, Kaiu and Raikküla.

Merger proposals made by the Government of the Republic

County	Municipalities to be merged	Proposed name of municipality after merger (as at 1 January 2017)	Population (as at 1 January 2017)
Harjumaa	Kuusalu rural municipality + Loksa city	Kuusalu rural municipality	9,328
Harjumaa	Keila city + Keila rural municipality + Paldiski city + Vasalemma rural municipality + Padise rural municipality	Lääne-Harju rural municipality	22,811
Hiiumaa	Käina and Hiiu rural municipality (Hiiumaa rural municipality) + Emmaste rural municipality + Pühalepa rural municipality	Hiiumaa rural municipality	9,550
Ida-Viru	Kiviõli city and Sonda rural municipality (Kiviõli rural municipality) + Lüganuse rural municipality	Lüganuse rural municipality	9,155
Ida-Viru	Iisaku, Alajõe, Mäetaguse and Tudulinna rural municipality (Alutaguse rural municipality) + Illuka rural municipality + Toila, Kohtla and Kohtla-Nõmme rural municipality (Toila rural municipality)	Alutaguse rural municipality	9,889
Ida-Viru	Sillamäe city + Vaivara rural municipality and Narva-Jõesuu city (Narva-Jõesuu city)	Vaivara rural municipality	18,438
Järva	Järva-Jaani, Albu, Ambla, Imavere, Kareda and Koigi rural municipality (Järva rural municipality) + Koeru rural municipality	Järva rural municipality	9,225
Lääne-Virumaa	Rakke rural municipality + Väike-Maarja rural municipality	Väike-Maarja rural municipality	6,112
Lääne-Virumaa	Sõmeru and Rakvere rural municipality (Rakvere rural municipality) + Haljala and Vihula rural municipality (Haljala rural municipality)	Rakvere rural municipality	9,972

Põlva	Põlva, Ahja, Laheda, Mooste and Vastse-Kuuste rural municipality (Põlva rural municipality) + Kõlleste, Kanepi and Valgjärve rural municipality (Kanepi rural municipality)	Põlva rural municipality	19,367
Pärnumaa	Saarde and Surju rural municipality (Saarde rural municipality) + Häädemeeste and Tahkuranna rural municipality (Häädemeeste rural municipality)	Lõuna-Pärnumaa rural municipality	9,855
Pärnumaa	Pärnu city, Audru and Paikuse rural municipality (Pärnu city) + Tõstamaa rural municipality	Pärnu city	51,730
Rapla	Rapla, Kaiu and Raikküla rural municipality (Rapla) + Juuru rural municipality	Rapla rural municipality	13,480
Saaremaa	Kuressaare city, Lääne-Saare, Orissaare, Pihtla, Valjala, Salme, Kihelkonna, Laimjala, Mustjala, Torgu and Leisi rural municipality (Saaremaa) + Põide rural municipality	Saaremaa rural municipality	32,007
Tartu	Alatskivi, Vara and Peipsiääre rural municipality (Peipsiääre rural municipality) + Kallaste city + Pala rural municipality	Kodavere rural municipality	5,776
Tartu	Ülenurme rural municipality + Kambja rural municipality	Kambja rural municipality	10,035
Tartu	Piirissaare, Tartu and Laeva rural municipality (Tartu rural municipality) + Tabivere rural municipality	Tartu rural municipality	10,397
Tartu	Elva, Konguta, Rannu, Rõngu, Palupera and Puhja rural municipality (Elva rural municipality) + Nõo rural municipality	Elva rural municipality	18,372
Tartu	Tartu city + Tähtvere rural municipality + Luunja rural municipality	Tartu city	103,754
Valga	Otepää and Sangaste rural municipalities and villages in Palupera rural municipality (Otepää rural municipality) + Puka rural municipality	Otepää rural municipality	7,264
Võru	Väraska rural municipality + Mikitamäe rural municipality + Meremäe rural municipality + villages in Misso rural municipality	Setomaa rural municipality	3,584

Võru	Lasva, Sõmerpalu and Võru rural municipalities (Võru rural municipality) + Vastseliina and Orava rural municipalities (Vastseliina rural municipality) + Antsla and Urvaste rural municipalities (Antsla rural municipality)	Võru rural municipality	15,639
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Table 1. Merger proposals made by the Government of the Republic (municipalities that did not meet the minimum size criterion are in bold; names of the municipalities merged on the initiative of the councils are in brackets)

Contrary to the initial proposals made by the regional committees, the government made a proposal to merge Keila city with Paldiski city and the rural municipalities of Keila, Padise and Vasalemma, as well as to merge the rural municipalities of Toila, Kohtla, Kohtla-Nõmme, Alajõe, Iisaku, Illuka, Mäetaguse and Tudulinna.

As the government's proposals were made in the form of a draft regulation for the alteration of administrative-territorial organisation, the government also made a proposal for the name of each municipality to be formed, based on the opinion of the Place Names Board.

Opinions of local authorities on the central government's proposals

Following the receipt of the proposals from the government, local authorities had to ask the residents for their opinion (unless this had already been done for exactly the same municipalities at the stage initiated by municipal councils); reach an agreement on the name, type and insignia of the new municipalities and on other issues related to the merger (approve the merger agreement); prepare decisions related to the upcoming elections and carry out necessary election activities; and submit a reasoned opinion concerning the proposal to the county governor by 15 May 2017 at the latest.

The authorities of 65 municipalities, or nearly two-thirds of those that received a proposal from the government, did not agree with the

proposal and did not make any preparations for the merger. The authorities of 25 municipalities agreed with the proposal made by the government, and those of 14 municipalities did not respond to the proposal (in this case the proposal was deemed to have been accepted, in accordance with the Administrative Reform Act).

There were two government proposals based on which local authorities carried out the activities prescribed by the Administrative Reform Act in preparation for the mergers, and approved the merger agreement. Põide rural municipality agreed with the other municipalities in Saaremaa on the terms and conditions of its merger. Likewise, agreement was also reached by the rural municipalities of Puka, Sangaste and Otepää. Tähtvere rural municipality and Tartu city also agreed with the merger. They had hoped to start the process by the end of 2016 but could not prepare a merger agreement by the given deadline (the same proposal also included Luunja rural municipality). Vaivara rural municipality and Kohtla-Järve city agreed to transfer part of the territory of Kohtla-Järve (the district of Viivikonna) to Vaivara. There were no other proposals where all parties concerned were in agreement.

Residents were against government-initiated mergers almost everywhere, in particular in the rural municipalities of Sõmeru (98.9%), Vara (98.5%), Ülenurme (98.3%) and Tudulinna (98.2%). At the same time, there were also municipalities where residents were in favour of mergers: these were the cities of Kiviõli and Elva, and the rural municipalities of Hiiu, Käina, Imavere, Järva-Jaani, Koigi, Väike-Maarja, Vastse-Kuuste, Kaiu, Rapla, Laeva, Tabivere, Alatskivi, Meremäe, Mikitamäe, Värskä, Keila and Tähtvere. In the rural municipalities of Raikküla and Puhja, votes were split equally.

There were seven merger proposals where none of the parties that received the proposal was in favour. These concerned the merger proposals of Kuusalu rural municipality and Loksa city; of the rural municipalities of Toila, Kohtla, Kohtla-Nõmme, Mäetaguse, Illuka, Iisaku, Alajõe, Mäetaguse and Tudulinna; of Vaivara rural municipality,

the cities of Narva-Jõesuu and Sillamäe; of the rural municipalities of Haljala, Vihula, Sõmeru and Rakvere; of the rural municipalities of Häädemeeste, Tahkuranna, Saarde and Surju; of the rural municipalities of Kambja and Ülenurme; and of the rural municipalities of Antsla, Urvaste, Vastseliina, Orava, Lasva, Sõmerpalu and Võru.

The local authorities had many arguments against the mergers, referring, in particular, to the sufficiency of their existing capacity, the lack of commonalities, and the fact that the merger would not result in an integrated municipality. The main arguments presented by the local authorities at the time are listed below.

- The existing municipality or the municipality to be formed through a merger initiated by the municipal councils themselves already has sufficient capabilities and administrative capacity; it has the required competence and capability to organise and manage local issues independently, and to perform functions arising from law. Therefore, no additional merger is necessary (e.g. the rural municipalities of Alajõe, Iisaku and Tudulinna, Illuka rural municipality, the rural municipalities of Vastseliina and Orava, Pühalepa rural municipality, Kambja rural municipality, Pala rural municipality, Nõo rural municipality, Keila city, Padise rural municipality, Vasalemma rural municipality and Luunja rural municipality).
- The municipality that the government wants to merge with the municipality in question is in a weaker position economically or has a different structure, which may also weaken the capacity of the municipality in question (e.g. Kuusalu rural municipality, Sillamäe city, the rural municipalities of Alatskivi, Peipsiääre and Vara, Keila city).
- There are no current relations or sense of cohesion that would ensure the ability of the merged municipality to provide integrated and functional services and cooperation between its different parts in the future (e.g. Kuusalu rural municipality and Loksa city, Vaivara rural municipality and the cities of Sillamäe and Narva-Jõesuu, the rural municipalities of Alajõe, Iisaku and Tudulinna, the rural

municipalities of Antsla and Urvaste, Rakke rural municipality, Mikitamäe rural municipality, Haljala rural municipality, Vihula rural municipality, Rakvere rural municipality, Sõmeru rural municipality, Keila city).

- Negotiations initiated by municipal councils failed because some of the participants could not agree on beginning negotiations or the conditions of the negotiations, and the situation has not changed since (e.g. Loksa city, Pärnu city).
- The proposed merger would not result in an integrated municipality or a common service area because there would be several distinct areas with different directions of movement in the new municipality and there would be no common centre. Even the new merged local authorities would not be able to change the mobility of the residents and municipal seat would not be on the natural route of the residents of all municipalities to be merged (e.g. the rural municipalities of Häädemeeste, Tahkuranna, Saarde and Surju, the rural municipalities of Kanepi, Kõlleste and Valgjärve, the rural municipalities of Alajõe, Iisaku and Tudulinna, the rural municipalities of Toila, Kohtla-Nõmme and Kohtla, the rural municipalities of Lasva, Sõmerpalu and Võru, the rural municipalities of Antsla and Urvaste, the rural municipalities of Vastseliina and Orava, Kambja rural municipality, Haljala rural municipality, Vihula rural municipality, Rakvere rural municipality, Sõmeru rural municipality, Pala rural municipality, Luunja rural municipality).
- Smaller municipalities referred to the risk of peripheralisation, decreased availability and deterioration of services in the area as a whole, concentration of residents in centres, focusing attention to other, larger areas to be merged, and decline in local democracy (e.g. Illuka rural municipality, the rural municipalities of Kanepi, Kõlleste and Valgjärve, the rural municipalities of Antsla and Urvaste, Emmaste rural municipality, Koeru rural municipality, Tõstamaa rural municipality, Kambja rural municipality).

- Preference was given to an alternative merger option (e.g. Juuru rural municipality would have preferred to be merged with Kohila rural municipality, which is also one of the service and commuting centres in Rapla county and, in particular, in Juuru rural municipality).
- The authorities of the municipalities that met the minimum size criterion pointed out that there were not sufficient benefits for the parties meeting the criterion in the justification presented by the government (e.g. Keila city, Ülenurme rural municipality), and as merger negotiations had not been held before, the local authorities had not reached agreement on how to develop the future merged local authorities (e.g. Tartu rural municipality).
- The authorities of the municipalities to be merged found that even preparing the decisions at the stage initiated by municipal councils had been very difficult and emotional, and that forming a new rural municipality through a coercive merger would create even greater alienation from the residents (the rural municipalities of Alatskivi, Peipsiääre and Vara, the rural municipalities of Konguta, Rannu, Palupera and Puhja).

Almost every local authority that gave negative feedback highlighted the specific characteristics of the municipalities to be merged and the missing links between them, as well as insufficient positive effect, or even negative effect, on the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act. Pursuant to the Act, this was obligatory when giving an opinion.

Väike-Maarja rural municipality and Tartu city made a proposal to alter their administrative-territorial organisation by means of Väike-Maarja joining Tartu (instead of the two merging), to which the government agreed.⁵

⁵ While merging would have required the termination of both municipalities, joining meant that only the rural municipality of Väike-Maarja would be terminated as a legal person.

Final decisions made by the government with regard to municipal mergers

Having considered the feedback received from the local authorities and the recommendations given by the regional committees, the government withdrew ten merger proposals that concerned municipalities falling short of the minimum size criterion or groups of municipalities that were already merging on the initiative of municipal councils, and proceeded with the remaining 26 mergers of such municipalities.

The government decided not to proceed with the following procedures (mergers initiated by municipal councils remained in force):

- the merger of Kuusalu rural municipality and Loksa city;
- the merger of Keila city with Keila rural municipality, Paldiski city, Vasalemma rural municipality and Padise rural municipality;
- the merger of the rural municipalities of Toila, Kohtla and Kohtla-Nõmme with the rural municipalities of Iisaku, Alajõe, Mäetaguse, Tudulinna and Illuka (only the merger of the rural municipalities of Toila, Kohtla and Kohtla-Nõmme);
- the merger of Sillamäe city with the cities of Vaivara and Narva-Jõesuu;
- the merger of the rural municipalities of Sõmeru, Rakvere, Haljala and Vihula;
- the merger of the rural municipalities of Põlva, Ahja, Laheda, Mooste, Vastse-Kuuste, Kõlleste, Kanepi and Valgjärve;
- the merger of the rural municipalities of Saarde, Surju, Häädemeeste and Tahkuranna;
- the merger of Nõo rural municipality with the rural municipalities of Elva, Konguta, Rannu, Rõngu, Palupera and Puhja;
- the merger of Luunja rural municipality with Tartu city and Tähtvere rural municipality (only in the case of Luunja rural municipality);
- the merger of the rural municipalities of Antsla and Urvaste with the rural municipalities of Lasva, Sõmerpalu, Võru, Vastseliina and Orava.

The merger procedure was terminated for seven municipalities that had merged on the initiative of municipal councils. These municipalities had a distinct and independent functional space, and all of them had more than 4,000 residents (the rural municipalities of Toila, Haljala, Kanepi, Saarde, Häädemeeste and Antsla, and Narva-Jõesuu city to be formed through mergers initiated by municipal councils). Some of them fell short of the minimum size criterion by just a few dozen residents (the rural municipalities of Kanepi and Häädemeeste to be formed through mergers initiated by municipal councils).

The merger procedure was also terminated for three single municipalities that did not meet the criterion (Loksa city, Luunja rural municipality and Nõo rural municipality).

The government based its decisions on the feedback received from the local authorities, by assessing whether the justifications and counterarguments submitted were sufficiently valid for the termination of the procedure, and by taking into account the initial reasons for making the proposal in question.

For several withdrawn proposals, it was also pointed out by the relevant regional committee that if local authorities could justify in their opinion that they were able to achieve the goal of the administrative reform and that an additional merger would mostly have a negative effect, terminating the procedure should be considered.

The government made a decision concerning most municipalities and proposals in its session of 15 June. It terminated the procedure for the alteration of administrative-territorial organisation for six and proceeded with the procedure for 18 municipalities or groups of merging municipalities that did not meet the minimum size criterion. The government adopted the relevant regulations on 22 June 2017.

In its session of 15 June, the government did not make a decision with regard to four areas; for these, it requested another assessment from the regional committees, including the results of opinion polls carried out among the residents. The re-assessed proposals were as follows:



A picket against the government's proposal to merge Nõo rural municipality with Elva city in front of the government building on Toompea, Tallinn. Nõo was one of the rural municipalities with fewer than 5,000 residents that the government decided not to merge. Source: Delfi

- (1) the merger of Keila city, Keila rural municipality, Padise rural municipality, Paldiski city and Vasalemma rural municipality;
- (2) the merger of the rural municipalities of Haljala and Vihula with the rural municipalities of Rakvere and Sõmeru;
- (3) the merger of Nõo rural municipality with Elva city and the rural municipalities of Konguta, Palupere, Puhja, Rannu and Rõngu.
- (4) the joining of the rural municipalities of Luunja and Tähtvere with Tartu city.

The regional committees discussed the above merger proposals in their meetings of 20 June, and submitted more detailed opinions to the government. It was suggested that for some proposals, the procedure could be partly terminated, by proceeding with the merger of Keila rural municipality, Padise rural municipality, Paldiski city and Vasalemma rural municipality, and the joining of Tähtvere rural municipality with Tartu city, in order to ensure a consistent approach to government-initiated mergers. At the same time, it was suggested that it would be useful to consider additional mergers in the future.

Consequently, the government decided in its session of 6 July 2017 to terminate the procedure for the alteration of the administrative-territorial organisation in the case of Keila city, Luunja rural municipality and Nõo rural municipality, as well as the rural municipalities of Haljala and Vihula, whose merger had been initiated by the municipal councils. It was decided to proceed with the procedure for the merger of Keila rural municipality, Padise rural municipality, Paldiski city and Vasalemma rural municipality, and the joining of Tähtvere rural municipality with Tartu city. In the same session, it was decided to include Setomaa rural municipality in Võru county.

Regarding other merger proposals, there were different reasons for the termination of the procedure. The government concluded that Kuusalu rural municipality and Loksa city were completely separate municipalities whose residents had no sense of cohesion, and that – despite several cooperation initiatives – had not achieved functional coherence or integrated into a coherent service area and settlement system.

The government decided not to proceed with the mergers of Toila rural municipality and Alutaguse rural municipality, Sillamäe city and Narva-Jõesuu city, Kanepi rural municipality and Põlva rural municipality, Saarde rural municipality and Häädemeeste rural municipality, and Antsla rural municipality, as the local authorities' arguments against the mergers were well-founded, thorough and justified, and it was clear that the municipal councils did not see any means of forming a single

municipality. There would be no single clear common centre, nor would it emerge after the merger. The current functional areas would continue to exist separately and the residents would continue to move in different directions. For most of the proposals, the centres would continue to be the closest larger cities. It was decided not to merge Antsla rural municipality, as it was found that despite the small number of residents, Antsla rural municipality was a separate strong centre that might become weaker when merged with an additional area. Likewise, there was no common centre in the rural municipalities of Haljala, Vihula, Sõmeru and Rakvere, and the municipality would have continued to cover different functional areas.

It was decided not to merge Keila city, Nõo rural municipality, Luunja rural municipality, and the rural municipalities of Haljala, Vihula, Sõmeru and Rakvere, as the government had previously terminated the procedure for the mergers of several municipalities falling short of the minimum size criterion. It thus ensured a more consistent approach to government-conducted mergers.

For Setomaa rural municipality, a survey was conducted on the initiative of the government on 12 and 13 June in order to determine the residents' county preference. 31.5 % of the residents of what would become Setomaa rural municipality participated in the survey. The results showed that a majority (in total, 59.1%) were in favour of belonging to Võru county (99.6% of the respondents in the rural municipalities of Võru county, and 20.7% of the respondents in the rural municipalities of Põlva county). 40.9 % of the respondents were in favour of belonging to Põlvamaa county (0.4 % of the respondents in the rural municipalities of Võrumaa county, and 79.3 % of the respondents in the rural municipalities of Põlvamaa county). The government decided to respect the residents' opinion and approved the inclusion of Setomaa rural municipality in Võrumaa county.

After the mergers were approved by the government, the rural municipalities of Rakke, Koeru, Lügánuse, Lasva, Võru, Vastseliina,

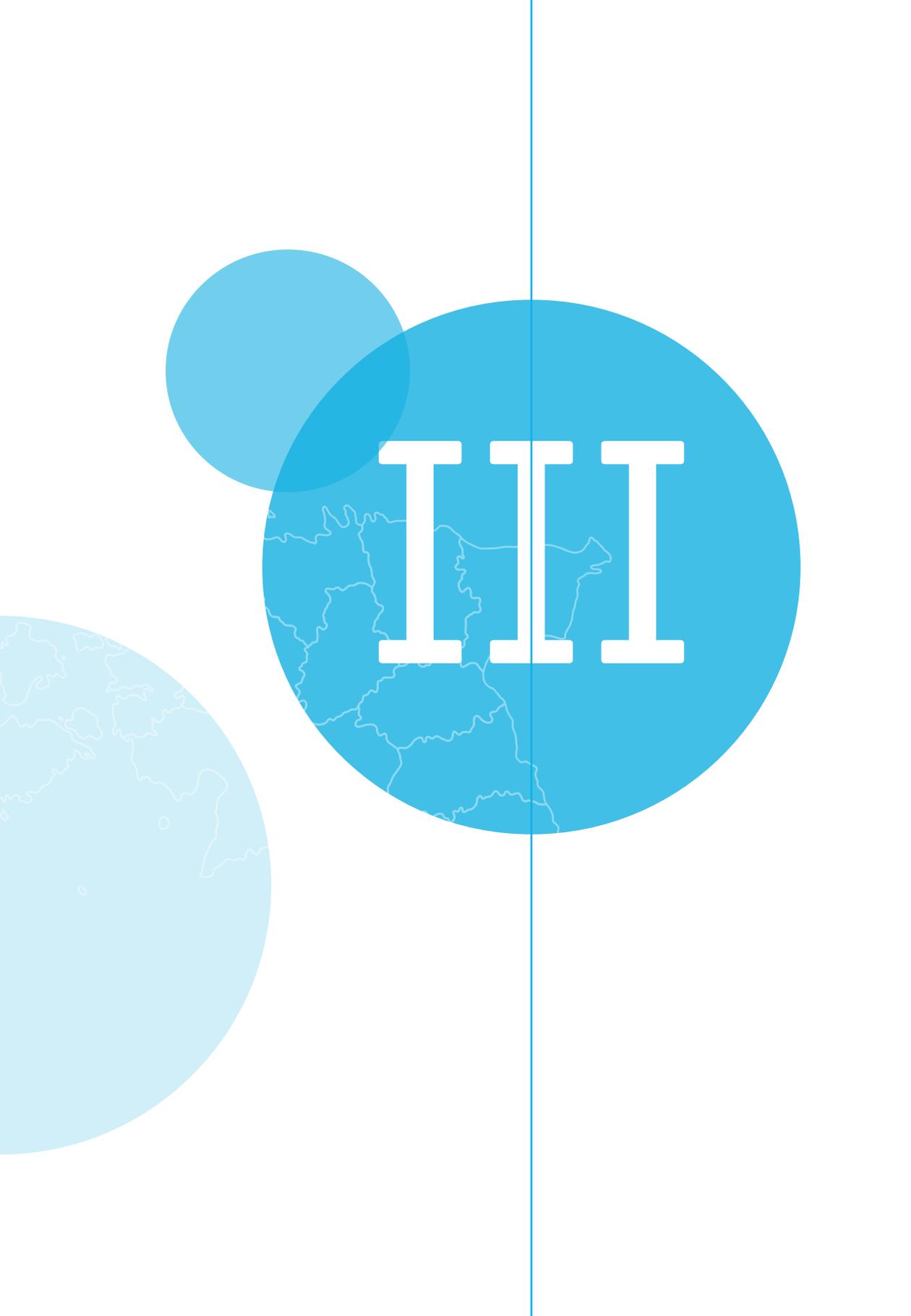
Sõmerpalu, Pala, Kambja, Ülenurme, Illuka, Mikitamäe, Tõstamaa, Emmaste, Pühalepa, Padise and Vasalemma filed an application with the Supreme Court to declare the government's merger regulation unconstitutional and invalid. The Supreme Court dismissed the applications of the local authorities, ruling that the Government of the Republic had wide discretion to decide on municipal mergers, that the mergers were not unconstitutional, and that the government had taken into account important and relevant circumstances in the alteration of the administrative-territorial organisation of municipalities, and had not based its decisions on incorrect facts. The applications filed with the Supreme Court and their review have been addressed in more detail in the article 'The Protection of the Constitutional Guarantees for Local Government during the Administrative-Territorial Reform' by Liina Lust-Vedder and Vallo Olle.

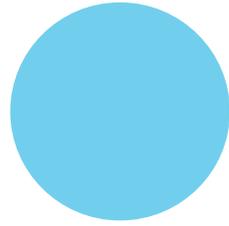
Conclusion

Before the administrative reform, there were 213 municipalities in Estonia: 183 rural municipalities and 30 cities. After the mergers initiated by municipal councils, a total of 102 municipalities would have remained, but after the mergers initiated by the government, the number of municipalities in Estonia totalled 79: 64 rural municipalities and 15 cities.

The stage of mergers initiated by the government was necessary to achieve the goals of the administrative reform, as by the end of the stage of mergers initiated by municipal councils, there were still 51 municipalities or merged municipalities that did not meet the minimum population size criterion.

The government used its right to terminate initiated merger procedures on ten occasions, primarily in the case of those municipalities that had merged on the initiative of municipal councils and where it was obvious that they had a clearly independent functional space, within the bounds of which they had already merged. The procedure was also terminated in the case of three single municipalities that did not meet the minimum size criterion.





Background and earlier reform initiatives

The Background Factors and Trends of the Administrative Reform

RIVO NOORKÕIV

There was no single reason for implementing the administrative reform; instead, it was a multi-faceted complex of developments that took place in various areas of the country. Indeed, it was socio-economic developments that triggered changes in the public sector.

A reluctance to take into account national and global development trends and the ongoing clinging to outdated views in public sector governance led to what was apparently a revolutionary, rather than evolutionary, reorganisation of the public sector in 2017 in order to re-establish a balance in the administrative system of central and local government. The problems in the Estonian system of local government and the reasons for the change run much deeper than merely altering the borders. The administrative reform is part of a state reform.

The earlier practice of voluntary, bottom-up merging of municipalities did not lead to systemic changes in the administrative organisation of the country but merely addressed local issues within a particular merger area. The motto of 'a strong state means strong municipalities', which had been prevalent at the end of the 1980s during the restoration of local government, lost its meaning.

The economic crisis in the year 2000 showed that apart from the problems of local authorities' capacity and autonomy, their deficiencies were also rooted in insufficient cooperation between the central government and the local authorities. The gap between the capacity of the local authorities and that of the central government increasingly restrained the local authorities from performing their inherent functions of organising local life and ensuring the efficient fulfilment of other tasks conferred on them.

Observers both within and outside Estonia have pointed out that state governance in Estonia is carried out in silos, and that the weak institutionalised cooperation between the cities and rural municipalities, local authorities and the state, and the public and private sectors hinders the overall development of the country.

In the second decade of this century, the social debate about the size of the public sector that Estonia as a small country can maintain has grown more and more vocal^{1,2}. It was broadly acknowledged that the fragmentation of public administration and the asymmetrical development of the state threatened the sustainability of statehood.

In 2011, Estonian statesman and legal scholar Jüri Raidla said in his speech at the Pärnu Leadership Conference, 'An observation of the reality of our municipalities inevitably leads to the serious conclusion that most Estonian municipalities are not real but illusory. They are able neither to perform their functions, either objectively or subjectively, nor

¹ Estonian Cooperation Assembly, *Good Governance Programme*, December 2014; http://www.kogu.ee/wp-content/uploads/2013/01/Riigipidamise-kava-tervikekst_final.pdf

² OECD, *Estonia: Towards a Single Government Approach*, 2011, http://www.valitsus.ee/User-Files/valitsus/et/riigikantselei/uldinfo/dokumendiregister/Uuringud/OECD_Public%20Governance%20Review_Estonia_full%20report.pdf.

to provide high-quality public services to the people living in their territories. Therefore, administrative reform is indispensable.³

Against this background, a wide spectrum of social developments has had to be taken into account in preparation for the reform, ranging from socio-economic and regional development trends to issues related to culture and security. Hence, the question is not just about the current situation. It is also necessary to predict the future and identify trends that are key in the long-term development of the municipalities and can be changed through the reform.

Demographic developments

Population ageing and urbanisation affect all societies. Different countries adapt to these developments in different ways.

A situation in which there is a rapid decrease in the population, including the working-age population, creates the need to cater for the subsistence of retired persons, and the need to organise care that takes into account the changing forms of the family and health-related issues. This calls for a long-term national strategy aimed at reorganising society, and this strategy should last longer than the period of elections.

The life expectancy of the Estonian population has grown remarkably. Compared to the beginning of the 1990s, the average life expectancy has increased by more than seven years – in 2016, it was 73.2 years for men and 81.9 years for women. At the same time, discrepancies between various groups of the population – for example, different age groups or socio-demographic groups – have widened, and the main geographical development trend has been the concentration of people in the county of Harjumaa. Due to changes in the relationship between different life events and their temporal sequence, it is more difficult to assess cause-and-effect relationships, as there is no established practice.

³ J. Raidla at Pärnu Leadership Conference 2011; <http://www.delfi.ee/news/paevauudised/arvamus/juri-raidla-estiriigi-pidamist-on-vaja-radikaalselt-muuta.d?id=59748604>.

The distribution of population in municipalities, 1 January 2017

Source: Statistics Estonia

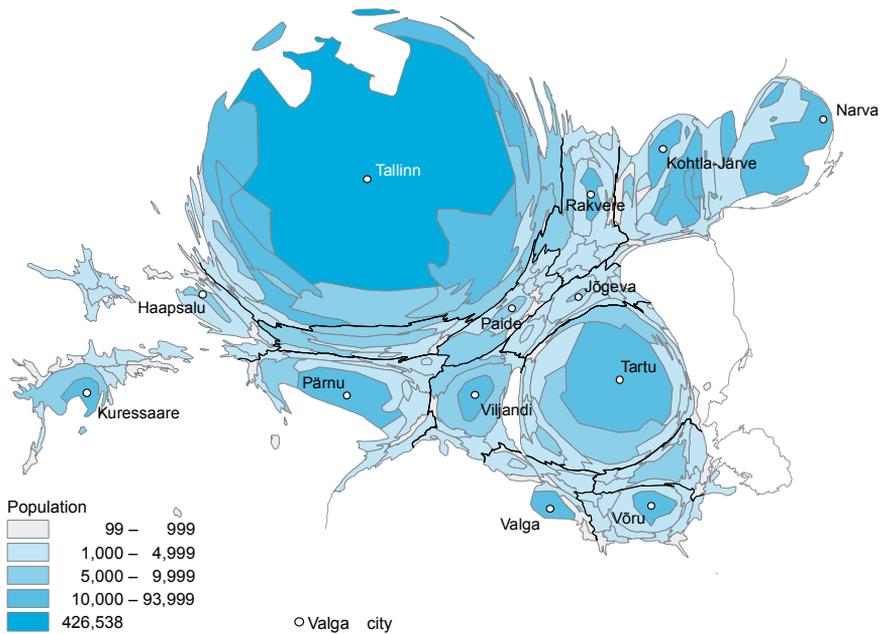


Figure 1.

In Estonia, the earlier trend of giving birth to children at a young age shifted in the 1990s towards having children at an older age. This resulted in a decrease in the number of children and the current situation whereby the number of people reaching working age is considerably lower than the number of those reaching retirement age. Therefore, the decline in the working-age population is unlikely to stop in the near future.

Changes in the population of municipalities Between 1 January 2005 and 1 January 2017

Source: Statistics Estonia

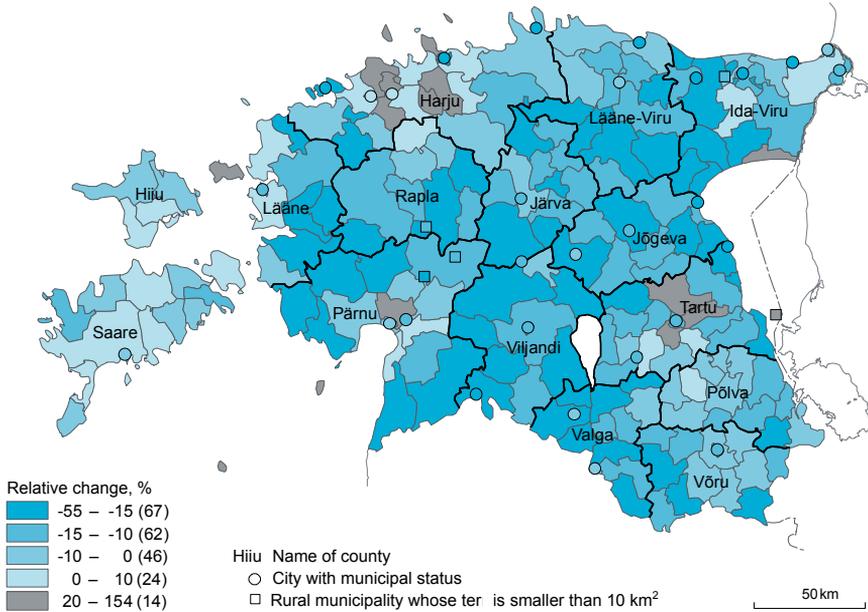


Figure 2.

Since regaining independence, the Estonian population has fallen by nearly a quarter of a million. Although immigration and emigration are currently in balance, the population continues to decline due to the inertia of demographic processes. Fertility is still below replacement level and, according to demographers, the current fertility rate of 1.6 children per woman is approximately 75 per cent of what is necessary to maintain the population. The decrease in the working-age

Population density 1989

Source: Statistics Estonia

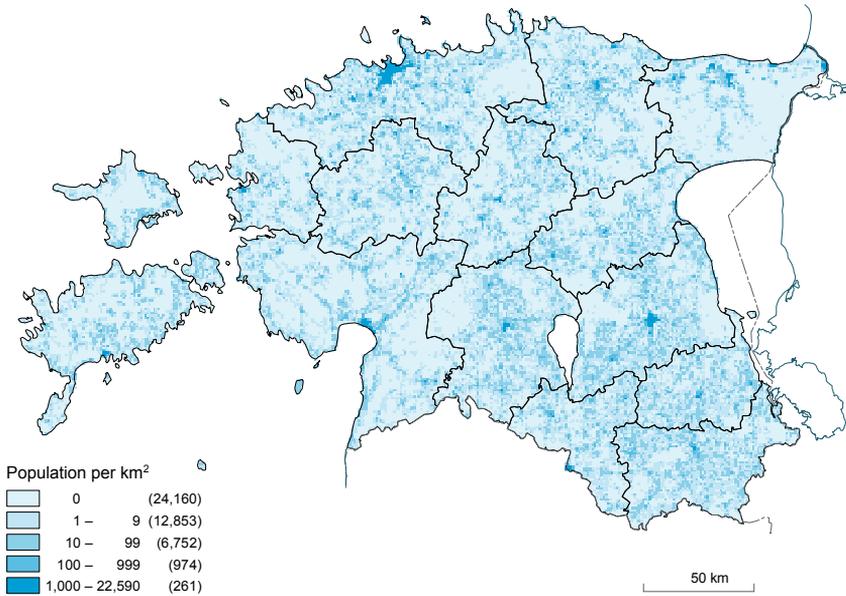


Figure 3. Population density grid map, 1 January 1989

population could not be stopped even by the immigration of a couple of thousand people per year in excess of emigration and a gradual growth in fertility⁴.

The number of residents changes at different speeds in different areas of the country (Figures 1 and 2). Due to the small size of the country and the peculiarities of the development of its settlement system,

⁴ L. Sakkeus, J. McKibben, A. Puur, L. Rahnu, L. Abuladze, 'Rahvastikuprognosis erinevate rändestsenariumide korral' – T. Tammaru, K. Kallas, R. Eamets (eds.) *Eesti inimarengu aruanne 2016/2017. Eesti rändeajastul*. Tallinn: Estonian Cooperation Assembly, 2017, pp. 57–66.

Population density 2017

Source: Statistics Estonia

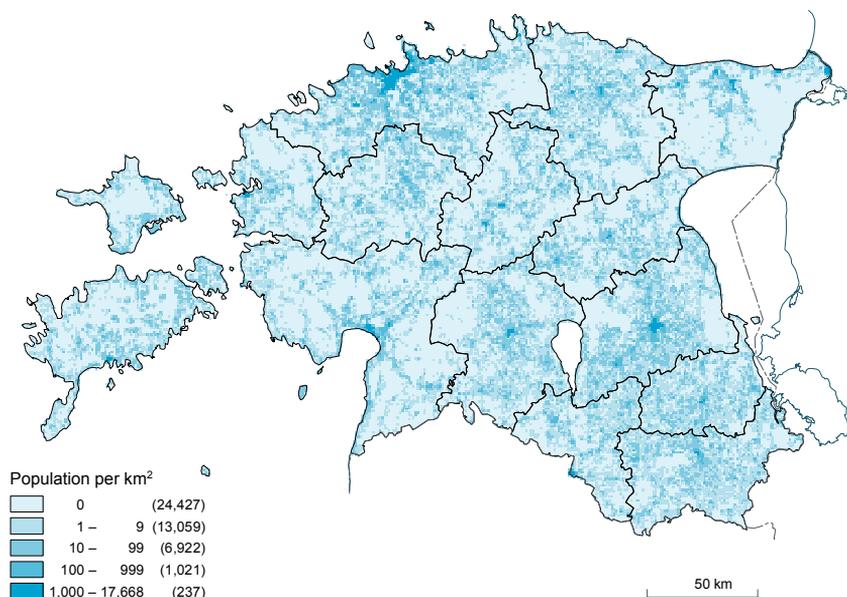


Figure 4. Population density grid map, 1 January 2017

population concentration in Estonia is among the highest in European countries.

It is also important to note the growing asymmetry of population density in Estonia (Figures 3 and 4). There is a variation of up to 1,500 times in population density across municipalities (e.g. 1.6 residents per square kilometre in Tudulinna rural municipality, 2,676.4 in Tallinn and 2 389.6 in Tartu). The average population density per municipality is 30.3 residents per square kilometre.

The population potential is higher in the counties of Harjumaa and Tartumaa, followed by the counties of Raplambia, Pärnumaa and

The population sizes of municipalities (1 January 2017)

Source: Statistics Estonia

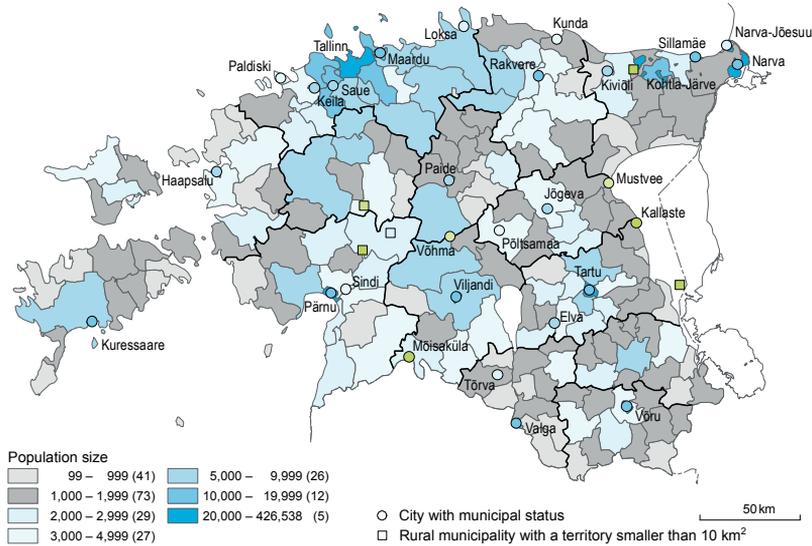


Figure 5.

Changes in the size of municipalities

Municipality	Before merging	After merging as at 1 January 2018
Number	213	79
Number on residents below 5000	169	17
Number on residents between 5001 and 11 000	28	34
Number of residents above 11 000	16	28
Average number of residents	6349	17 152
Median number of residents	1887	7739
Average size of territory in km ²	204	550
Median size of territory in km ²	180	512

Table 1.

The population size of municipalities (1 January 2018)

Source: Statistics Estonia

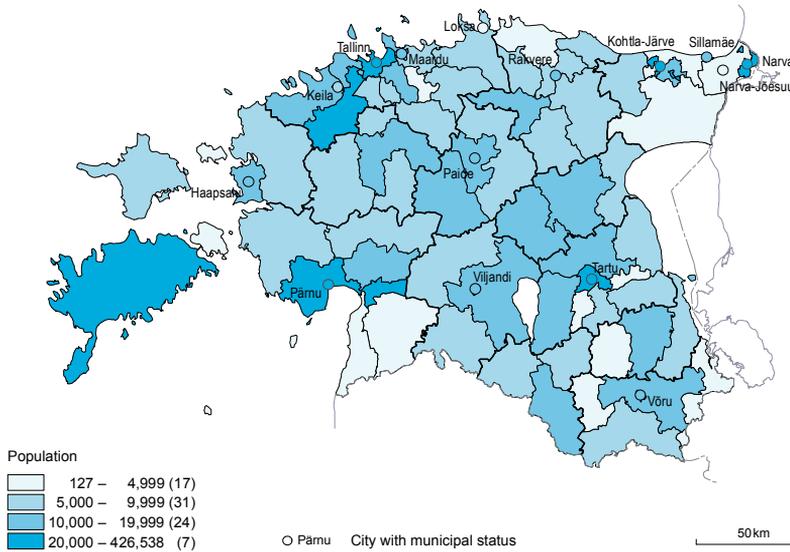


Figure 6.

Lääne-Virumaa. By region, problems are intensifying in the county of Ida-Virumaa and in southeastern Estonia. This concerns economic development, the well-being of residents as well as emigration.

Before the administrative reform, the population of the urban municipality of Tallinn (426,538 residents) was more than 4,000 times larger than that of the rural municipalities of Piirissaare (99 residents) or Ruhnu (127 residents) and more than 4 times larger than that of Tartu (93,124 residents). There were 169 municipalities with fewer than 5,000 residents, which made up approximately 80 per cent of all municipalities (Figure 5).

After the regular local elections in October 2017, when new municipalities were formed, the number of their residents changed remarkably (Figure 6).

Projected population changes by county, 2012–2040

Source: Statistics Estonia

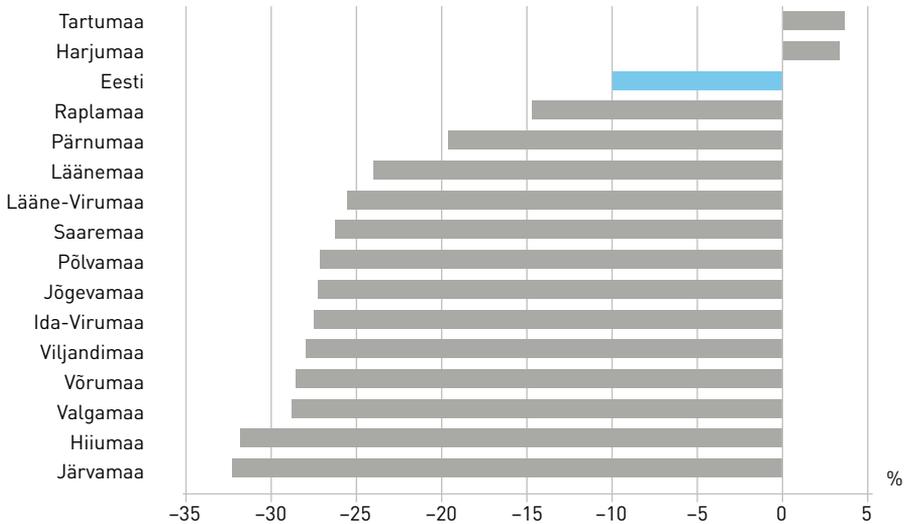


Figure 7.

Since the announcement of the results of the local elections in October 2017, there are 79 municipalities in Estonia: 15 cities and 64 rural municipalities. The changes in the number of residents and in the size of the territories of the municipalities after mergers are shown. Population projections by Statistics Estonia show that the trend of declining population will continue, occurring at different speeds in different parts of the country⁵. The population is projected to grow only in

⁵ *Eesti rahvastikuprognosis 2040: neli positiivset stsenaariumi*. Statistics Estonia, 2014; <https://statistikaamet.wordpress.com/2015/10/06/eesti-rahvastikuprognosis-2040-neli-positiivset-stsenaariumi/>.

the counties of Tartumaa and Harjumaa, and to decline in the rest of the counties (Figure 7).

Municipalities continue to compete for residents. One of the reasons for this is the fact that the largest source of revenue in a municipal budget is individual income tax, which in turn depends on the number of registered residents.

There are large differences in the opportunities for personal fulfilment, the availability of education, the size of income, the level of public sector services and local development prospects. These are the drivers behind the population's increased mobility and these continue to motivate people that are more active and have better education to move to municipalities that are more competitive. However, skilled workers not only move from rural areas to cities, but they also move abroad. The intensity and direction of migration reflect the municipalities' competitiveness in satisfying the vital needs of their residents.

According to the 2012 projections for the development trends of the population, municipalities located further away from county centres, those located in peripheral areas and those with the risk of peripheralisation will lose more residents than the Estonian average.⁶ According to the most extreme scenarios, by 2030, the population will have fallen by up to 38 per cent and the proportion of elderly people will have increased to 28 per cent in some pre-reform municipalities.

Considerable efforts are needed to adjust to the population changes and respond to the consequences of unwelcome demographic trends with effective policies. A population that is falling, ageing and concentrating into cities negatively affects the economic development and tax base of municipalities in rural areas in particular. There will be a growing need for social and health services for the elderly, which in turn will increase labour demand and leave fewer resources in the municipal

⁶ *Rahvastiku võimalikud arengutrendid 2012–2030*. Geomedia OÜ, 2012; http://www.siseministeerium.ee/public/KOVindeks_2011_rahvastiku_aruannne.pdf.

budget for investment in other sectors. In order to improve standards of living, greater efforts will need to be made to boost productivity. For people to have longer working lives, investments will have to be made in increasing healthy life years and life-long learning. Obviously, it is necessary to consistently promote child- and family-friendliness in order to ensure natural population growth. The freedom to live anywhere in Estonia is a prerequisite of national prosperity, rather than a threat to it. Local initiatives and creativity are a strong foundation for the development of the entire country.

In the years ahead, choices will have to be made regarding how to satisfy the needs of workers in order to ensure economic growth. If the decision is taken to support immigration from abroad, local authorities will also have to make additional investments in finding solutions to cultural and socio-economic problems, including cultural integration and language learning, ensuring social protection,⁷ as well as providing attractive opportunities for work, studies and personal fulfilment, and high-quality public services. A separate issue is how to move from the quantity of immigrants to the quality of immigrants, i.e. how to make Estonia an attractive destination for talented people. An even more complex issue is how to attract them to municipalities outside the urban areas of Tallinn and Tartu.

Urban-rural relations and peripheralisation

In the Estonian human assets report,⁸ a distinction is made between rural municipalities that are already suffering from peripheralisation, those that are at risk of peripheralisation and those whose centre is well connected with cities but where certain parts (territorial communities) are very sparsely populated and poorly accessible.

⁷ M. Ainsaar, 'Change in the European Labour Force and Its Impact on Migration' – *Kroon & Economy* No 4/2006 & No 1/2007, pp. 25–34.

⁸ *Eesti inimvara raport (IVAR): võtmeprobleemid ja lahendused*, 2010; http://www.kogu.ee/public/Eesti_Inimvara_Raport_IVAR.pdf

The signs of peripheralisation are thought to include a population's decline by at least half over the past 50 years, or by at least 1 per cent annually on average from the year 2000 onwards. According to this definition, 48 rural municipalities, with a total population of 50,000, were in the process of peripheralisation. There were 58 rural municipalities with a total population of 90,000 that were at risk of peripheralisation. Their population density was below 8 residents per square kilometre and/or their distance from a larger centre was more than 50 kilometres.

Rural municipalities that are not affected by peripheralisation are primarily county capitals and their neighbouring municipalities. This category includes a majority of the municipalities in Harjumaa county and more than a half of municipalities in Tartumaa and Pärnumaa counties. In these areas, it is easier to bring work and home closer together, there is a wider choice of jobs and housing, and companies have access to a more numerous and diversified workforce. Larger and more cohesive functional areas within which people commute daily between work and home help to reduce the number of peripheral areas and those at risk of peripheralisation. In order to ensure the development of such areas in the context of population decline, it will be essential to advance transport organisation that will improve people's mobility.

One of the goals set in Estonia's regional development strategy⁹ is that each functional area should provide good jobs, high-quality services and a pleasant living environment that enables diverse activities. As most new positions are created in areas that have various types of companies providing modern services and a highly educated workforce, it is important to be able to make the best use of the particular preconditions for the development of each area in order to balance out the differences in regional development.

⁹ *Eesti regionaalarengu strateegia 2014–2020*. Ministry of the Interior, 2014; https://www.siseministerium.ee/sites/default/files/dokumendid/eesti_regionaalarengu_strateegia_2014-2020.pdf

GDP per capita compared to the Estonian average

Source: Statistics Estonia

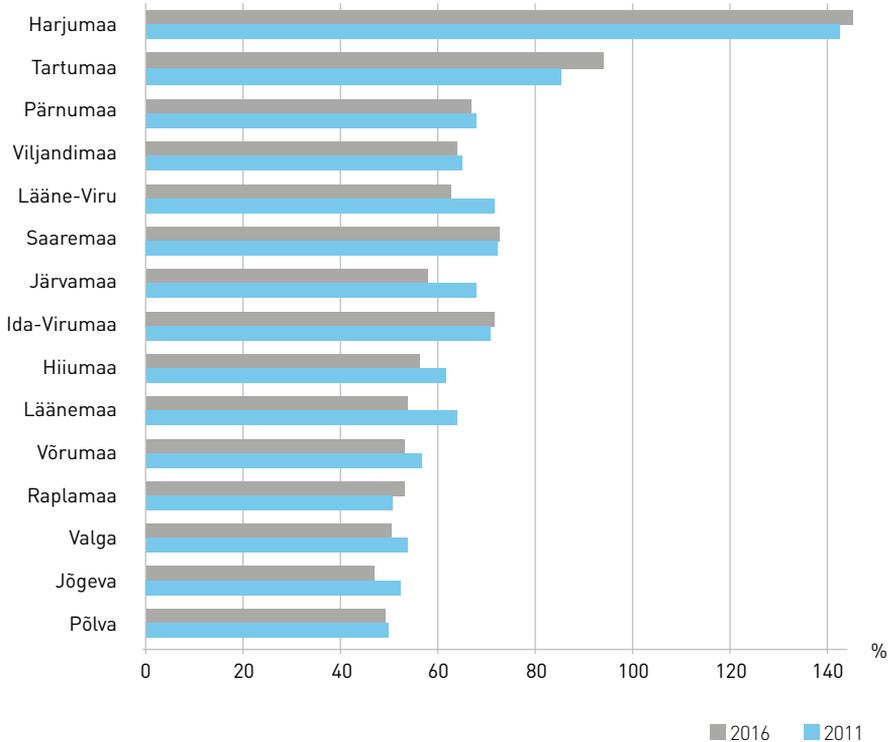


Figure 8.

Whether a new municipality achieves full functionality depends on the cohesion of the centre and its hinterland, as the settlement system and the daily mobility of the people cannot be ignored. In addition, the concepts of the urban and the rural will need to be redefined: they should be understood as describing settlement units rather than administrative divisions, distinguishing between urban, semi-urban and rural areas.

The urbanisation and regional development trends in Estonia are similar to those of its neighbouring countries. However, owing to its geography, Estonia is situated far from core European regions, and Tallinn is the only city classified as a medium-sized European city. Although the peripheral position of the country sets limits on its economic development, Estonia has moved closer to the more developed countries in the European Union¹⁰. According to Eurostat, the Estonian GDP per capita (adjusted for purchasing power) was 73 per cent of the EU average in 2015.

The analysis *How's Life in Your Region?*¹¹, which measures people's material prosperity (income, jobs and housing) and the resulting quality of life (health, education, environment, safety, access to services and civic engagement), shows that the level of development is higher in northern Estonia, which ranks among the top 20 per cent of OECD regions for access to services, education and environment. At the same time, the largest regional disparities in Estonia are visible in jobs, access to services and civic engagement. The driver of the socio-economic development in Estonia is the capital region, which has managed to increase cohesion with other European regions, and in particular with Helsinki, the capital of Finland. GDP per capita in the county of Harjumaa is more than three times higher than in several other counties (Figure 8).

Harjumaa, including 53 per cent in Tallinn. Harjumaa and Tallinn's large share of Estonia's total economy is also highlighted by the fact that the GDP per capita generated in these regions amounts to 145 per cent and 165 per cent, respectively, of the Estonian average.

Although the proportion of the GDP generated in capitals is large in many European countries, the concentration of economic activity in

¹⁰ *Regions at a Glance 2011*. OECD, 2011. *The Objectives of Economic and Social Cohesion in the Economic Policies of Member States*. EPRC, 2010.

¹¹ *How's Life in Your Region? Measuring Regional and Local Well-being for Policy Making*. OECD, 2014; http://www.oecd-ilibrary.org/urban-rural-and-regional-development/how-s-life-in-your-region_9789264217416-en

Relative poverty rate 2011

Source: Statistics Estonia

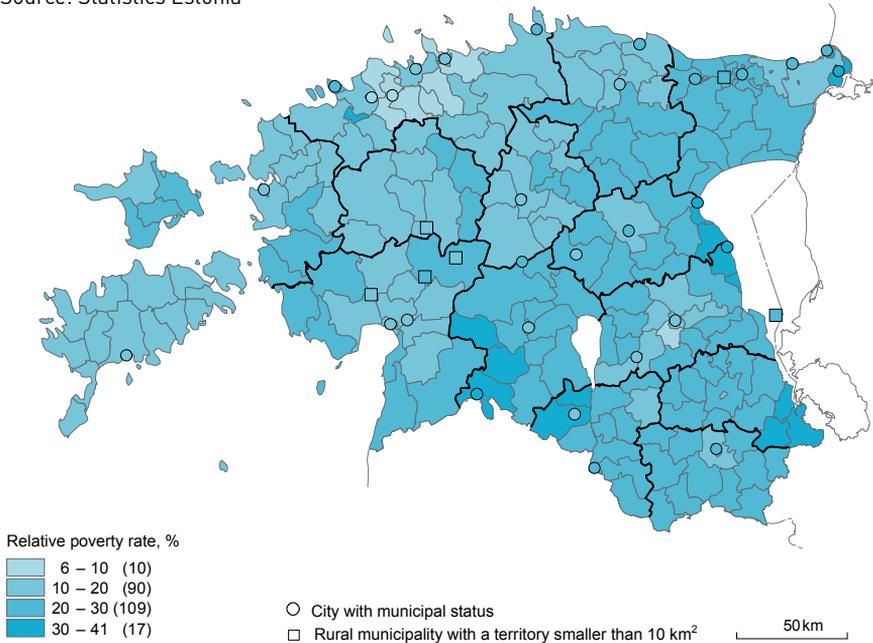


Figure 9.

Tallinn is one of the highest, being of the same magnitude as in Riga, but lower than in Malta, Cyprus and Luxembourg.

The lowest GDP per capita is generated in the counties of Põlvamaa, Jõgevamaa and Valgamaa. The disparities between counties are very large and have widened over the years. As regards the growth rate of GDP per capita, it has been higher in the city of Tartu, which in turn has contributed to the fast growth rate of GDP per capita in the county of Tartumaa.

The fast development of cities and the growth of urban areas have led to the need for new solutions in the management of municipalities.

As regards Tallinn, discussions have re-emerged regarding the need for the decentralisation of power and for a special act on the capital city to be drafted. This could be aimed at strengthening the position of the capital and in particular its international competitiveness, as well as reducing the differences in economic and administrative capacities of municipalities¹². Some politicians have proposed that the eight city districts in Tallinn, which currently have restricted local government, could be separate municipalities. This would raise the question of fair division of decision-making powers in the cooperation structures of the Tallinn capital region.

Jobs and commuting

Although the counties' contributions to Estonia's aggregate GDP are evened out to a certain degree by extensive commuting between the place of work and home and by discrepancies between the actual location and the registered seat of a number of companies, such bias calls for solutions to be found for the territorial rebalancing of economic development and the quality of the living environment. This need is clearly reflected in the polarisation of the country along the north-south axis based on the relative poverty rate (Figure 9), which also shows disparities stemming from the level of available jobs and income.

In several countries, employment is characterised by a growing share of the service economy, supported by technology- and knowledge-intensive companies in the industrial and manufacturing sector. For the future economic development of the regions, the productivity of the activities that underlie development is key. In 2016, 70 per cent of Estonia's total added value was created in the services sector. The service sector made up the largest share in the counties of Harjumaa (78 per

¹² S. Mäeltsemees, 'Hauptstadt und Hauptstadtregion im System der Lokalen Gebietskörperschaften' – *Riigi regionaalpoliitika probleemid*. Vol. 25(2017), pp. 1–14; <http://ojs.utlib.ee/index.php/TPEP/article/view/13727/8774>

cent) and Tartumaa (70 per cent), primarily on account of Tallinn and Tartu.¹³ It would be problematic to move companies that create high added value outside of these centres, as the critical mass of people, institutions and competence is missing.

Changes in the economic structure and the loss of the advantage of cheap labour affect employment and the possibilities of making use of region-specific advantages, which makes the elimination of regional disparities unrealistic. On the contrary, declining numbers of consumers and an increased proportion of elderly residents in most counties will result in a decline in the consumption of goods and services (except services related to ageing, e.g. medical and social services). Therefore, it is likely that the share of the added value created in the counties of Harjumaa and Tartumaa will continue to grow within the Estonian economy. In the remaining counties, the main issue will be the need for increasing productivity, so that the wage difference with these two counties would not increase critically.

There are 37 functional areas, or centre-hinterland systems, in Estonia. The population of the two largest functional areas – Tallinn and Tartu – makes up 56 per cent of the total population of Estonia (Figure 10). According to the results of the 2011 population and housing census, there are 561,138 employed persons in Estonia, of whom 532,420 have a job in Estonia. Of the latter, more than one-third commute to a place of work outside their home rural municipality or city. The number of those working abroad is also significant: approximately 25,000 people, or 4.4 per cent of all employed individuals, work outside Estonia.¹⁴

The concentration of jobs in cities, increased mobility related to people's daily work and spare time, and longer commuting distances have had an effect on the development of the entire settlement system.

¹³ 'Teenindussektori osatähtsus on kasvanud kõigis maakondades'; www.stat.ee/pressiteade-2017-134

¹⁴ *Toimepiirkondade määramine*. Statistics Estonia, 2014.

Functional areas with at least 5,000 residents

Source: Statistics Estonia
 Commuting in functional areas with
 at least 5,000 residents
 Population and Housing Census 2011
 1, 1,300,000

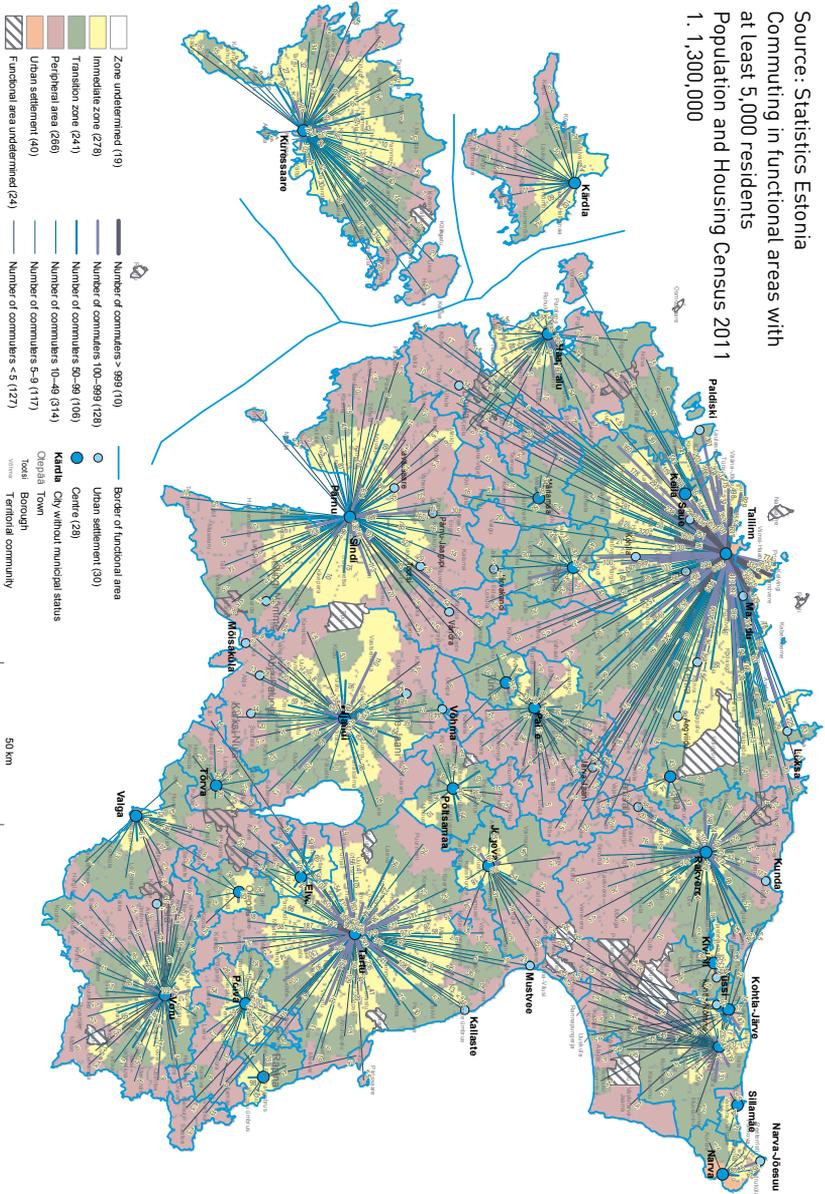


Figure 10.

While in 1982 there were 68,000 people commuting to work, and 115,000 in 2001¹⁵, by 2010 there were already 380,000 people¹⁶ working outside of their home municipality. Most commuters do not travel more than 10–25 kilometres, which means that they travel between an urban centre and its hinterland. A survey ordered by the Ministry of Social Affairs showed that the maximum distance between the place of work and home that people are willing to travel on a daily basis was in the opinion of the largest group of the respondents (37 per cent) between 20 and 49.9 kilometres.¹⁷

The data point to a significant widening of the spheres of influence of Tallinn and Tartu, which has led to a situation where the spheres of influence for several smaller centres have essentially ceased to exist. One of the reasons for this is that outside of urban centres, income levels are lower. In 2010, the difference between the value of jobs provided by employers in regional centres and their hinterland was approximately 25 per cent.¹⁸ Such a discrepancy is an important motivator for many people to look for work outside their home municipality.

When helping different regions to adjust to the changes in the structure of the economy and increase their competitiveness, it is necessary to look at the representation of public sector jobs as well. Changing the distribution of public sector jobs and relocating state authorities out of the capital is one of the strategies used by the government in order to boost local economies.

¹⁵ T. Tammaru, *Eesti linnade mõjualad ja pendelränne*, 2001.

¹⁶ R. Ahas, S. Silm, K. Leetmaa, T. Tammaru, E. Saluveer, O. Järv, A. Aasa, M. Tiru, *Regionaalne pendelrändeuuring. Lõpparuanne*. A study ordered by the Ministry of the Interior and carried out by the Chair of Human Geography and Regional Planning, University of Tartu, 2010; http://www.siseministeerium.ee/public/Regionalne_pendelrndeuuring_11.06.2010.pdf

¹⁷ Ministry of Social Affairs, *Tööjõu siseriikliku mobiilsuse uurim. Lõppraport*. Centre for Applied Social Sciences, University of Tartu, 2011; http://www.sm.ee/fileadmin/meedia/Dokumendid/ASO/Pendelr%C3%A4nde_l%C3%B5ppraport__11_11_2011.pdf

¹⁸ *Rahvastikuareng ning töökohtade arvu ja väärtuse muutumine KOV-võimekuse indeksi andmebaasi andmete alusel*. Geomedia, 2011.

This would be more effective if the relocation of state authorities was organised using a cluster-based approach, i.e. by grouping authorities whose activities are connected, and matching them with local needs and preconditions for development. To that end, it would be reasonable to concentrate resources in carefully selected locations, for example in the county of Ida-Virumaa and in Tartu.

The *Estonia 2030+* national spatial plan paints a picture of future Estonia as a country with a cohesive spatial structure and diverse living environment, and as a low-density urbanised space that is well linked to the external world. However, it is not clear how this desired regional pattern is supported by demographic, educational, enterprise, public transportation, environmental and other sectoral policies at the state level.

Moreover, the authorities that are moved out of Tallinn will also have to be viable in the long term and create value added in the living environment outside of the capital. This could also be an incentive for the private sector to create new jobs in county centres. The state could support this by developing municipal housing that would help to alleviate the restrictions on labour mobility and enrich the quality of the living environment in less developed regions.

The concentration of people and organisations, and hence also of knowledge, skills and services in large centres has resulted in the decreased importance of small towns and rural settlements. The large-scale outflow of young people, accompanied by a modest demand for housing and the building of new shopping centres on the outskirts of small towns, weakens urban centres and contributes to urban sprawl.¹⁹

²⁰ This in turn results in an increased volume of transport, growing energy consumption and environmental pollution. Derelict buildings

¹⁹ T. Tammaru, K. Leetmaa, S. Silm, R. Ahas, 'Temporal and Spatial Dynamics of the New Residential Areas around Tallinn' – *European Planning Studies* 17(3), 2009, pp. 423–439.

²⁰ A. Roose, A. Kull, M. Gauk, T. Tali, 'Land use policy shocks in the post-communist urban fringe: a case study of Estonia' – *Land Use Policy* 30(1), 2013, pp. 76–83.

and the associated abandoned urban spaces only exacerbate the outflow of young people. As a result, only larger cities are able to develop living environments that follow the trends of globalisation.²¹

A rapid decline of small cities weakens the cohesiveness of the Estonian settlement system and does not allow the development of a living space that combines urban and rural living environments. Municipalities that are away from centres lack sufficient resources for providing their residents with high-quality and diverse opportunities for personal fulfilment throughout their life-cycle.

Shrinking areas tend to have an ageing population and there is a noticeable difference in men's and women's life expectancy. As a result, households have problems covering housing costs, and there is a greater need for social and transport services for the elderly. The proportion of working-age population is on the decline and so is the tax revenue in the municipal budget. This in turn may decrease the availability of necessary services and increase inequality by making access to high-quality aid more difficult for poorer people, for example. Hence, in these areas, instead of investing in economic growth, it is necessary to find smart solutions to the consequences of the changed number of consumers and economic structure. In order to develop such solutions, local authorities must have the courage to use their internal resources in innovative ways. They must also have the capacity to use financing available from the structural funds of the European Union and the private sector, which can be invested in the development of e-services among other things.

²¹ M. Ruth, R. S. Franklin, 'Livability for all? Conceptual limits and practical implications' – *Applied Geography* 49, 2014, pp. 18–23.

Regions with good access to regional services

Source: Source for Applied Social Sciences

Level 4 service centres and service areas

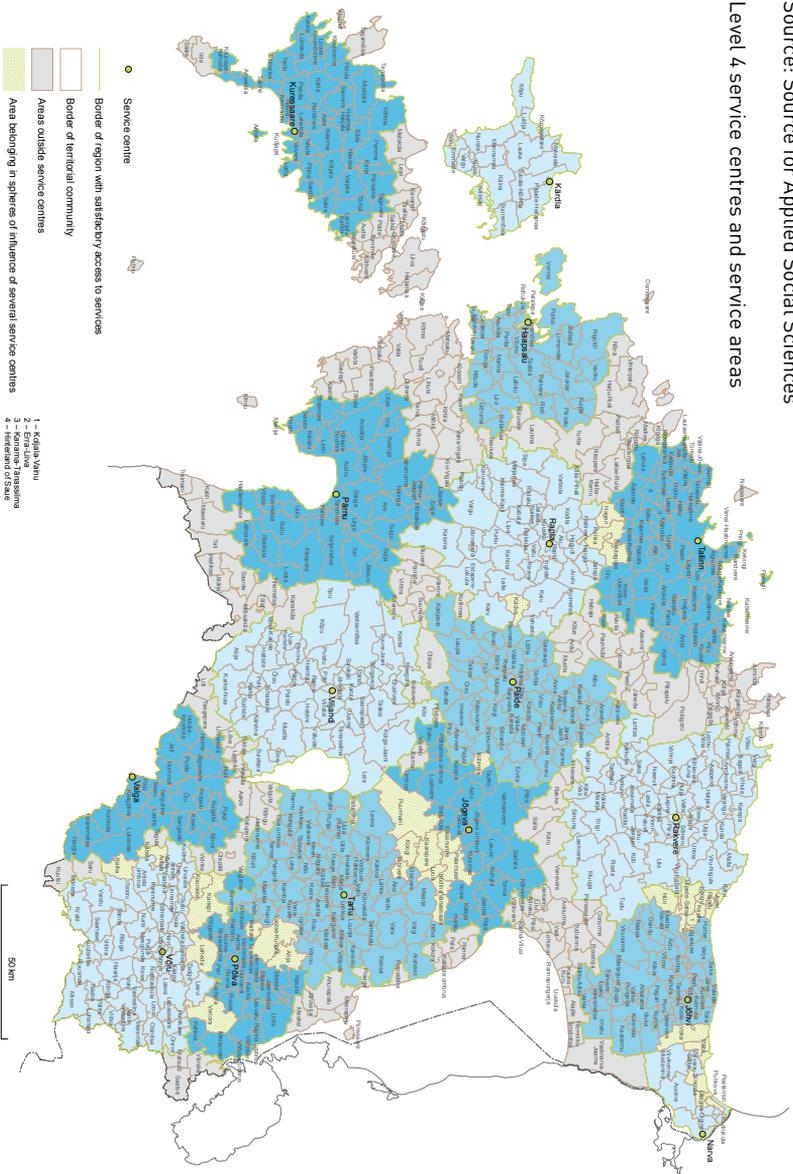


Figure 11.

The capacity of local authorities and the provision of services

The OECD report on the analysis of the efficiency of the Estonian government sector²² pointed out that the level of public services across the ministries and local authorities was very uneven, and that often there were no minimum standards set for the services.

The need to build the capacity and scale of local authorities was highlighted, as was the need to guide mergers in those municipalities where cooperation and voluntary mergers did not yield results. The importance of equal treatment of residents irrespective of their place of residence in the country was emphasised.²³

Over the last decade, several methods have been used in measuring and comparing the capacity of cities and rural municipalities. For example, the following indices have been created to assess their level of development: a viability index^{24, 25, 26}, a development index²⁷ and a territorial development index²⁸. The local government capacity index^{29, 30}, which

²² *OECD Public Governance Reviews: Estonia. Towards a single government approach.* OECD, 2011; http://www.valitsus.ee/UserFiles/valitsus/et/riigikantselei/uldinfo/dokumendiregister/Uuringud/OECD_Public%20Governance%20Review_Estonia_full%20report.pdf

²³ *Government at a Glance 2013: Country Fact Sheet. Estonia.* OECD, 2013; www.oecd.org/gov/GAAG2013_CFS_EST.pdf TNS Opinion & Social / European Commission. *Standard Eurobarometer 82. Avalik arvamus Euroopa Liidus. Rahvuslik aruanne: Eesti.* Sügis 2014; http://ec.europa.eu/public_opinion/archives/eb/eb82/eb82_ee_ee_nat.pdf

²⁴ K. Sõstra, 'Elujõulisuse indeks ja kohalike omavalitsuste elujõulisus' – *Linnad ja vallad arvudes.* Statistics Estonia, 2004; <https://www.stat.ee/public/pp/analused/2004/elujouulisus.pdf>

²⁵ K. Lehto, 'Elujõulisuse indeks – muutused ajas' – *Linnad ja vallad arvudes.* Statistics Estonia, 2005; <https://www.stat.ee/public/pp/analused/2005/elujouulisus.pdf>

²⁶ M. Kivilaid, M. Servinski, *Elujõulisuse indeks. Eesti piirkondlik areng.* Statistics Estonia, 2013; https://www.stat.ee/valjaanne-2013_eeesti-piirkondlik-areng-2013

²⁷ M. Kivilaid, 'Arenguindeks' – *Vallad ja linnad arvudes.* Statistics Estonia, 2005; <https://www.stat.ee/public/pp/analused/2005/arenguindeks.pdf>

²⁸ K. Sõstra, 'Omavalitsusüksuse territoriaalarengu indeks' – *Linnad ja vallad arvudes.* Statistikaamet, 2009; <https://www.stat.ee/public/pp/analused/2009/04.pdf>

²⁹ V. Sepp, R. Noorkõiv, K. Loodla, 'Eesti kohaliku omavalitsuse üksuste võimekuse indeks. Metoodika ja tulemused, 2005–2008' – *Linnad ja vallad arvudes*, pp. 10–42. Statistikaamet, 2009; <https://www.stat.ee/public/pp/analused/2009/03.pdf>

³⁰ R. Noorkõiv, K. Ristmäe, 'Kohaliku omavalitsuse üksuste võimekuse indeks 2013' – *Eesti kohalik omavalitsus ja liidud – taastamine ning areng 1989–2017*, pp. 310–341.

Personal income tax in euros (2014–2016)

Source: Ministry of Finance

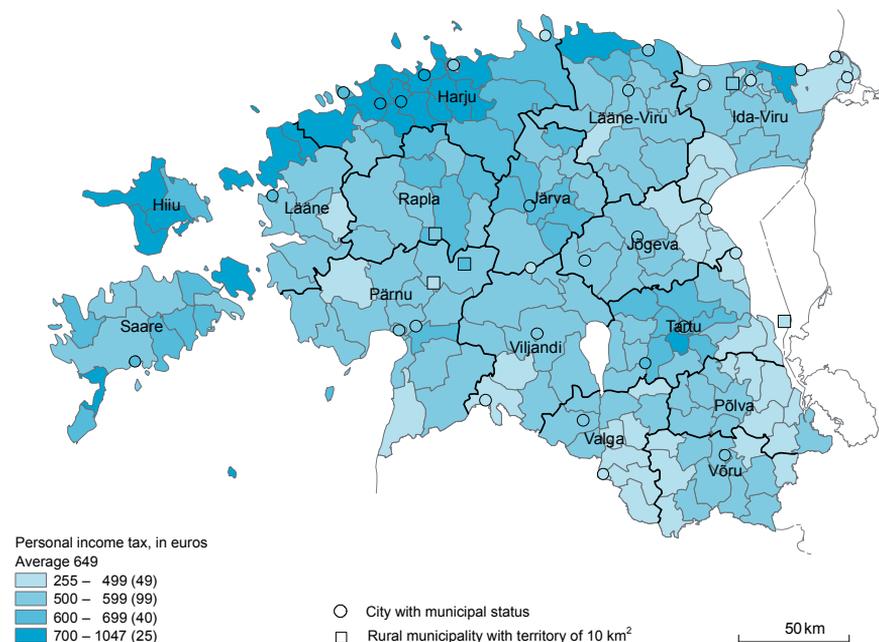


Figure 12.

is prepared annually at the request of the Ministry of the Interior and is based on the data on cities and rural municipalities in various national registries, received widespread public attention. Since 2011, the Ministry of Finance's Local Government Financial Management Department has prepared an index of regional potential³¹ that sets out the background to the functioning of local authorities and explains their responsibilities and development potential. Information about the financial status of

³¹ *Piirkondliku potentsiaali indeks 2015*. Department of Local Government Financial Management, Ministry of Finance, 2015, <http://www.fin.ee/public/Piirkondliku-potentsiaali-indeks-2015.pdf>

municipalities and its sustainability can be found in the financial capacity overview prepared by the Ministry of Finance.³²

The development of services was analysed by the Centre for Applied Social Sciences, University of Tartu,³³ which made a proposal to categorise services into different levels. One of the indicators for the assessment of the sustainability of a service on a particular level was the number of people to whom it was easily accessible. Naturally, the importance of a particular service in a person's daily life was related to the necessary and reasonable frequency of its use. The analysis focused on the socio-economic nature of services and their quality requirements, the legislation established and official decisions implemented, as well as the accessibility needs of the target groups. As a result, five groups of services were identified and the criterion of good accessibility was defined based on their nature: services provided close to home (maximum distance 3 km), local simple services (maximum distance by public transport 11 km), local basic services (maximum distance by public transport 15 km), local quality services (maximum distance by public transport 27 km) and regional services (maximum distance by public transport 40 km).

Assuming that services are guaranteed to everyone, Figure 11 highlights the accessibility of services at the regional level, which coincides to a significant extent with accessibility at the level of service centres in functional areas and the level of county centres.

Larger areas not covered by services fall primarily within the counties of Pärnumaa and Läänemaa, eastern and western Harjumaa, southern Ida-Virumaa and western Saaremaa.

³² <https://www.rahandusministeerium.ee/et/kohalikud-omavalitsused-haldusreform-maavalitsused/finantsulevaated>

³³ *Uuring era- ja avalike teenuste ruumilise paiknemise ja kättesaadavuse tagamisest ja teenuste käsitlemisest maakonnaplaneeringutes*. Centre for Applied Social Sciences, University of Tartu, 2015.

There is a general tendency towards the difficulty of accessing higher-level services in peripheral areas of the counties, and therefore residents are more dependent on smaller local settlements with regard to these services (and jobs). It must be borne in mind, however, that current service level standards will not necessarily guarantee the provision of services in an economically and socially effective manner in the future.

It should also be taken into account that over the years, several services have changed significantly both in terms of their content (quality requirements, affordability) and geographical distribution, and these changes will continue in the future. For example, the system of long-term care is being changed from an institutional system to a home-based system, so that people needing such care could live at home as long as possible or access necessary services in home-like community-based social welfare institutions.³⁴ The main driver behind this trend is the rapidly increasing number of the elderly, a growing need for care services and increasing costs of care both for the state and for those needing them and their families.

Deinstitutionalisation requires fundamental changes in the entire social and healthcare system and is a challenge to service providers and consumers alike. Providing innovative services in a more people-centred manner usually requires more resources, which has an effect on both public financing and people's own contribution towards the consumption of such services.

³⁴ *Pikaajalise hoolduse deinstitutionaliseerimise mõju hindamise raamistik. Analüüsi aruanne.* Praxis, 2017; http://www.praxis.ee/wp-content/uploads/2017/10/DI_anal%C3%BC%C3%BCs_Praxis-2017_FINAL.pdf

Obligations of local authorities and their financial capacity to fulfil them

Regarding the responsibilities and revenue base of Estonia's local authorities, there are several aspects that deserve closer examination. First, there are significant differences in the levels of employment and income across municipalities. Second, there are also differences in the composition of the population.

As a result, the size of income tax revenue per capita differs by a factor of 1.5–2 in different municipalities, without taking into account the extremes (Figure 12).

Municipalities with lower tax revenues have older populations and a more sparsely populated territory, which translates into higher costs per capita for the local authorities in the provision of services. Considering all the above circumstances, uniform provision of services by local authorities with different tax bases is not possible without state support.

As each ministry is required to ensure the provision of services in its area of responsibility, it is inevitable that, as differences between municipalities grow, more earmarked allocations from the state budget will be needed. This in turn means that the financial autonomy of local authorities will decrease, as their revenue base will be increasingly dependent on decisions made by the central government. Given the resources available to the state, it is unlikely that the state will be able to guarantee significantly higher financing for municipalities in the near future without reallocating certain functions between the central government and local authorities.

The weak coordination of different policy lines of the central government both at the state³⁵ and regional level³⁶ has led to the situation where

³⁵ K. Taro, 'Efektiivse riigihalduse otsinguil: riigipidamise kava. Valitsuskeskus poliitika-protsessi koordineerijana' – R. Vetik (ed.), *Eesti inimarengu aruanne 2014/2015*. Lõksudest välja. Tallinn: Estonian Cooperation Assembly, 2015.

³⁶ V. Sepp, R. Noorkõiv, 'Regioonide sotsiaal-majanduslik areng, riiklik poliitika ja haldus-reformi proovikivid' – M. Lauristin (ed.), *Eesti inimarengu aruanne 2009*. Tallinn: Estonian Cooperation Assembly, 2010, pp. 68–72.

the state works on the development of different areas without coordinating the corresponding activities in the relevant sub-areas. At the same time, local authorities and their associations at the county level have very limited capacity to participate in regional policymaking due to the scarcity of investments and fragmented cooperation. Local authorities cannot contribute much to the investment support measures developed by ministries, as their cooperation with state authorities is weak.

In order to reduce local authorities' dependence on the central government, it is necessary to decentralise responsibilities while simultaneously increasing the efficiency of administration and the autonomy of the revenue base of local authorities. This also includes increasing the responsibility for the performance of local authorities. It is difficult to speak about the financial autonomy of local authorities in a situation where the proportion of local taxes in their revenue base is around 1 per cent (by comparison: in Denmark it is approximately 50 per cent).

Director of the Bureau of the Association of Estonian Cities and Rural Municipalities Jüri Võigemast has said that the municipal revenue base and the central government's budgetary revenue moved consistently at an equal pace in relatively reasonable proportions until 2000, the year of the first economic crisis since Estonia regained independence.³⁷ After the crisis, preference was given to the areas funded from the state budget rather than to local activities.

In Estonia, the share of municipalities in the total public expenditure is approximately 25 per cent, compared to 64 per cent in Denmark, 47 per cent in Sweden, 41 per cent in Finland and 34 per cent in Norway.³⁸ In Estonia, approximately one-third of the municipal revenue comes as support from the central government and, unlike in Northern European countries, its use is strictly regulated.³⁹

³⁷ J. Võigemast, 'Murdepunktide lugu' – *Eesti kohalik omavalitsus ja liidud – taastamine ning areng 1989–2017*, 2017, pp. 220–224.

³⁸ *Subnational Governments in OECD countries: Key Data 2015 edition*. OECD.

³⁹ In 2017, such support included, for example, support for hobby education and for salaries of pre-school teachers (<https://www.riigiteataja.ee/akt/105072017017>).

It can be expected that after 2020 there will be radical changes in the volume of the EU support given to Estonia. While over the last ten years, on average approximately one half of the government investment and slightly more than one-tenth of the total expenditure of the state budget have been financed with the support of the European Union, in the budget period beginning in 2021 the financial support will decrease by up to 40 per cent, or approximately 1.5 billion euros, compared to the current budget period according to an initial estimate of the Ministry of Finance.⁴⁰

The decreasing support shows, on the one hand, that Estonia has reached a certain level of wealth and will have to rely more and more on its own resources, but on the other hand, reduction in external financing also means a contraction in investment. Consequently, the appropriateness of planned investments should be assessed more critically than before in order to ensure their efficiency and achieve the self-sufficiency of the country.

Public officials and their competencies

In 2016, there were 116,734 public servants in the Estonian public sector, of whom 61,857, or approximately 53 per cent, worked for cities and rural municipalities. 36.5 per cent of all public servants in municipal administrative agencies worked in the four largest city governments (Tallinn, Tartu, Narva and Pärnu). The remaining 209 local authorities employed 3,577 public servants, meaning that the average number of public servants in a local government was 17. Approximately one half of the staff of the local authorities was older than 50 years.

Unlike in state administrative agencies in general, local government administrative agencies are characterised by a small share of men, who account for only approximately one-fourth of the staff. The proportion of public servants with higher education is 77 per cent.⁴¹

⁴⁰ *Ülevaade riigi vara kasutamisest ja säilimisest 2016.–2017. aastal. Riigikontrolööri kokkuvõtte riigi majanduse ja rahanduse väljavaadetest ning riigi varaga seotud probleemidest;*

⁴¹ *Avaliku teenistuse 2016. aasta aruanne.*

As Estonia's current legislation requires that all local authorities, regardless of the size of the municipality, perform the same functions; the typical concerns of the authorities of small municipalities are managing with a small number of staff, carrying out a large number of tasks that are performed selectively, and dealing with consequences rather than doing proactive work. There are not enough specialists with the necessary qualifications for the authorities of each municipality and the workload is insufficient for specialisation.⁴²

At the same time, there has been an increase in bureaucracy, as a result of which public servants have more work with documents and less contact with citizens. Estonia's local authorities are characterised by a clan-type organisational culture where good mutual relations and a lack of competition are valued.⁴³

The requirements for knowledge and skills of public servants of cities and rural municipalities change constantly. Until now, only the authorities of larger municipalities have been able to address staff issues in a systematic way.

An assessment of the training needs of local government employees⁴⁴ showed that among main competencies, the greatest training needs occurred with regard to the representation of public authority (primarily in terms of influencing political processes and intervening in political decisions where necessary, knowledge of the fundamental principles and development trends of the EU, and relations and cooperation with local politicians), the organisation of services (primarily in terms of service development and cooperation with service providers) and communication (primarily in terms of

⁴² Explanatory memorandum to the draft Administrative Reform Act.

⁴³ P. Vinkel, 'Organizational culture of Estonian local government in the light of a multi-dimensional approach to administrative culture'. Master's thesis. Tallinn: Tallinn University of Technology Press, 2008.

⁴⁴ R. Noorkõiv, M. Nõmm, 'Kohalike omavalitsuste teenistujate kompetentsipõhine koolitusvajaduse hindamine' – *Eesti piirkondlik areng*. Statistics Estonia, 2016; https://www.stat.ee/valjaanne-2016_eesti-piirkondlik-areng-2016

lobby work, public speaking, foreign language skills and virtual tools in local government work).

An IT-related analysis of local authorities⁴⁵ shows that in municipalities with fewer than 5,000 residents, the use of IT solutions depends to a large extent on the attitude, knowledge and initiative of the employees of a particular local government and that such local governments employ an average of 0.17 IT specialists. In most cases the IT area is run by a single leader. If something happens to this specialist, the local government will lose its capacity for IT management and administration.

Only a few former local authorities had online forms for applying for e-services: the authorities of 92 out of 213 pre-reform municipalities had an online form in the public e-services portal, eesti.ee. The e-services of most local authorities have thus been quite rudimentary.

Democracy and the development of civil society

Estonian municipal councils and their executive management are considered to be well-structured, and they participate actively in civil society.⁴⁶ At the same time, the local level is strongly dominated by an elite, i.e. a small group of people that serve as municipal leaders and stay in leading positions for many years: only around one quarter of the local political elite changed between 2002 and 2013.⁴⁷

⁴⁵ *Kohalike omavalitsuste IT-juhtimise, e-teenuste analüüs ja arendusettepanekud*. AS PricewaterhouseCoopers Advisors, 2015; http://kov.riik.ee/wp-content/uploads/2016/01/Kohalike-omavalitsuste-IT-juhtimise-ja-e-teenuste-anal%C3%BC%C3%BCs-ja-arendusettepanekud_final.pdf

⁴⁶ G. Sootla, K. Kungas, 'Effects of Institutionalisation of Local Policymaking. The Study of Central Eastern European Experience' – J. Franzke, M. Boogers, L. Schaap (eds.), *Tension Between Local Governance and Local Democracy*. Reed Elsevier (Business). The Hague, 2007.

⁴⁷ H. Roosimägi, 'Poliitilise eliidi ringlus ja profiil Eesti kohalikul tasandil aastatel 2002-2013'. Bachelor's thesis., Institute of Political Science and Governance, Tallinn University, Tallinn, 2014.

Various analyses^{48, 49} have shown that larger municipalities have predominantly pluralistic and smaller municipalities an elite-centred (more clan-like) patterns of power. However, a stable elite may also indicate that people trust their representatives in municipal councils, they are satisfied with their decisions and no political change is expected at the local level. Still, it has been noted that there is a significant positive correlation between local authorities' capacity and political pluralism. In particular, there is more political diversity in municipalities with more than 3,500 residents.

There are more political forces in larger municipalities and political parties must form coalitions with other parties or electoral coalitions in order to take power.

Hence, the argument that small municipalities are better carriers of local democracy than large ones, and that the merging of municipalities threatens local democracy and the ability of the citizens to control the local authorities and the local elite, does not stand up to scrutiny.

Although thus far, the local government management model has been based on centralisation due to the small size of municipalities, this is likely to change after the administrative reform. The larger territories of the new municipalities, the role of centres in the settlement system, and the need to ensure local democracy will create the need to use different territorial management models.

In order to avoid the loss of grassroots initiatives and democracy, each municipality will have to find ways of organising local life that are best suited to the local circumstances and that respect the historical

⁴⁸ G. Sootla, K. Kattai, A. Viks, 'Size of municipalities and democracy: an institutional approach' – 23rd NISPAcee Annual Conference. 21–23 May 2015. Tbilisi, Georgia.

⁴⁹ P. Soosaar, 'Kohalike omavalitsuste võimustrite muutumine 2002–2013'. Master's thesis. Institute of Political Science and Governance, Tallinn University, Tallinn, 2014.

experience and place identity of local communities.⁵⁰ Heads of local governments must respect them and support the cohesive structures within the civil society, such as village elders or community assemblies, in dialogue with the local communities. Indeed, the essential prerequisites for the development of peripheral rural regions are strong local communities, a sense of responsibility and social inclusion of residents. The population can be maintained by raising people with an entrepreneurial mindset that are willing to contribute to their communities.

In a number of rural regions in Estonia, voluntary citizens' initiatives have become a very important source of support for the state, in areas such as ensuring security and rescue service capacities.

Conclusion

Important steps have been taken in the implementation of the administrative reform. Its roadmap is the goal of what needs to be achieved with the planned changes and which of the current development trends need to be changed. The content, methods and timeline of the reform must be agreed on centrally, taking into account the unique administrative culture of the country, the tasks that need to be solved and the visions for the future.

One can learn from the practices of other countries and the previous voluntary mergers in Estonia but concrete solutions should not be copied directly, especially because the environment determining the system of local government is constantly changing. In order to cope with the changes, it is appropriate to carry out pilot projects in parallel to the main reform, so as to identify solutions that are worth developing further, to improve quality of life and raise confidence in the future prospects of the country.

⁵⁰ M. Lõhmus, G. Sootla, K. Kattai, R. Noorkõiv, *Soovituslikud juhised detsentraliseeritud valitsemis- ja juhtimiskorralduse mudeli ülesehitamiseks kohaliku omavalitsuse üksuses*. Ministry of Finance, 2016; http://haldusreform.fin.ee/static/sites/3/2016/07/detsentraliseeritud_juhtimismudelid_loplik_21.07.2016.pdf

It is important to design a monitoring system for the development of municipalities, a knowledge bank of the best practices, but also including solutions that do not work. Future reorganisation should continue to be based on knowledge, courage, willingness to make changes and an ability to learn from experience and apply the knowledge obtained, so that the Estonian state could function sustainably.

The Development and Dilemmas of Estonian Local Government from a European Perspective

GEORG SOOTLA

In this article, I try to give an overview of the development of Estonian local government as an institution of democratic politics and governance. As there is an abundance of literature on the development of the Estonian local government system,¹ I will only focus on those aspects of and pivotal events in the system's development that help us to better understand the background of the 2017 reform.

¹ See e.g. S. Ludvig (ed.), *10 aastat Eesti Omavalitsusliitude Ühendust*. Tallinn, 2003. S. Ludvig et al. (eds.), *Eesti kohalik omavalitsus ja liidud – taastamine ning areng 1989–2017*. Tallinn, 2017.

Any reform involves a fair amount of inconvenience (or even risk) and so should only be undertaken if avoiding it is not an option. Therefore, I will mainly focus on the tensions that justified taking this kind of ambitious decision (to initiate reform), setting aside the results, which may be considered satisfactory and which I have discussed elsewhere.²

Setting of the analysis

Local government is the most important aspect in the governance of unitary nation-state. It allows the central government to govern the entire territory relying on universal principles. At the same time, it allows the central government to delegate various administrative functions (ensuring local order and administration of justice, tax collection, education, statistical data collection and so on) to communities or local authorities.

Therefore, modern local government forms an interconnected system with the state, its authorities and other actors. Strong local authorities that trust the central government enable the state to focus on national development goals and leave most of the responsibility for the smooth running of day-to-day life to the institutions that are under the immediate oversight of the citizens. This idea is emphasised in the documents of the European Commission as the principle of subsidiarity.

As a result of exercising the principle of subsidiarity, it is possible to develop a complex system of multi-level governance, from supranational institutions (such as the European Commission) to the administrative levels within municipalities (villages, municipal districts³).

² G. Sootla, K. Kattai, 'Estonia: Challenges and Lessons of the Development of Local Autonomy' – *The Oxford Handbook of Subnational Democracy in Europe*. Oxford University Press, 2011. G. Sootla, S. Lääne, 'Keskkvalitsuse ja kohaliku omavalitsuse suhted' – *Eesti poliitika ja valitsemine 1991–2011*. Tallinn, 2012.

³ In English, the term 'neighbourhoods' is used for municipal districts.

The administrative division of Estonia in 1889 when the local government system was restored

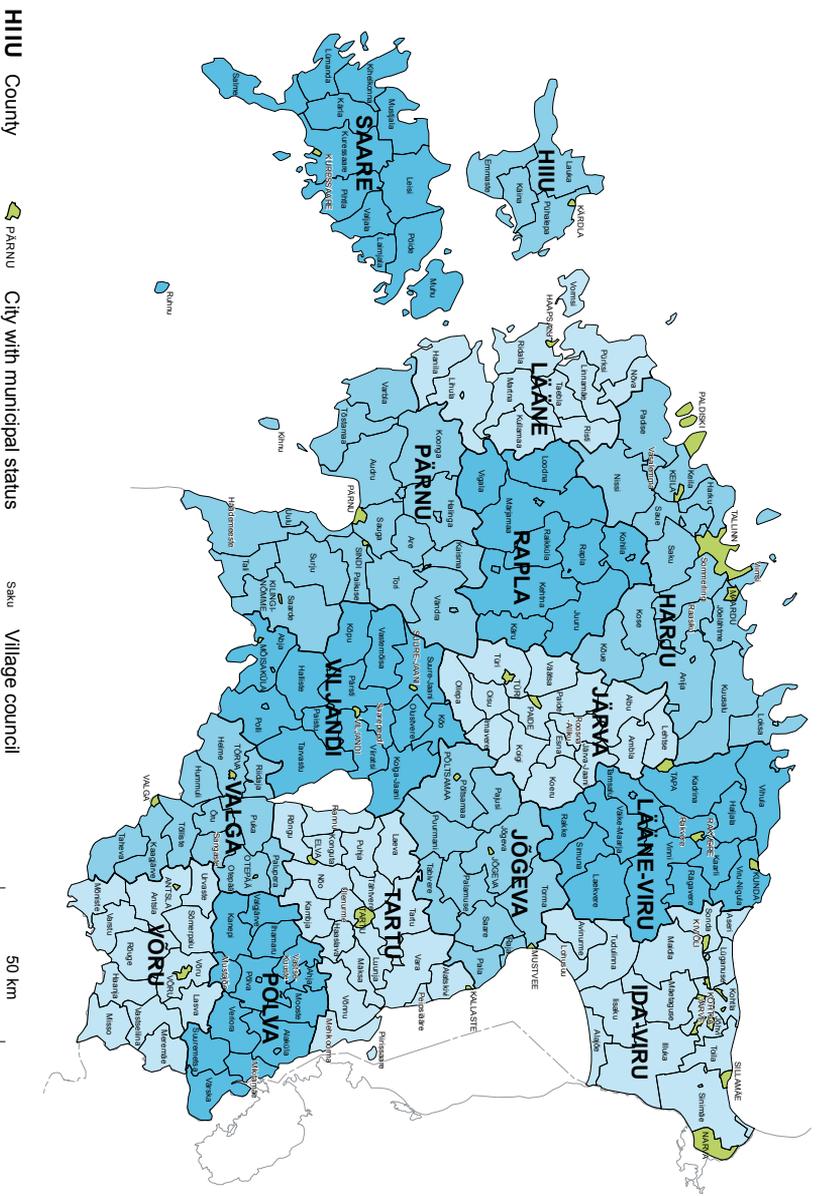


Figure 1.

Restoration of the local government system in 1989

The democratic system of local government re-emerged in Estonia as a result of a restoration process that started in 1989. The aim of the process was to counterbalance the authority of the already collapsing central government in Moscow by rebuilding the first tier of local government. Therefore, it was natural to use the classical system of mixed state and local authority at the county level.

During the four-year transition period, the local government functions were delegated to the first tier of government, except those that could have been performed at county level due to the small size of the municipality. The majority of local authorities remained within the domain of former village councils, as the local government reform was timed to take place during the regular local elections. Six of the larger urban municipalities also kept their status as a county and first tier of local government (which was typical practice for a mixed system found in continental Europe). To reduce the dominance of Soviet-era leadership in local life, the system of a committee was used for the municipal council-government balance, which meant merging the positions of the chairman of the municipal council and the chief executive of the local government. Because the elections did not have operating political parties, a unique method of single transferable vote was set up; that is, these were essentially elections of persons.

The driving force behind the reform was a department of the Presidium of the Supreme Soviet of Estonian SSR headed by Raivo Vare. They established the administrative reform expert committee, whose task was to grant municipal status to local authorities. Village councils and cities gained the new municipal status after the approval of their municipal statutes and development plans. This was an effective method of testing the new local leadership and competency at the very start of their role.

However, this vital process of assigning municipal statuses turned into a formality, particularly before the elections in 1993. This formality was reflected later in the different competency that local authorities had

in strategic planning. In 1991, during the restoration of independence, only 94 out of 244 village councils and cities had received the above-mentioned municipal status.

An important and very productive stage in planning the local government as an institution in Estonia was the discussions held at the Constitutional Assembly in 1991–1992. The seventh working group of local government of the Assembly had a pivotal role in detailing the safeguards of local autonomy in Chapter XIV of the Constitution of the Republic of Estonia. But with foresight, the Constitution left room for many issues to be resolved by future legislation.

Still, the subsequent system of local government began to turn political. Two main approaches were discussed, and in hindsight, they both had strengths and weaknesses. The first approach was to develop a one-tier system of local government, modelled after the local government system in Finland, and was justified by the need to shape the basis for a democratic first-tier local government in Estonia. Another thought was to establish local authorities within the old framework of parishes; this mostly gained the support of nationalist party politicians. At the time, this inclination to look back in history had an influence on determining the first tier of local government. During the 2017 administrative reform, the logic of defining municipalities according to historical parishes was also an important argument that was used to justify this system of merging.

The second approach was the system of a classical two-tiered system of local government where the second tier was the county executive agency of the central government, which was under the authority of the county council (a continuance of the 1989 model). However, after 1989, some county leaders cooperated with ministry officials at the time and stopped delegating tasks to the first tier of government. This behaviour spoke against the second approach.

The Assembly did not declare itself in favour of either of these approaches. However, the Constitution established rural municipalities

and cities (and other municipalities established by law) as local government entities. In reality, because the city was interpreted as a settlement unit in administrative practice, establishing separate divisions of authority for urban municipalities began to hinder the mergers of larger county capitals and their hinterlands (for example, the cities of Viljandi and Paide). As a result of the 2017 administrative reform, some very large urban municipalities were established. This led to renaming urban municipalities with rural regions (somewhat paradoxically) as rural municipal districts. It is apparent that partial solutions to this terminological confusion (for example, defining the urban size in an urban municipality) can lead to even more peculiar results. Therefore, instead of distinguishing cities and rural municipalities, we should find one common definition for an administrative division with local government.

In 1993, during the discussions for the Local Government Organisation Act, the government did not have a consensus for the number of tiers in the local government system. And so, on 12 May 1993, the Estonian parliament made the decision to establish a one-tier system of local government, and this was followed by passing the Local Government Organisation Act in June of the same year. The Act established the Estonian local government system after the Nordic countries and their one-tier system of local government. This differed from the system of pre-war Estonia, as well as from the system that was developed in 1989.

Creating a one-tier system of local government was logical for various reasons. Most importantly, it was necessary first to establish a strong first tier of local government, and this was the right way of doing that. Most Central and Eastern European countries (aside from Lithuania, Bulgaria, and Romania) chose the strategy of strengthening the first tier of local government. However, they did not implement the one-tier system, but instead used a classical form of mixed governance. Second, there was a risk that many county local governments in Central and Eastern European countries (including Estonia) would organise a referendum for autonomy. And this actually took place in summer 1993.

Estonia's choice was mostly inspired and justified by the system of local government established in Finland. But there were some important prerequisites for establishing this system that had been developing over centuries. First, the local communities in the Nordic countries evolved as communities with municipal status; furthermore, they did not experience serfdom. Communities with municipal status started to emerge in Estonia only in the mid-19th century, and this development was interrupted by the Soviet occupation. Estonian politicians had a very brief experience with running a balanced democratic government (1918–1934). This also became evident in the heated discussions about the optimal system for central and local government in Estonia in the 1920s. Incidentally, the system of county governance established in Estonia in 1937 (Counties Act, *State Gazette* 1938, 43, 405) could be the model example of a well-balanced system of central and local government.

Second, the central and local government have to achieve a balance in which the local level has a significant say, as well as, in certain matters, the opportunity to halt any decision-making that would be damaging to the autonomy of local government or to the balance between state and local authority.

Third, in order to receive the best services, municipalities and their residents focus on improving the self-management and leadership of their communities. Therefore, the competition between local authorities is insignificant; few residents are voting with their feet in search of better services. This provides a premise for mutual cooperation and makes it possible to sort out common interests when shaping policies.

The Local Government Organisation Act of 1993 established these general prerequisites for the system to be successful. County governments were divisions of decentralised territorial government, and governed the counties on behalf of the state. Candidates for county governor as a career official were appointed by the Government of the Republic with the consent of heads of local authorities. County governments and local administrative authorities were quite successful in representing

local characteristics and needs, and the county governor was able to balance the various influencing factors within the county. The county governors also successfully represented local interests at the government cabinet meetings that shaped the decisions of central government. For example, until 1999, because of the management style of the ministry and the county government, decisions regarding the national investment programme on local government investments were made through a consensus between heads of local government and county governors. By contrast, in some counties up to one-third of the investments went into developing the county.

Yet the formal legal context in 1993 was still defining the basis for approach, and the legislative body included important prerequisites for establishing this system of governance.⁴ Above all, they were expecting the formation of larger and more capable municipalities with their important right of taxation.

The coalition in power was defeated in the elections of October 1993 (mostly due to the onset of recession), which resulted in a political divide between the tiers of central and local government. This divide started influencing subsequent laws that related to the competency of local government and transformed into political rivalry between the parliament and the city of Tallinn.

At the beginning of 1995, the Territory of Estonia Administrative Division Act was passed, which set the procedures for local government mergers. One restraint, but not a decisive variable, on the development of the local government system as a whole may have been the difference in and low levels of financial capacity of local authorities. The main factor was developing and shaping the balance between the central and the local government. This institutional balance is created through shaping policies in the government and the *Riigikogu* (Estonian Parliament)

⁴ K. Jürgenson, 'Põhiseaduse Assambleest ja kohaliku omavalitsuse süsteemi taasloomisest' – Polis Annual Conference, Tallinn, 19 August 2014.

with the clear and joint strategic input of local authorities. It is just as vital to coordinate the positions of relevant ministries and ministers in comparison to other sectors.

The subsequent process indicated that the initial balance in power resources started to tilt more and more towards the central government and its agencies. In my opinion, the biggest issue was not recognising that the main cause of the problems, such as the small revenue base, the allocation of responsibilities between tiers of authority, the tendency for centralisation in governance and so on, was the imbalance of power.

Subsequent development of county governments

The Government of the Republic Act⁵ was passed at the end of 1995, and it significantly changed the role of the county government and the governor. This Act reduced the role of the county governor to a representative of state in the county and the county government was changing from the administrative authority of a territory into an office that serves the county governor and coordinates sectoral management.

In the mid-1990s, the prevailing view was that the county governor could not represent local interests and be the state supervisor at the same time. As a result of this, the lower tier administrative responsibilities of counties were delegated to the local administrative agencies of ministries. At the same time, it was presumed that the responsibilities of local authorities and determining regional interests at the county level would be delegated to the county associations of local authorities.⁶ County governments as autonomous centres of authority, which at the time were mostly led by Soviet-era leaders and specialists, were an inconvenient intermediary for the local and central government elites.

⁵ <https://www.riigiteataja.ee/akt/111062013007>

⁶ See 'Principles for the Development of Public Administration', an explanatory statement submitted to the Government of the Republic by a committee chaired by Minister Peep Aru, 18 February 1999.

Throughout the era of the democratic Republic of Estonia (until 1934), as well as in the 1990s in many countries in Eastern and Central Europe that were democratising, the state attempted to neutralise the role of the county government.

The new political leaders with little experience in democratic governance did not realise that the key to the balance of power between central and local government lay in the balancing role of the county governor and the county government as an autonomous authority (see Hesse 1998). Instead, the politicians attempted to tilt the balance in their favour and saw an easy shortcut in just pushing out one player. This also explains why leaders in the Nordic countries who start out at the local level continue to defend the interests of their local government in the central government. By contrast, in Estonia, former mayors and heads of rural municipal governments who are elected to the *Riigikogu* are quick to forget local interests.

In 2004, county governments were moved to the administrative division of the Ministry of the Interior. The appointment of the county governors started to be based on informal political agreements between political parties, which the government then merely ratified. This meant that the administration of tiers lower than the state was entirely taken over by ministries. It was probably an effective solution, but the scope of local and regional policies, especially in development, was reduced in public administration. In this context, the dissolution of county governments by the 2017 decision was just a legal formality for a long process.

Administration became more centralised and fragmented with agencies on tiers lower than the state. At the same time, the other side of the strategy – assigning local government functions and regional development plans to county-level associations of local authorities – was largely not introduced.

Yet, as local authorities basically do not have their own tax base (the input of local taxes is the lowest in Europe, below 1 %) and the divided state tax (including individual taxes on income) is viewed as general

purpose state allocations by European research, the local authorities became both politically as well as administratively more dependent on resources that they received from the central institutions of state (parties, ministry departments). The local authorities became competitors in the fight for resources that were in the hands of the central government.⁷

This reduced the willingness of local authorities to cooperate on administrative or organisational tasks that smaller municipalities could not manage on their own (e.g. support counsellors for schools or social workers) and that might have had a regional impact (e.g. reshaping upper secondary school education) through cooperation. The main issue was that local authorities and their associations could not make clear and substantial inputs to policy development, and because the central government sensed its growing power, it was unwilling to take them seriously.

A one-tier system of local government had developed that did not balance the power of the state and local authority; instead the power began to shift to the hands of the central government, as a void had appeared at mid-level administration.

The side effects of this unique system became strikingly apparent when applying the European Union structural funds for regional development. For these funds to be implemented, there has to be a connecting link of (regional) territorial governance that can join the sectoral preferences with local and regional needs. This enables the government to make strategic and regionally balanced decisions. Regional policy has been treated as a key issue in Estonia. The position of Minister of Regional Affairs existed for over 20 years, but there was still no agency for regional planning and coordination or even clearly defined regional areas. Therefore, there is a serious contradiction between political rhetoric and actual public policies.

⁷ J. Hesse, 'Rebuilding the State: Administrative Reform in Central and Eastern Europe' – OECD 1998, 'Preparing Public Administrations for the European Administrative Space', *Sigma Papers* No 23, OECD Publishing, Paris, pp. 41–63.

Many EU regional development programmes are focused on increasing the capacity of state institutions (e.g. state upper secondary schools, Estonian Unemployment Insurance Fund) at the county level, even though the local authorities already have this capacity and it only requires further development. A new wave of centralisation started with the programmes of European regional development funds.

However, because of fragmentation and a lack of regional cohesion, the tier of local government has been unable to introduce relevant inputs of regional priorities for the EU programmes⁸. Therefore, despite the inclusive administration process of the EU Regional Development Fund, the role of local authorities has been minimised in the phase of planning the measures of regional policy (e.g. the role of county development plans). The role of local government development plans in long-term strategic planning has also decreased. These plans have mostly become as broad as possible to be applicable to a wide range of external financing programmes (Praxis Centre for Policy Studies 2015).

For some local authorities, the motivation for choosing voluntary merging was the dispersed outlook of these strategic plans.⁹

One of the goals of the administrative reform was to reintroduce the strategic perspective to local government policies.

Input of local interests into policy-making

Another measure in the one-tier system of local government that empowers local authorities is the substantial input that local authorities give to policy-making on state level, especially on issues that infringe the interests (autonomy) of local government.

⁸ Praxis, The impact of structural fund programs (2007–2013) on regional development. Praxis/Centrar, 2015.

⁹ 'Kohalike omavalitsuste 2005. a ühinemiste ja selle tagajärgede analüüs'. A report for the Ministry of the Interior. Tallinn University, Tallinn, 2008.

Associations of local authorities. In May and September 1990, respectively, the Association of Estonian Cities and the Association of Municipalities of Estonia were re-established with the restitution. The first county-level association of local authorities (in Raplamaa) was established in January 1991, and to coordinate these associations, the National Association of Local Authorities was created in 1993. In February 1994, the Co-operation Assembly of Association of Local Authorities was established after it was realised that the growing number of associations would probably undermine local authorities in relation to the state. This association was to begin annual negotiations with the state on matters related to the budget.

These negotiations have been the only effective and regular means of consultation between the state and the local authorities. However, they mostly have been focused on consultation and details of implementation and have not been binding. Therefore, the associations of local authorities have not become a significant balancing force in the process of furthering local government policies.

Civil service input into government policy. The Constitutional Assembly aimed to form a government that would coordinate strong policies but would have a Prime Minister who would have less authority (Constitutional Assembly 1997). At the time, it was a new approach to governance in the Central and Eastern European countries. But this meant removing all administrative functions and coordination from the Government Office.

In October 1993, the Local Government Organisation Act was introduced, which dissolved the Department of Local Government and Regional Development from the State Chancellery. The Local Government and Regional Development Agency was established, whose contribution to government was weak because of its status. In the 1990s, the Minister of the Interior, who was responsible for the area, was often replaced (between 1993 and 2004 there were 13 ministers), and these ministers focused on matters related to internal security (with the

exception of Minister Tarmo Loodus). The Minister of Regional Affairs without portfolio (since 1994) was working with a few advisers in the administration of the Government Office. However, the influence of this position was largely dependent on the personal and political competency of the minister in the hierarchy of their party. On occasion, their role was remarkable (e.g. during the tenure of Minister Peep Aru), but overall, the Minister of Regional Affairs remained without a portfolio until 2004. In 2004, the Minister of Regional Affairs became the second minister in the Ministry of the Interior, but none of them had a significant influence in the party or in cabinet. Therefore, it is not surprising that from 1998 to 2014, most initiatives on the administrative reform did not make it to government. Two initiatives gained formal support but failed to go further.

We cannot underestimate the impact that failed administrative reform efforts had on heads of local governments, as well as on central government politicians. A few important and probably not coincidental processes that started in autumn 2010 highlight these trends.

Discussion of partnership between the state and local authorities in the *Riigikogu*

In late autumn 2008, preparations began for a deliberation on a matter of significant national importance concerning the partnership of the central and the local governments ('*Riigi ja kohaliku omavalitsuse partnerlus-est*'). As a result of the cooperation between the associations of local authorities and universities (under the auspices of MTÜ Polis), and the Constitutional Committee of the *Riigikogu*, the discussion was held on 23 September 2010 in the *Riigikogu*.

On the one hand, the representatives of local authorities and universities showed a willingness to discuss a 'national reform of municipal mergers under the coordination of the central government when the merged municipalities are established as a result of discussions held between local authorities and when it delegates more competencies and resources to the local authority.'

On the other hand, the representatives sought to establish a permanent committee on public administration in the *Riigikogu*, a permanent think tank for local government and regional development, and to transfer the coordination of local government policy under the administration of the Ministry of Finance, as well as to develop one strong association of local authorities¹⁰. This was one important aim for the 2017 administrative reform.

The local government think tank and the reform model based on local commuting centres

One of the terms of the government coalition that took office in 2011 (the third government of Andrus Ansip) was the establishment of local government think tanks. This was also suggested during the deliberation on the matter of significant national importance in the *Riigikogu*. Establishing the think tank as an independent and all-encompassing arena of participants under the patronage of the *Riigikogu* was unsuccessful. Despite that, on 31 October 2011, Minister of Regional Affairs Siim Kiisler formed a think tank as an advisory committee for the minister.

Although preparing a draft for the local government reform was not the purpose of the committee, year-long consultations led to presenting a plan for the reform in 2012, which had important distinctions. First, it was not a finished product that was prepared by experts. It was an assignment that suggested analysing six potential scenarios for the local government reform, including the pros and cons of preserving small municipalities. Second, following the recommendation of the think tank, the ministers abandoned the idea of passing the draft act in January 2013 and trying to implement it with the 2013 election. Instead, the scenarios were put up for general discussion for all parties who were connected with the matters of local government. As the participants of the discussion

¹⁰ Verbatim record of the 23 September 2010 session of the *Riigikogu*; <http://stenogrammid.riigikogu.ee/et/201009231000> (27.6.2017).

preferred the local commuting centre scenario, the association of local authorities, in cooperation with county governors, had to analyse the county local commuting centres based on specific criteria. The draft for the administrative reform was officially circulated for approval at the end of January 2014 after consultations that lasted for 14 months. In March 2014, the coalition collapsed, and this process faded.

The issue was no longer about what to do, but rather how to find the appropriate political measures for organising the local government reform.

Systems of municipal councils and governments

In 1989, a system of municipal councils and governments was chosen that ensured maximum control in local governance. Without a doubt, one of the aims of the government coalition at the time was to neutralise the heads of collective farms and organisations as well as specialists, who had strong positions of authority and who could stop the reforms that had a radical impact on regional areas.

In 1993, a less-used system for governance, known as the cabinet model, was chosen. According to this model, the head of a municipal government who is politically elected by a municipal council majority would establish his/her own team (a collegial government as the decision-making body) for local governance. The term for 'government' loosely equates to administrative-political guidance. Because this term has been too widely used in Estonia, the local administrative system, or administration, is also called a 'government'¹¹.

In a comparative study of the local government system in Central and Eastern European countries^{11 12} (Soos, Zentai 2006), the municipal council and government system in Estonia was the most successful in

¹¹ This was debated in Estonia as early as the 1920s (see Sootla and Laanes 2015).

¹² G. Sootla, K. Grau, 'Institutional Balance in Local Government: Council, Mayor and City Manager in Local Policy Making' – *Faces of Local Democracy: Comparative Papers on Local Governance in Central and Eastern Europe*. OSI/LGI, 2004.

furthering strategic management and at the same time basing decision-making on policies. This means a clearly structured municipal council (political groups), substantial and well-prepared deliberations, effective political oversight of the municipal government by the municipal council and extensive autonomy of the head of the municipal government through political trust. The Local Government Organisation Act leaves enough freedom to independently make decisions on the local administrative organisation of local authorities.

However, these strengths became apparent only with larger municipalities (of at least 5,000 residents). The strength of this system of municipal council and government in Estonia was confirmed by another one of our studies¹³, which was also used to justify the establishment of administrative reform goals and indicators.

This trend can be explained by the fact that various very different systems have been used for the government as the body for decision-making in the judicial area of the Local Government Organisation Act. In small municipalities, the head of the municipal government usually forms the government from key municipal officials. This significantly extends the decision-making power of the officials and the *status quo* policies and decreases the capacity of the municipal council in complex matters. It may be the optimal solution for small communities that lack sufficient competency. Sometimes the members of the municipal government are the local opinion leaders, and so the government becomes an open consultation body.

In the third system, the elected politicians and the deputy heads of municipalities are, at the same time, also departmental heads and top officials. This version can reduce the consistency of sectoral development in counties and minimize the strategic direction of development in areas where the government is unstable. Therefore, larger counties use

¹³ R. Noorkõiv, G. Sootla, K. Kattai, M. Lõhmus, 'Ühinemiste mõjude analüüs Märjamaa valla ja Türi valla näitel'. Tallinn, 2015.

The percentage of total votes in different size municipalities for the winning list of candidates.

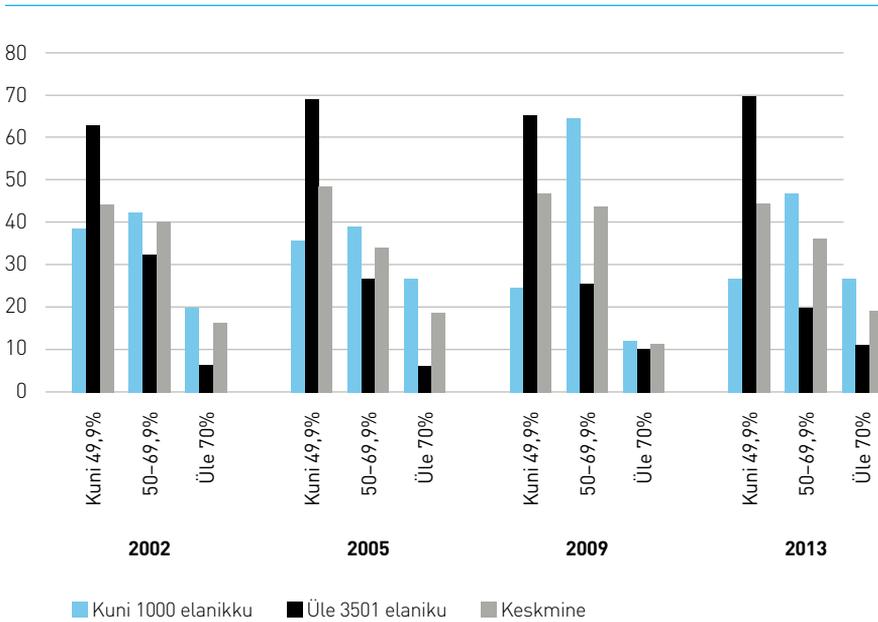


Figure 1.

what is known as the clean cabinet system, where the political leaders are members of the government and the public officials lead the administrative agencies. The same studies have indicated that the municipal councils of larger municipalities give more productive input to substantial decision-making. This takes place mostly through competent committees who are able to constructively assess government proposals.

Therefore, with a purposeful strategy, the administrative reform can significantly broaden the strategic capacity of local authorities, as well as distinguish the governance of the municipality as a whole from the everyday administrative/organisational activities.

The dominance of winning list of candidates in different size municipalities.

Aasta	2002			2005			2009			2013		
Number of residents in municipality / % of votes for winning of candidates	Up to 49,9%	50–69,9%	Over 70%	Up to 49,9%	50–69,9%	Over70%	Up to 49,9%	50–69,9%	Over 70%	Up to 49,9%	50–69,9%	Over70%
Up to 1000 residents	38,5	42,3	19,2	35,5	38,7	25,8	23,7	65,8	10,5	26,3	47,4	26,3
Over 3501 residents	64,1	31,3	4,7	70,1	25,4	4,5	66,2	25	8,8	71	18,8	10,1
Average	44,8	40,2	14,9	48,8	33,9	18,1	46,9	43,8	9,3	45,1	37,2	17,7

Table 1.

Elections

The procedure of local government elections supports the development of the aforementioned relationship between the municipal council and the government. However, we cannot conclude that the expectations for the development of local democratic policies would have been met by establishing that system of local government. The main reason for this is that some important measures of local policies (policies on local tax system, entrepreneurship, land ownership and so on) remained marginal in local policies.

The table above shows a clear trend that the system of election by list only works partially in municipalities with less than 3,500 residents. For example, in 2013, close to three-quarters (73.7 %) of municipalities with up to 1,000 residents had the absolute majority of one list and over

half of municipalities (57.9 %) had two or even one list of candidates. At the same time, one list had an absolute majority in only a third (28.9 %) of the municipalities with over 3,500 residents, where only two lists were in every tenth (11.6 %) municipality. These previous election results show a lack of choice in local authorities and were one important argument for justifying the democratic objectives of the administrative reform.

Residents and local authorities

The local authorities in Estonia are open, and they provide their residents with different means of communication with the local authorities. But a stable democracy requires that the engagement of residents take place mainly through organised associations. At this point I will justify two important ways of development.

Studies indicate¹⁴ (SIMDEL 2009) that local authorities are not active enough in delegating public services to civil associations and inevitably see these associations as buffers when delegating smaller and more inconvenient services if the budget allows them to. However, a study by Praxis Centre for Policy Studies showed that in many municipalities, the residents have sufficient interest and professional capability for engagement.

Unfortunately, Estonian legislation on public procurement prevents delegation based on relational partnership¹⁵, which is the main way to shape the sustainability of local civil associations as well as local service providers. The local government administration in Estonia has less means for the board of trustees of institutions at local level for the schools, kindergartens, libraries and so on compared to the Nordic countries. Therefore, the citizens in the Nordic countries do not fear

¹⁴ 'Kohaliku omavalitsuse üksuste avalike teenuste lepinguline delegeerimine kodanikeühendustele'. Praxis, 2009.

¹⁵ R. H. DeHoog, 'Competition, Negotiation, Or Cooperation: Three Models For Service Contracting' – *Administration & Society* 22 (3), 1990, pp. 317–340.

losing services as a result of merging, because these institutions are self-governed in the literal sense of the phrase. It is true that during the administrative reform, many municipalities in Estonia also developed important mechanisms of decentralisation (service centres) and participation (council of a rural municipal district) ¹⁶.

Conclusion

I focused mostly on those aspects and explanations of local government development in Estonia that can illustrate the necessity of the 2017 administrative reform. The majority of explanations are supported by studies and comparative experiences of Europe, and based on this, the growth of Estonia is more remarkable.

I hope that the decision-makers and new municipal leaders realise that the question of resources available to municipalities, their capacity to provide services and the consideration of the interests of municipalities when developing national policies has to do, above all, with **how the resources of power are allocated between the central and local government**.

How the resources are divided depends on the synergy between and investment into strategic priorities of local authorities.

The reform does not need to repair, broaden and so on, but needs to restore the equal partnership in central- local relations. This was promised at the deliberation of the *Riigikogu* in 2010.

Second, I hope that most of the new heads of local government understand that the merging of municipalities was only the beginning of vital changes in the entire system of local government. If this start does not have enough impact to soften old behaviours and attitudes, and cannot restructure the inner organisation of local authorities, then

¹⁶ G. Sootla, K. Kattai, V. Pihele, An analysis report for the project 'Suure territooriumiga ühinenud omavalitsuse mitmetasandilise haldusorganisatsiooni kujundamine Saaremaa vallas'. Tallinn, 2017.

the benefits that come with mergers will not be established, and the negative aspects of having large municipalities and a one-tier system of local government may emerge.

I would like to summarise the overview of Estonia's development with the conclusion of a well-respected practitioner and researcher of the local government system, Harald Baldersheim:

*The local government reforms have often aimed at two myths: finding the ideal size of a municipality and the ideal allocation of responsibilities between different tiers of governance. [...] The most appropriate conclusion is that efficient governance is not dependent on the size of a municipality or on the allocation of responsibilities. The variety of local government systems in Europe shows that modern societies can be happy with local government systems that have different sizes and different functions. The most important thing is the system of coordination between different tiers of governance, that is, the way in which multi-level governance is organised.*¹⁷

¹⁷ H. Baldersheim, 'Subsidiarity at Work: Modes of Multi-Level Governance in European Countries' – J. Caulfield, H. O. Larsen (eds.), *Local Government at the Millennium*. Leske + Budrich, Opladen, 2002.

Plans for the Administrative-Territorial Restructuring of Estonia from 1989 to 2005

MADIS KALDMÄE

The restored Republic of Estonia inherited its administrative division from the Soviet system, consisting of districts (raions), state-governed cities, cities, towns and village councils. These administrative entities and their boundaries had emerged as a result of largely arbitrary waves of centralised restructuring.

In 1988, a shift towards the re-establishment of local government was initiated as part of the development of the concept of a self-managing Estonia (*isemajandav Eesti*). At first, there were two main alternatives, with counties and municipalities as the contenders for the status of primary entities of local government. There was also a third option, of establishing approximately 40 new entities with completely redrawn borders.

It was an administrative organisation based on cities and rural municipalities that eventually prevailed. In 1989, the Principles of Local Government Act and implementing acts for the transition period were adopted. In the following year, the then administrative units (raions) were renamed counties; the village councils and cities would be granted self-governing rights within three years depending on their readiness. Until then, county councils would perform local government functions by proxy, as it were.

During the transitional period, several existing municipalities were divided into two, forming Saku and Kiili, Juuru and Kaiu, Orissaare and Põide, as well as Kuressaare and Kaarma. The rural municipality of Torgu was separated from Salme at the initiative of the Independent Royalist Party faction in the *Riigikogu* (Estonian Parliament). No elections were held in the city of Paldiski, which remained under the city of Keila until the 1996 elections. There was one instance of redrawing municipal boundaries, as part of the rural municipality of Meremäe was incorporated into Vastseliina rural municipality.

Summer 1993 saw the hasty adoption of the Local Government Organisation Act so as to establish a new administrative organisation by the time of the local elections that autumn. The whole legislative package was passed between 1993 and 1995. The new system of local government consisted of 46 cities and 209 rural municipalities.

At a critical moment before the 1993 local elections, it became clear that, under the new legislation, the existing towns (*alevid*) were outside the law. The town councils were given three weeks to decide whether to apply for city or municipal status. Only towns with a population greater than that of the smallest city at the time could apply for city status. The smallest town to apply for city status was Lihula. The largest town that decided not to apply for city status was Vändra, arguing that it would merge with the rural municipality of Vändra at the earliest opportunity (the merger took place only in 2017) and that city status might interfere with that process. The legislation allowed for rural municipal districts

to be formed within rural municipalities. Within a few years, the district of Vinni in Lääne-Virumaa used this option.

Although it was acknowledged that many administrative divisions were far from optimal in terms of size and completeness, the primary goal was to assign local government functions and revenue bases. According to the general logic of the reform and the views held by several parties at the time, the functional establishment of local government was to be followed by the reorganisation of the administrative-territorial division, given the small size, unreasonable shape and lack of internal cohesion of many of the rural municipalities. However, it was not yet the right time for this, as the municipalities first had to adapt to the new administrative organisation and primarily address more existential problems (a fuel crisis, ownership reform and so on). There was also a lack of willingness at the state level and no proper legislation. The need to make greater or smaller adjustments after the initial implementation of the local government reform was already obvious at that time.

One of the discussion points throughout that period was what to call the new administrative divisions. Unfortunately, no agreement was achieved on using a single term, as in neighbouring countries (e.g. 'municipality', 'kunta' or 'kommun'), and so both cities and rural municipalities were included in the Constitution.

The Territory of Estonia Administrative Division Act was adopted in 1995 and amended in 1996. The Act established the rules for the merging and division of municipalities as well as the alteration of municipal boundaries at the initiative of local or central government. In addition to administrative divisions, the different types of settlement units were also defined. In view of expected municipal mergers, the distinction between rural municipality and city as established in the Constitution emerged as problematic. The definition of a city was ambiguous between an administrative division and a settlement unit. In order to make terminological room for the merging of a city as a settlement unit with a

rural municipality, the cumbersome concept of a *city without municipal status* (*vallasisene linn*) had to be introduced.

The first merger under the new act was carried out already in 1996, as the rural municipalities of Halinga and Pärnu-Jaagupi merged. The Act also allowed for mergers between elections. In 1998, this option was used by the rural municipalities of Abja and Abja-Paluoja.

In 1997, as ministers Jaak Leimann, Mart Opmann and Raivo Vare called attention in the press to the need for a more thorough overhaul of Estonia's state governance, more active discussions also began concerning the possible alteration or reform of the local government system, including the administrative-territorial organisation. Analyses were drawn up at both the national and the county level; for example, in Võrumaa and Viljandimaa. Several master's theses were written on the subject. The views of both experts and political actors on the possible solutions and methods for achieving them clearly became more and more polarised.

It was then that the different positions on municipal restructuring originated and essentially remained relevant for years to come.

The main positions of the different groups were as follows:

- 1) the Estonian administrative divisions need to be restructured through a reform – either radical or moderate – organised by the central government;
- 2) rather than adopt more complex solutions, the system of local government must be rearranged into 15 counties and five independent cities;
- 3) the small size of rural municipalities is not a problem and mergers must take place only on a voluntary basis; tighter cooperation and stronger county-level associations of local authorities can replace mergers;
- 4) a second tier of local government must be introduced in Estonia, in which case rural municipalities and cities would not need to be reorganised.

In reality, these different views, of course, were combined with one another but still caused enough controversy to hinder actual progress for a long time.

'The Administrative-Territorial Organisation of Estonia', a study commissioned by the Minister of Regional Affairs Peep Aru, was completed in early 1998. In that study, existing municipalities were assessed considering their size, completeness, coverage by the functional areas of the centres of neighbouring municipalities, as well as their historical and economic specificities. Possible and suitable solutions for territorial restructuring were prepared for all administrative divisions and a two-page description of restructuring plans was drawn up for each. These were based on a detailed analysis of maps and statistics as well as interviews with heads of local governments. In addition, a survey was conducted to identify the factors favouring or preventing administrative-territorial changes. The elementary unit for the purposes of the analysis was a locality (*kant*), defined as the smallest cohesive socio-territorial community (locality as the elementary unit of settlement was also used during the preparation of 2006 county spatial plans). Some of the specific visions of administrative restructuring proposed were more radical than others. The two most extreme versions proposed approximately 55 municipalities, which more or less corresponded to the districts of the 1950s, and 90 municipalities. As these options had not been thoroughly worked through and were too radical at the time, they were, however, left out of the final version of the study.

Taking into account both objective information and the views of local government leaders, the solution reached was 120 to 150 municipalities. This range broadly corresponded to the number of parishes and would not have resulted in a significant increase in distances to the centres. The map illustrating the study still featured 154 municipalities, as reaching an acceptable solution would have required additional analysis in some areas. The proposed changes included both the merging of entire rural municipalities and the division of rural municipalities between neighbouring municipalities.

The study proposed the following tactical views on rationalising the administrative-territorial organisation:

- 1) in regard to the administrative-territorial organisation of local government entities, the scope of the administrative reform concept should extend to the year 2002;
- 2) in view of the possibility of implementing a uniform and central administrative-territorial reform, such a reform should be carried out after 2002;
- 3) national measures should be taken to support and encourage as many municipalities as possible in implementing changes by the 1999 elections, provided that the municipalities are ready for the changes;
- 4) in addition to rewards, these national measures should include support instruments (targeted investments directly linked to the integration process, and state involvement in the implementation of specific changes as a consultant and arbitrator);
- 5) in certain cases, the state should initiate administrative-territorial changes already in 1999, in particular in specific problem areas where the small size or heterogeneous nature of a rural municipality directly impedes the fulfilment of local government functions, where management problems exist, and where a voluntary process at the local level is inconceivable in both the short and the long term.

The study also highlighted the fact that administrative-territorial changes would require significant intervention by the central government and government authorities, which should include the following:

- material incentives using earmarked means;
- investments to improve and create connections in transport and communications;
- drawing up a comprehensive rehabilitation programme for certain regions;
- the establishment of additional social benefits for local government officials and the partial funding of these from the state budget;

- the allocation of funds for research and development both before and after territorial reorganisation;
- state-commissioned development projects;
- the participation of government authorities in a consulting and arbitrating capacity and as a motivator for both residents and officials;
- the initiation of certain discussions by the government authorities if the voluntary change process has stalled for some reason;
- the initiation or deciding of restructuring by the central government, where the parties concerned have failed to reach agreement, including government-initiated processes at the request of one of the parties;
- amendments to legislative acts, regulations or administrative provisions that obstruct municipal restructuring or qualify it as 'discriminating' against the parties concerned;
- facilitating cooperation and integration that are prerequisites of or even serve as a replacement for restructuring;
- intervening in the restructuring process where a voluntary municipal merger unduly infringes on the interests or development prospects of certain localities or where the parties intend to resolve territorial problems only partially.

In the spring of 1998, discussions of the practicality and feasibility of possible administrative-territorial changes began in the counties. The results of the above study were also presented during these discussions. Although a cautious and sceptical attitude prevailed in many of the discussions as was to be expected, this was not always the case. One realisation, which has subsequently been confirmed, was that voluntary merging is a complex process that requires good administrative capacity which only the larger local authorities have.

In many cases, interviews with rural municipal mayors showed that they personally considered merging very natural and necessary, but because of widely held attitudes, felt unable to initiate voluntary

merging processes themselves and would rather support an initiative by the government.

In spring 1999, shortly before the parliamentary elections, the government approved a document titled 'Principles for the development of public administration', which describes the administrative-territorial organisation of cities and rural municipalities as follows:

1. Owing to the logic of the settlement system, in particular the placement of local commuting centres and the interests of municipalities with regard to socio-economic integrity, the number of municipalities will be substantially reduced, which will improve their capacity to perform socio-economic functions and provide public services.
2. The administrative-territorial reorganisation of local government will take place in two successive stages. The period of voluntary reorganisation will last until the regular local elections in 2002. The second stage of administrative-territorial reorganisation will be carried out at the initiative of the central government. In some municipalities, government-initiated administrative-territorial reorganisation may begin already before the second stage, if the small population size or heterogeneity of the municipalities is a direct obstacle to the performance of local government functions.
3. The central government will support voluntary administrative-territorial restructuring by actively participating in the local preparatory and organisational process (in particular through county governors) and by offering incentives, including partially covering the costs involved in restructuring. Necessary studies will be carried out before the reorganising of the administrative-territorial division.
4. The administrative-territorial reorganisation initiated by the government will require relevant studies to be carried out and the opinions of the municipalities to be heard, ensuring that local interests are taken into account.

In general terms, the preparations for the administrative-territorial reform were based on these principles from 2000.

In 1999, it was also decided that financial support from the Government of the Republic reserve fund would be granted to support voluntary merging (for various reasons, these funds were in fact not largely allocated until 2003). In 1998–1999, the position of a merger consultant was introduced in the Ministry of the Interior. For the 1999 elections, Otepää city and Pühajärve rural municipality, Antsla city and Antsla rural municipality, the rural municipalities of Vihula and Võsu, Lihula city and Lihula rural municipality, as well as the rural municipalities of Kuresaare and Kaarma were merged.

The government coalition of Pro Patria, Reform Party and Social Democrats formed in spring 1999 under Prime Minister Mart Laar decided on an extensive administrative reform, which was to include the regional and local administration. Jüri Mõis, who acted as Minister of the Interior until October, had the officials start preparing, among other things, a reform that would transfer all local government to the county level.

Tarmo Loodus, who succeeded Mõis in the autumn, set out to prepare a complex reform of local government, part of which would be the administrative-territorial reorganisation of local government. This time, the process would be based on principles already approved by the previous government at the beginning of the year.

The launching of the reform preparations at the start of the new millennium proved unintentionally controversial. Under orders from the minister, a map of possible future administrative divisions was drafted within a 24-hour period in January 2000 based on previous expert opinions. An unknown source immediately leaked an image of this map to the press. In a live interview for 'Aktuaalne kaamera' – the news programme on national television – a ministerial deputy secretary-general blurted out a phrase that caused a public outcry: 'When draining a pond, you do not ask the frogs.'

Then systematic efforts began. By March 2000, a concept document, 'Administrative reform in local government', was prepared in cooperation with partners and experts. This covered the organisational, budgetary and administrative-territorial arrangement of local government.

The concept document defined the basic principles of the planned administrative-territorial reform as follows:

- the reform will be implemented in tandem with changes in the budgetary and organisational arrangement of local government;
- the reform will be based on existing municipalities, the territories of which will be merged or restructured;
- the reform will be based on common principles and agreed criteria;
- the reform will be implemented in two stages from 2000 to 2005;
- the reform will be implemented flexibly (taking into account the particularities of the specific regions) in cooperation between the central government and local authorities (combining the existing local experience with expert assistance organised by the central government);
- the administrative-territorial changes will enter into force with the regular elections in 2002 and 2005;
- as a result of the reform, there will be 110 to 150 municipalities in Estonia.

In the concept document, preliminary criteria for the size and integrity of municipalities, as well as the reasons that, in conjunction with each other, might justify exemption from these criteria were specified for the purpose of designing the new municipalities. The conformity of the proposed municipalities with these criteria would be assessed by a working group composed of experts on administrative reform. In revised form, the criteria set out in the concept document served as a basis for a Government of the Republic order of 4 July.

According to the concept document, the reform would be implemented in two stages:

- in the course of stage I (2000–2002), an administrative-territorial organisation scheme was to be developed and approved, and administrative-territorial changes were to be implemented in municipalities that were ready for such changes, where the administrative capacity of the local authorities had been low for a long time or where the demographic situation was extreme;
- stage II (2003–2005) would involve the larger and more complicated part of the changes, which were to be initiated, prepared and implemented largely on the initiative of the state.

The government coalition introduced two fundamental changes to the concept drawn up by the Ministry of the Interior, which made the proposed reform far more radical. **The minimum population size of a municipality was raised from 2,500 in the original concept document to 3,500. It was decided that the entire reform would be completed by autumn 2002 instead of the originally planned two stages.**

On 4 July 2000, the government approved a guidance document for the drafting of proposals for altering the administrative-territorial organisation of local government:

- 1) the generally required minimum population size of a municipality would be 3,500;
- 2) in peri-urban areas where most of the population is concentrated in satellite settlements, the generally required minimum population size would be 4,500;
- 3) an urban settlement of up to 10,000 residents would be merged into a single municipality with its immediate hinterland;
- 4) a municipality should be formed on the basis of a maximally integrated region with one or several tightly interconnected centres;
- 5) municipalities (irrespective of its population size) with parts that have closer ties with neighbouring municipalities than with each other should be amalgamated, either as a whole or in parts, with the appropriate neighbouring municipalities;

- 6) municipalities with more than 3,500 residents and one or more centres with their immediate hinterland overlapping with smaller neighbouring municipalities should be merged into a new municipality incorporating the entire functional area.

Deviations from the above criteria could be justified in cases where a combination of several of the following factors occurred:

- 1) the existing or proposed municipality constituted an integrated whole with its internal ties closer than those with neighbouring centres;
- 2) the existing or proposed municipality constituted a whole within historical boundaries (e.g. parish boundaries);
- 3) most public services are provided within the municipality or outside it but not in a neighbouring municipality;
- 4) over 50 per cent of the population of the municipality live more than 15 kilometres away (for municipalities with 2,000–3,500 residents) or 20 kilometres away from the centres of neighbouring municipalities (for municipalities with fewer than 2,000 residents);
- 5) the municipality has a large territory and low population density;
- 6) although the different areas of the municipality are connected with various centres outside the municipality, their close internal ties make it difficult to divide the municipality between neighbouring municipalities.

The concept document submitted in the spring had envisaged that the reform would be backed up by legislation – an administrative-territorial reform act. However, as the reform period was subsequently reduced to a single election cycle and there were disagreements within the government coalition, a political decision was made to give up this plan. The reform would be based on the government's authority to initiate administrative-territorial changes under the Territory of Estonia Administrative Division Act and appropriate amendments to the Act would be made.

This left the whole reform process vulnerable to possible disagreements and policy changes within the government coalition.

Adhering to the work plan, the Ministry of the Interior began to prepare a strategy document, 'Administrative reform in local government', which was finalised in January 2001. A draft version of the strategy document included proposals for further necessary action and a timetable until the autumn of 2002. The document was never approved by the government.

In August 2000, work began in the counties to prepare the possible solutions for administrative-territorial changes. Committees were set up under the county governments, discussions were held with local government representatives, expert analyses were commissioned, and municipal councils were asked for opinions and submitted proposals on the initial solutions. Where the proposals involved potential changes to county boundaries, opinions were also requested from the relevant county government. The Ministry of the Interior had an advisory role in all this.

In autumn 2000, an expert work group was set up under the Ministry of the Interior to review the results received from the counties and, with the representatives of county governments, to prepare the central government's proposal for the alteration of the administrative-territorial organisation.

The county governments' proposals regarding administrative-territorial changes, accompanied by supporting materials and the opinions of local authorities, were submitted to the Ministry of the Interior by 1 December. On 1 December, the proposals were ceremonially handed over at the Ministry. Each county governor gave a five-minute presentation on the subject.

Based on the proposals of the county governors, generalisations could be made and further steps planned. Depending on the county, either one solution for new administrative-territorial organisation or up to three alternatives were submitted in the form of maps. Most counties also provided a thorough description and explanation for each new local

government unit proposed. Generally speaking, the work submitted by the counties was quite varied and required harmonisation at the beginning of 2001.

The table below shows the possible numbers of municipalities based on the proposals received from county governments. The proposed alternatives varied considerably. The table represents an attempt to place them on a scale (the first column is the most radical and the last represents continuing with the existing number). Two approximations of the possible total number of municipalities – 73 and 131 – emerged from the proposals. The conclusion drawn was that the final number of municipalities in the counties would probably be between these two approximations.

The proposals for administrative-territorial changes had also been discussed in most municipalities – 90 per cent of them had made their decisions.

If we take the softer version of the reform, then over 50 per cent of the municipalities agreed with the changes, either completely or with some reservations, or proposed their own alternatives. This figure does not include the municipalities that were large enough not to be affected by the changes or had good grounds for requesting exemption despite their size. About 20 per cent were against any changes. Some of them were what might be called initial opponents, arguing that they wanted to hear nothing about the alternatives before something had actually been done.

With the more radical alternatives, the share of opponents would have been much larger.

The options submitted by the county governments and the supporting materials allowed for a preliminary summary to be drawn up for each municipality. On the basis of this, it was possible to estimate how much further analysis was required and to separate those areas where the possible solutions require no specific analysis from those where an expert opinion or analysis was still necessary.

A generalisation based on the proposals from county governors on possible future municipalities

Harjumaa country	26		4			19			
Hiiumaa country	5	1							5
Ida-Virumaa country	23				11				
Jõgevamaa country	13			3		5	7		
Järvamaa country	16			4	5	6			
Läänemaa country	12			4		7	8		
Lääne-Virumaa country	18			6	9	11			
Põlvamaa country	15			4					
Pärnumaa country	23	2		8		11		19	
Raplamaa country	14				5	8	9		
Saaremaa country	16	1	2	3		6-8			
Tartumaa country	22	2		7		13			
Valgamaa country	13				5	6	8		
Viljandimaa country	18			4		9			
Võrumaa country	13			4		6	7		
Total	247			73		131			

Table 1. The proposals on possible alternatives for administrative-territorial changes submitted by the county governors to the Ministry of the Interior at the end of 2000.

In the more problematic areas, centrally organised public opinion polls were to be held after the government had presented its proposals. A poll would be carried out in an entire rural municipality or various parts of it if there were several options available for amalgamating the municipality, or parts of it, with another municipality. A public opinion poll was not required for a municipality to resolve the dilemma of whether it would join another municipality or continue in its present form.

The situation became a little uncomfortable in October 2000 as Minister of Regional Affairs Toivo Asmer appeared in the press with an appeal to build the Estonian municipal system around 15 counties and 5 independent cities, essentially copying the Soviet-era system. Although it caused some short-lived media attention, the appeal was soon forgotten. At the time, the Minister of Regional Affairs was a minister without portfolio and only had two advisers; the departments for regional affairs and local government policy were under the Minister of the Interior.

In a government session on 30 January 2001, the Ministry of the Interior was assigned to prepare a draft order for the initiation of administrative-territorial alterations. The draft was to be drawn up for the government session on 5 May. In February and March 2001, separate working meetings were held with the representatives of all counties; in cooperation between the ministry, county governments and experts, the most suitable and acceptable solutions for all counties were worked out and the areas that required further analysis were identified. Intense discussions were held during which solutions were proposed. In April, the expert working group submitted a proposal for a new administrative division considering all the circumstances. The map of the main version of this proposal showed 110 municipalities.

However, due to political considerations, the number of municipalities proposed in the draft order to be submitted to the Government of the Republic was not allowed to exceed 100. Perhaps it was the Prime Minister's reasoning that a more radical draft order would give him additional room for negotiation with his coalition partners and then allow him to make concessions later.

Already in April, the coalition partners criticised Prime Minister Mart Laar for rushing the reform. The Prime Minister reminded them that they themselves had insisted a year before that the period of implementation of the reform be reduced to one election cycle (as opposed to implementing it in two stages by 2005 as per the original concept document).



Prime Minister Mart Laar (left) and Minister of the Interior Tarmo Loodus in Tartu in spring of 2001 discussing the administrative-territorial reform with the municipal leaders of Tartumaa county. At the time, the ministers still had reason to be hopeful about the reform going through. Source: Ove Maidla / *Postimees*.

The draft order discussed in the cabinet meeting on 29 May 2001 envisaged 98 municipalities. The Minister of the Interior was asked to further specify the explanatory memorandum to the draft order 'Initiation of the alteration of the administrative-territorial organisation' based on the comments made at the meeting and the provisions of Article 8(1) of the Territory of Estonia Administrative Division Act.

The draft order was submitted to the parliamentary groups of the *Riigikogu* for their opinion. The Social Democrats responded diplomatically, expressing their support in principle for the proposed reform, but considering some adjustments to the draft order necessary. The letter read as follows:

The Social Democratic parliamentary group wishes to reiterate that, rather than the number of municipalities, which ought to be decided in a

continuing dialogue with the local authorities and county governors, the priority is that the new administrative-territorial organisation be based on clear principles, ensuring a balance between community-based autonomy and efficiency derived from economies of scale. The purposeful observance of the principles of the 'Guidance document for proposals to alter the administrative-territorial organisation of local government', as approved by a decision of the Government of the Republic session on 4 July 2000, gives hope that the administrative-territorial reform will be completed by the 2002 local elections.

This implied that the parliamentary group would, in principle, support the earlier proposal of the expert working group.

In the course of the additional preparation of the draft order, comments from ministries and partners were taken into account, the explanatory memorandum accompanying the draft order was supplemented, and most importantly, the proposed number of new municipalities was increased to 108. Among other things, the more radical solutions that were in conflict with the principles of the guidance document of 4 July 2000 were taken out of the draft order.

The draft order was discussed in a government session on 19 June 2001. The following decisions were made regarding the initiation of the administrative-territorial reorganisation:

- 1) to agree with the draft order for the initiation of the alteration of the administrative-territorial organisation prepared by the Ministry of the Interior; to issue an additional Government of the Republic order drafted by the Ministry of the Interior based on the Territory of Estonia Administrative Division Act after the draft has passed a technical review;
- 2) to emphasise that what will be initiated is the alteration of the administrative-territorial organisation with respect to rural municipalities and cities, and that the changes will be implemented on a voluntary basis;

- 3) to note the objections submitted by Minister of Finance Siim Kallas and Ministry of the Environment Heiki Kranich against the issue of the order for the alteration of the administrative-territorial organisation claiming that the justification presented is not sufficient for the initiation of the alteration from a socio-economic aspect and that it has not been clearly established that the steps following the initiation will be voluntary.

Despite the dissent of two Reform Party ministers in the government session, the order was approved (at that time, the government still made decisions without consensus). The final setback came a few days later, just before Victory Day on 23 June.

Through its parliamentary group, the Reform Party expressed its fundamental opposition to continuing with the reform as proposed. This was completely unexpected to minister Tarmo Loodus and the others involved, as the Reform Party had expressed no views whatsoever on the draft order before the government session. The political situation at the time certainly played a significant role here: all three coalition parties had fundamental disagreements and the presidential elections, where all parties would have their own candidates, were right around the corner. The collapse of the government was thought to be just a matter of time.

On 25 June 2001, Prime Minister Mart Laar signed Government of the Republic Order No 437-k 'Initiation of the alteration of the administrative-territorial order in respect of cities and rural municipalities' (Haldusterritoriaalse korralduse muutmise algatamine valdade ja linnade osas). But this no longer made any difference. Proposals were still sent out to all municipal councils for them to submit opinions, but no one took these seriously. The preparations for the administrative-territorial reform had ground to a halt.

What should have happened next? By autumn, the municipal councils were supposed to submit their opinions on the government

proposals. At the same time, national public opinion polls were to be held in the disputed areas (in 17 entire rural municipalities and in parts of another 47 rural municipalities). This was to be followed by the preparation of the final solutions and advising the local authorities in preparing the alteration. The new administrative-territorial organisation was to be approved in the second quarter of 2002.

What could have happened next if the coalition parties had been able to agree on a more flexible way of continuing the reform process, perhaps even switching over to the two-stage option in the autumn?

Given the preliminary work already done and the opinions expressed by the municipal councils at the time, a dialogue between the state and the councils could have brought the number of municipalities down to around 130 following the 2002 elections (according to the personal assessments of Tarmo Loodus and the author), if the government had put moderate pressure on and offered comprehensive support to the local authorities.

By the end of 2001, the tripartite coalition government stepped down and with the forming of a new coalition a new government took office in early 2002. Anything related to administrative reform was off the agenda. Words like 'administrative reform' and 'map drawing' were taking on a pejorative meaning.

Several local authorities that were almost ready for a merger abandoned this idea, realising that they could expect no support (or pressure) from the government. Although merger grants were still formally available from the government reserve fund, local authorities remained sceptical, as even the grants for the 1999 mergers had not yet been paid out in full. It would not have been unfair to say that municipalities were merging not thanks to but despite the government.

Leading up to the 2002 local elections, voluntary mergers took place between Märjamaa rural municipality, the town of Märjamaa and Loodna rural municipality, the city of Rapla and the rural municipality of Rapla, the town of Kohila and the rural municipality of Kohila, Rääpina

city and Rāpina rural municipality, as well as Anija rural municipality and the city of Kehra.

Nor were administrative-territorial problems prioritised by the government that took office after the elections in spring of 2003. Nonetheless, outstanding grants were paid out in full to merged municipalities at the initiative of Minister of Regional Affairs Jaan Õunapuu. Mainly focusing on local government financing and strengthening the county level, the Minister of Regional Affairs – now the second minister in the Ministry of the Interior, with a separate administrative area – also considered it important to facilitate voluntary municipal mergers.

In 2004, the Promotion of Local Government Merger Act was adopted, establishing a legal basis for municipal merger grants and introducing additional financial benefits for the leaders of merging municipalities. An expert working group was set up to determine recommended merger areas for voluntary municipal mergers.

In 2004, the government issued a regulation listing municipalities by merger areas. The regulation was only indicative, being based on expert opinions and not submitted for public discussion locally. The government regulation outlined 65 merger areas. Including the municipalities that were not covered by the regulation, this would have resulted in 101 municipalities. The proposed solutions broadly coincided with earlier expert opinions and plans. The difference was that the regulation did not touch on the possible dividing up of the more problematic municipalities.

In autumn 2005 (as municipal councils were now elected for a four-year term instead of the earlier three years), the following municipalities went through with voluntary mergers: Saarde rural municipality, Kilingi-Nõmme city and Tali rural municipality; Suure-Jaani city, Suure-Jaani rural municipality, Olustvere rural municipality and Vastemõisa rural municipality; Kuusalu rural municipality and Loksa city; Tapa city, Saksi rural municipality and Lehtse rural municipality; Tamsalu city and Tamsalu rural municipality; the rural municipalities of Väike-Maarja and

Simuna; Türi city, Türi rural municipality, Oisu rural municipality and Kabala rural municipality; and Jõhvi city and Jõhvi rural municipality.

While the public's impression of the period discussed in this article may have been that the officials only engaged in changing municipal borders – redrawing the geographical map, as it were – the actual work was much more wide-ranging. During the preparation of the proposals for administrative reform, extensive material was analysed, revealing the importance of achieving integration between the centres and their hinterland in the new municipalities based on both historical and newly developed socio-economic spatial relationships in the municipalities. The issue of amalgamating or dividing territories was raised repeatedly during the later stages of the administrative reform and the earlier knowledge would certainly have helped when agreeing on the boundaries of the merging municipalities. Everything new tends to be the well-forgotten old.

The administrative divisions of Estonian as of 1 January 2006

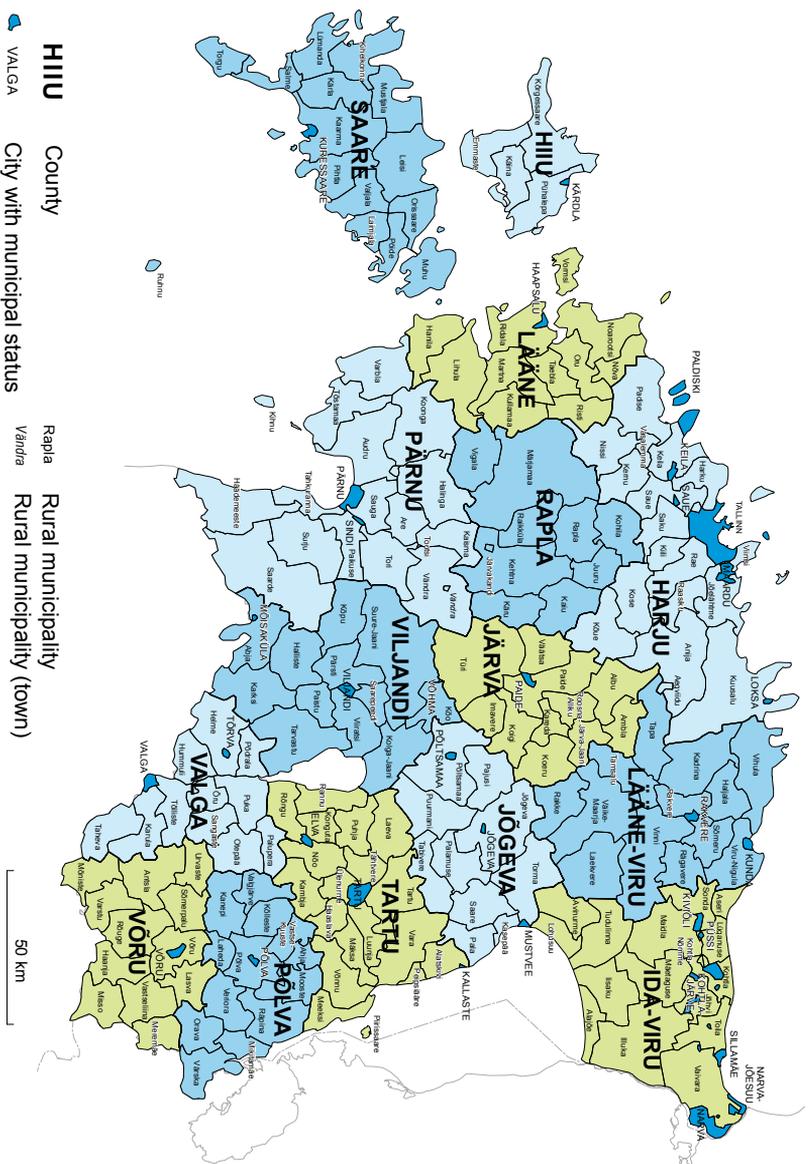


Figure. This is what the Estonian administrative map looked like as of 1 January 2006. There had been a few municipal mergers, but the completion of the administrative reform was still more than a decade away.

To What Extent Did the Administrative Reform Take into Account Long-Term Changes in Settlement Structure and the Global Competitiveness of Localities?

GARRI RAAGMAA

Introduction

This article aims to assess the impact of the 2017 administrative-territorial reform on the long-term sustainability of settlements and, in particular, county seats, which function as regional centres for employment and services. Everyday services are organised and new residential areas are planned by local authorities. The construction of expensive

infrastructure that can still be used in the year 2050 or even 2100 is decided at the local level. Consequently, the administrative-territorial reform will affect population distribution.

In my view, the main problem with the administrative-territorial reform as implemented was that when pursuing the goals specified in the Administrative Reform Act,

of increasing the capacity of local authorities to provide high-quality public services using regional potential for development, increasing competitiveness and ensuring more uniform regional development,

it focused only on administrative efficiency and failed to take into account the broader context of development and the settlement system. In places, local leaders' clinging to the little power they had and the political parties' fear of losing power in some counties led to a geographical nightmare, compared to which the 39 districts formed under Stalinist rule in the 1950s seem fairly logical. Just imagine how much easier it would have been to establish local government at the county level and leave the local authorities to deal with their own local matters. Except for the regions around the capital, an average county-based municipality in Estonia would have been somewhat larger than the municipalities in the Netherlands or Sweden, and approximately the same size as in recently reformed Denmark and Lithuania.

The municipalities the size of Saaremaa, for example, could be entrusted with some state functions; they would be able to support entrepreneurs, negotiate with investors, and prepare and manage European Union projects. With tax revenue from a mere 5,000 residents, however, this is not feasible.

Several Estonian county cities that are engines for the development of their hinterland – being the local centres for services, work and networking – are still administratively cut off from their natural hinterland. Cities give the first impression of a region and convey its identity: if a city has a good reputation, the citizens are proud of it and the whole region, the real estate is more valuable and entrepreneurs

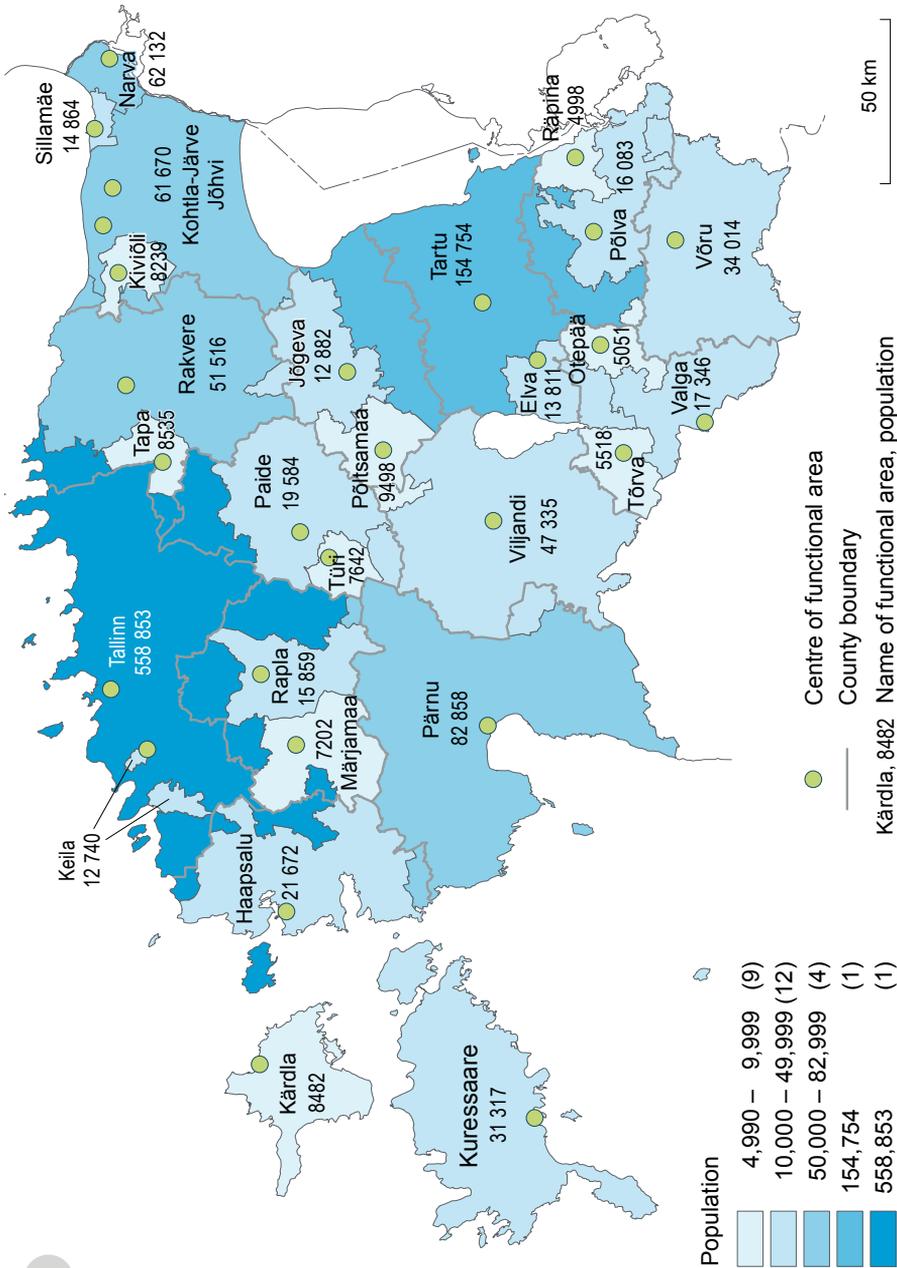
are interested in investing and creating new jobs there. The quality of life and services in the urban centre determines the attractiveness of the entire wider hinterland. This could, of course, benefit from a smart urban and regional policy, which is why this article will, in addition to critical remarks, also make suggestions as to how to move forward in this new administrative situation. This administrative-territorial reform is neither the first nor the last.

First, let us look at the situation from the long-term perspective. Most reforms tend to solve the problems of yesterday. However, what are the spatial patterns that will prevail in the future? All regions, except the urban regions of Tallinn and Tartu, have lost residents over the last 25 years. Will this trend continue? How should the administrative organisation respond to this?

Throughout history, administrative reforms have in fact always been primarily about power. Those in power cannot resist the temptation of profiting from the redistribution of power. The justifications of experts are almost always left in the background and tend to be used to support political objectives. The policy of divide and rule has been literally pursued in recent decades even by the Tories in the UK, let alone in Moldova and Macedonia where the boundaries and administrative divisions were readjusted several times in the interests of political benefit. Hence it is appropriate to look at the experience of other countries, how their administrative structures have developed and how they function.

Another matter of concern is that the state does not know what the state does. In fact, it has of course nothing to do with knowledge but political objectives, which are given priority. On 30 August 2012, the Government of the Republic adopted the national spatial plan *Estonia 2030+*¹ where the key role in the development of settlements has been assigned to county seats, which are the centres of functional urban areas.

¹ <https://eesti2030.wordpress.com/materjalid/planeering-eesti-2030/>



Joonis 1.

The administrative-territorial reform essentially ignored the role of functional urban areas and their centres. What is more, the officials who drafted the national spatial plan and who were led by the Minister of Public Administration placed in the Ministry of Finance to prepare the administrative-territorial reform also got rid of county governments, which had previously organised the common activities of counties as functional urban regions. Counties were preserved on the map but without a mechanism for administration or regional cooperation. How shall we move forward?

The waves of development for settlements and the impact of the administrative system

It can be assumed that an administrative-territorial reform that changes the size and capacity of administrative divisions has a fairly significant impact on the development of settlement and the regional balance in general. At the same time, this impact cannot be assessed separately from other ongoing processes.

In what follows we will look at the Estonian administrative and settlement system in the wider theoretical and empirical context. We will describe changes in the settlement hierarchy and present a selection of more significant factors affecting the change and resident migration decisions. We will also describe how the division of municipalities (with more than 5,000 residents) resulting from the administrative reform may affect settlement and the mobility of residents.

Relationship between the emergence of a hierarchy of urban regions and the administrative system

In the global context, cities in Estonia are small and located on the periphery of Europe. Only Tallinn belongs to cities of intermediate size and is marked as a MEGA² on maps of Europe. The population of

² Metropolitan European Growth Areas. See <http://ec.europa.eu/eurostat/web/metropolitan-regions>.

the functional urban region of Tallinn³ (Figure 1) has grown close to 600,000 and it forms a labour market area within which travelling takes more than an hour. Tartu in conjunction with its hinterland is four times smaller and is followed by regions of small cities located around former county centres that have 10,000–80,000 residents.

The emergence of a hierarchy of urban cores depends primarily on economic factors but also on the division of power between the local and regional levels (i.e. on subsidiarity), which allows localities and regions to manage their economy.

The decentralisation index prepared by BAK Basel Economics⁴ shows a clear correlation: in countries with a more decentralised administration there are smaller regional differences and greater average welfare (Figure 2).

Metropolisation in Estonia and elsewhere in the world, particularly in developing countries over the last few decades, has created the impression of an irreversible process. Some officials, politicians, economists and even the World Bank have found that the concentration of people in metropolises should be encouraged. It has also been argued in Estonia that Tallinn is too small.

According to the OECD⁵, megacities do not guarantee a global competitive advantage. Rather, it is important to have an urban economic environment that enables participation in the global economy, and institutional capacity. If some areas and residents are left out of the global economy, then these regions will become marginalised: they will not contribute to the creation of value added, they will gobble up money in order to achieve social equality, and require additional resources from

³ Defined as an area where more than 15 per cent of the residents commute on a daily basis to the central municipality. It is reasonable to plan the residential and industrial areas, services and transport of a functional urban region in a holistic manner.

⁴ U. Müller, T. Haisch, 'From Subsidiarity to Success: The Impact of Decentralisation on Economic Growth.' BAK Basel Economics. Assembly of European Regions, 2009; https://www.unibas.ch/fileadmin/wwz/redaktion/dekanat/Forschungsseminar_HS09/The_Impact_of_Decentralisation_Urs_Mueller.pdf.

⁵ *OECD Territorial Reviews: Competitive Cities in the Global Economy*. 2006.

The decentralisation index (a), and its link to GDP (b)

Source: BAK Basel Economics 2009

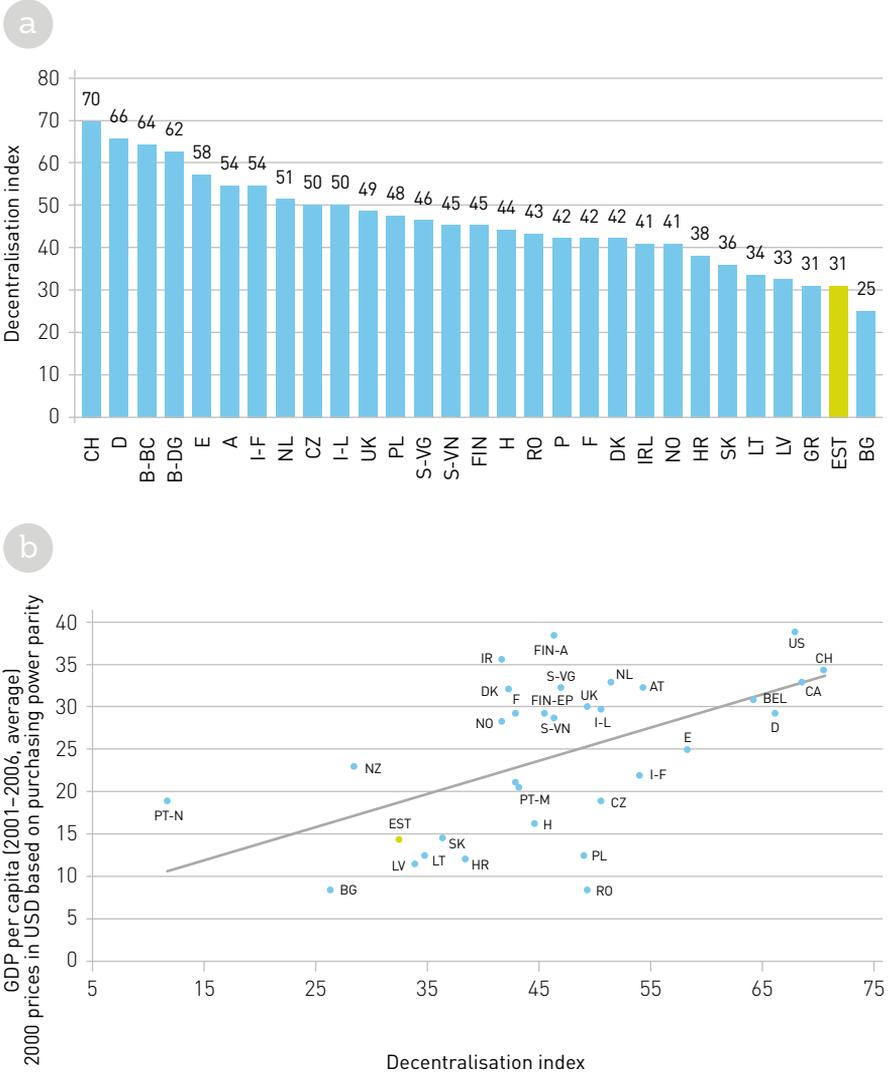


Figure 2.

the state or from citizens and companies in order to ensure safety and security. Metropolisation is not necessarily the only possible, let alone the most sustainable solution for distributing the population, at least not in the longer-term perspective and not everywhere in the world.

Besides achieving short-term economic growth, the concentration of population in metropolises also has a number of negative consequences, such as increased energy consumption and pollution, traffic-related investment and congestion costs, and various kinds of social problems, such as segregation, poverty, crime and unrest.

The growth of megacities and over-urbanisation are primarily phenomena of extremely centralised and failed states where the authorities do not wish or are unable to implement policies which would balance spatial developments. The excessive growth of metropolises largely takes place at the expense of other regions. Hopeless poverty in remote regions causes larger and larger migration flows and in some regions of some countries it has led to separatism or the tyranny of criminal groupings. In Estonia, too, there are some border areas with ethnic-cultural specificities.

In order to prevent and mitigate these problems, several developed countries in Europe have used more decentralised administrative organisation models, including cultural autonomy, and regional policies that contribute to a more even distribution of jobs throughout the country.

Waves of urbanisation

The post-war wave of urbanisation in Europe and the USA was followed by population dispersal in the 1980s. The growth of metropolises lasts until resources become depleted (e.g. water) and/or when the factors that support population dispersal (price growth, pollution, crime) become predominant. Therefore, at a certain phase of development,

metropolises start to sprawl and even shrink. A number of authors⁶ have addressed the return of population from large cities to smaller ones. The theory of differential urbanisation⁷ (Figure 3) describes the wave of urbanisation; that is, migration to the largest centres (I–III), the sprawl of large cities (IV–V) – internal migration turnaround – and finally, counter-urbanisation or migration (back) to small cities (VI–VII). Some western countries went through the last cycle in the 1980s, which was followed by a new wave of urbanisation in the 1990s triggered by globalisation.

In the 2000s, the population of some Western European countries started to move to small cities (Figure 4). This suggests a new polarisation reversal (migration turnaround). Will this trend also reach Estonia despite the latest massive outflows? Given that external migration in Estonia was positive in 2015–2017 for the first time in a long time and that there are a number of indicators pointing to the continuation of this trend, we cannot exclude the possibility of the regional dispersal of settlement in the future.

The life-cycle and age structure – the baby-boomers of the 1980s are likely to ruralise from the 2030s onwards

Today, people choose their residence depending on their life-cycle. Young people move to cities to study and make a career, families look for a compromise between a well-paid job and a safe living environment for their children, and at retirement age the decisive factors are the price and quality of the living environment. The Estonian baby-boom generation of the 1980s has urbanised over the past 15 years and moved abroad

⁶ A. Hirschman, *The Strategy of Economic Development*. New Haven. Yale University, 1958.
J. P. Gibbs, 'The Evolution of Population Concentration' – *Economic Geography* 39, 1963.
J. Friedmann, 'The spatial organization of power in the development of urban systems' – *Development and Change* 4, 3, 1973, pp. 12–50.
H. Geyer, 'Expanding the Theoretical Foundation of the Concept of Differential Urbanization' – *Tijdschrift voor Economische en Sociale Geografie* 87(1), 1996, pp. 44–59.
E. Korcelli-Olejniczak, P. Korcelli, 'On European metropolisation scenarios and the future course of metropolitan development in Poland' – *Geographia Polonica* 88, 1, 2015, pp. 107–121.

⁷ H. S. Geyer, T. Kontuly, 'A Theoretical Foundation for the Concept of Differential Urbanization' – *International Regional Science Review* 15, 1993, pp. 157–177.

The differential urbanisation model

Source: Geyer and Kontuly 1993

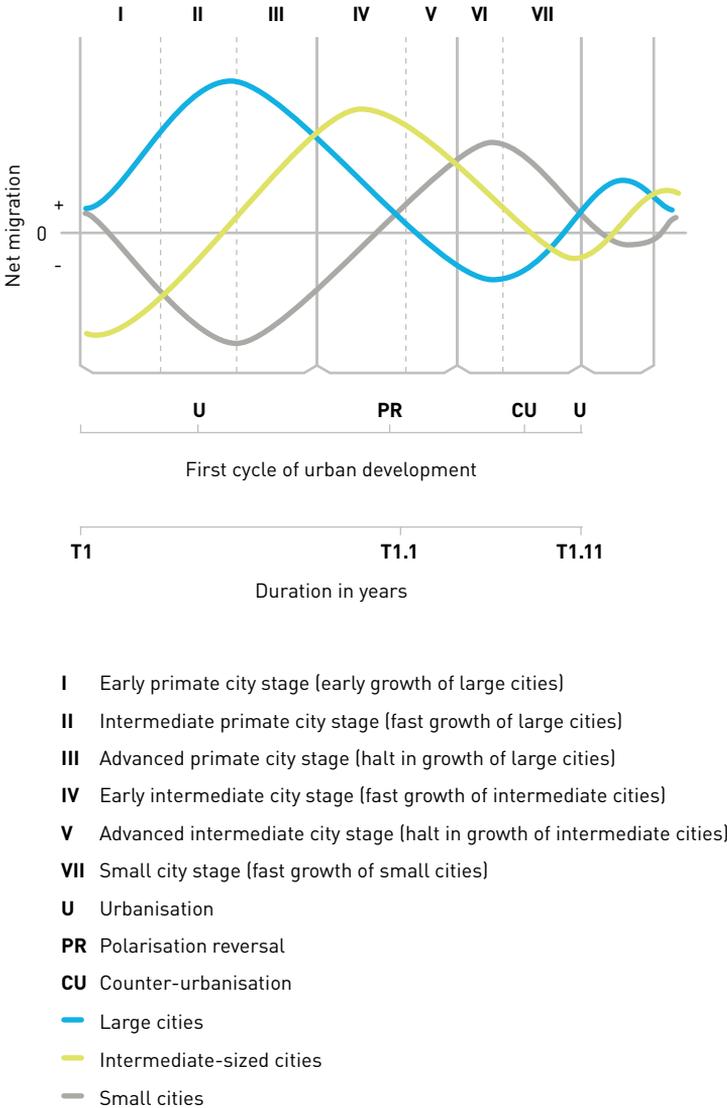
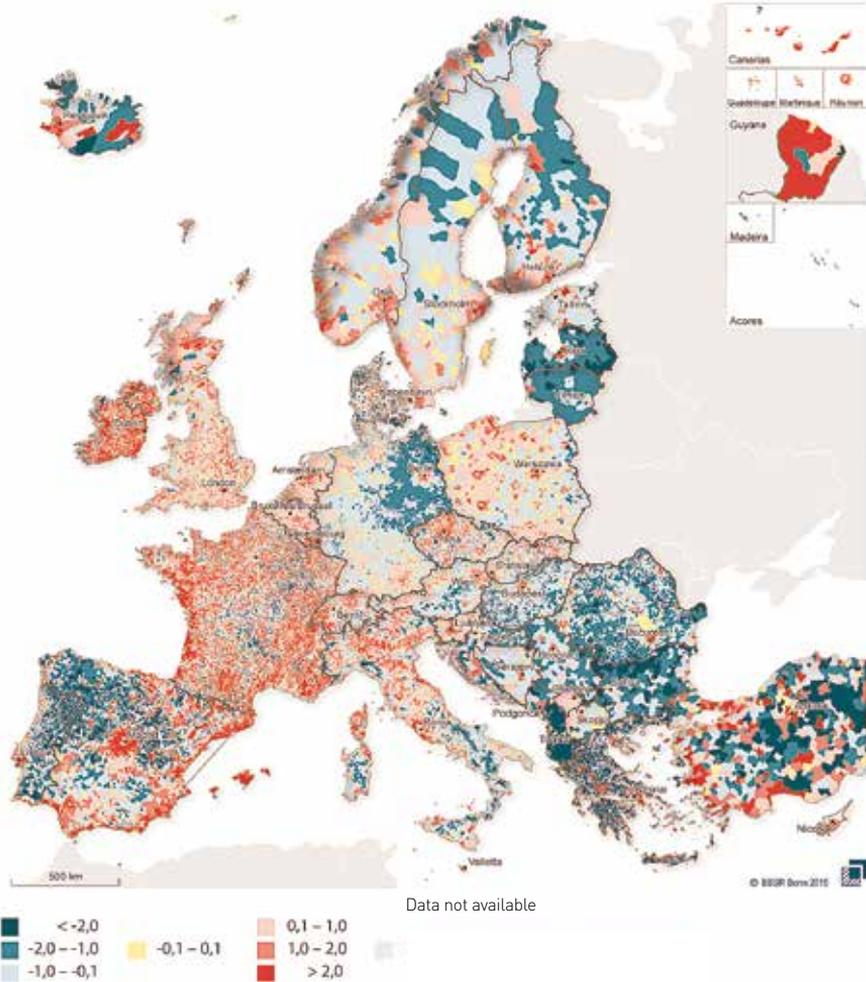


Figure 3.

Changes in the population of European local administrative units (LAU 2) 2001–2011

Source: BBSR⁸



Joonis 4.

⁸ Where the population in Europe is growing or shrinking. Bundesinstitut für Bau-, Stadt- und Raumforschung; <http://www.bbsr.bund.de/BBSR/EN/SpatialDevelopment/SpatialDevelopmentEurope/AnalysesSpatialDevelopment/Projects/PopulationDevelopment/population-development.html?nn=392744>

Net migration rate of young people aged 15–29 years (a), and older people aged 50–69 years (b) on the basis of municipalities, 2000–2011

Source: Statistics Estonia¹¹

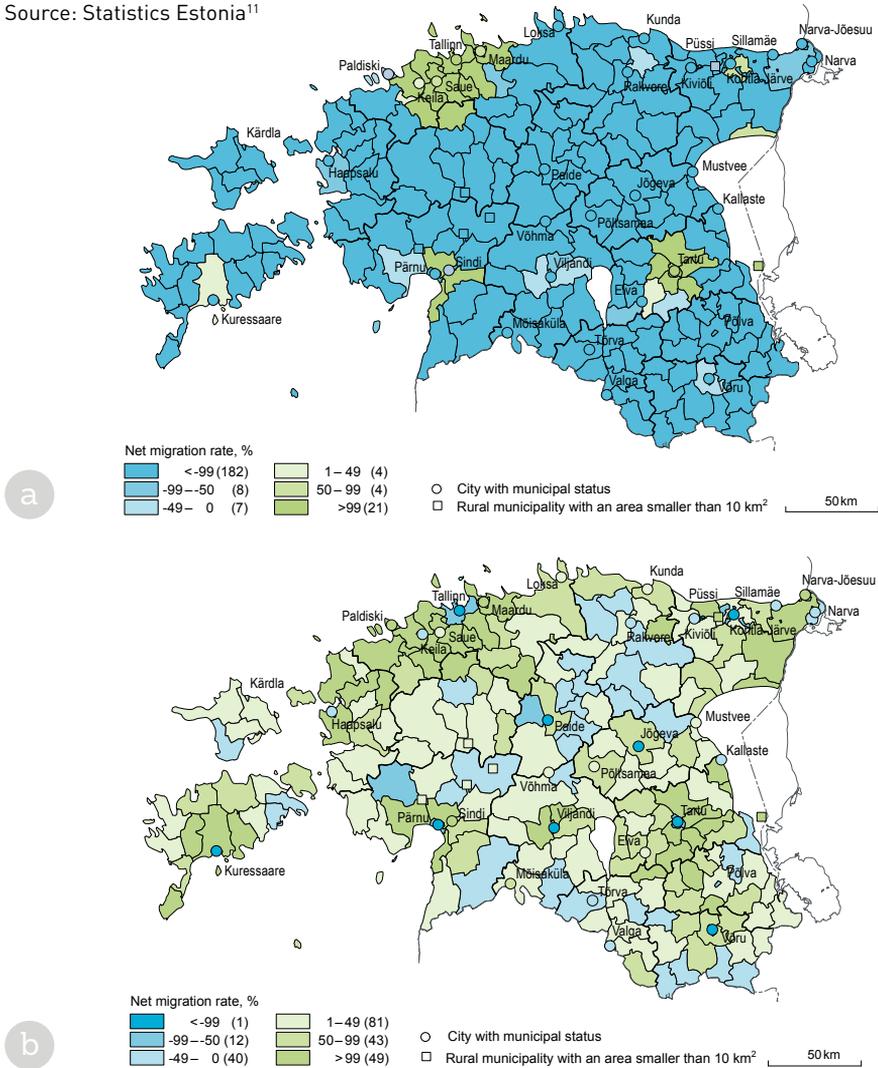


Figure 5.

¹¹ Eesti piirkondlik areng. 2015. Regional Development in Estonia. Eesti Statistika: Tallinn, 2015; https://www.stat.ee/valjaanne-2015_eesti-piirkondlik-areng-2015.

in search of work, especially during the economic crisis of 2009–2011. This generation will turn 50 in the 2030s and will probably place greater emphasis on their living environment, will gradually retire from active career and return home.

Up until now this has been the pattern of behaviour of Estonians (Figure 5) and Europeans in their late middle age. Therefore, small Estonian cities may grow on account of the people who are currently living in Tallinn and Tartu, and also in Finland and other foreign countries, as many of them will return home or inherit real estate from their parents or relatives. There is an increasing number of people from the core of Europe who have second homes in the Mediterranean countries as well as in southern Sweden and Norway.⁸

In the longer-term perspective, due to the shortage of water and rising summer temperatures resulting from climate change, people will prefer the wetter and cooler Baltic Sea region to Mediterranean countries. Rail Baltic and improving connections may stimulate these processes.

Cycles of technological development and possibility of green dispersed growth

Even technology changes settlement structure. Every 40–50 years, the global economy plunges into recession, and subsequently reaches out for new heights of growth with the support of new technologies. These technology-based development cycles have been called Kondratiev waves⁹: during crises the profitability of companies falls, some companies of the old economy disappear and new ones will have a chance to grow.

⁸ D. K. Müller, *German second home owners in the Swedish countryside: on the internationalization of the leisure space*. Umea, 1999.

Nordregio, 'Second homes in the Nordic countries' – *Journal of Nordregio* Vol. 7–2007.

⁹ J. A. Schumpeter, *Business cycles: a theoretical, historical, and statistical analysis of the capitalist process*. Mansfield Centre, Connecticut: Martino, 2006 [1939].

C. Perez, *Technological Revolutions and Financial Capital: The Dynamics of Bubbles and Golden Ages*. UK: Edward Elgar, 2002.

The financial crisis of 2008 signalled that the world which had become globalised in the second half of the 20th century through micro-electronics and aviation had become sick, and that the fifth Kondratiev wave had come to an end.

The field of eco-energetics will grow in all likelihood but this requires considerably more space. Wind generators can be erected in locations where there is wind and where they are acceptable to the inhabitants. Solar panels should be installed close to consumers but there is not much space for them in large cities. Due to transportation costs, the best location for a biofuel-based cogeneration plant would be close to the resources and industrial housing. A green economy also entails energy efficiency and better planning: the geography of a settlement which has been optimised through energy and time consumption differs significantly from that of current settlements. The urban environment of large cities that is dependent on energy, food and water, which all have to be brought in on a massive scale, should become even more expensive due to increasing environmental taxes. In particular, the environmental load of the residents of sprawling motorised large cities is significantly larger than that of the residents of small cities.¹⁰

And there is more to this. Robert Putnam¹¹ has described how, by 'bowling alone', Americans have lost their friends and family life because driving from their suburban houses to their offices in the city takes several hours away from their day. The results of the lack of a spatial policy and the stigmatisation of small cities as 'depressing' can be seen in their extreme form in over-urbanised developing countries.

¹⁰ A. Poom, *Spatial aspects of the environmental load of consumption and mobility*. University of Tartu Press, 2017.

¹¹ R. D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon & Schuster, 2000.

The return of geopolitics and the strategic value of low-density settlement

Due to the changed geopolitical situation, the governments of the European (eastern) border states obviously have to critically review the settlement trends in the remote regions of their countries. Major countries, such as Russia, China, Iran and Japan, have started to redistribute their spheres of influence. In one of his articles, Estonian statesman Raivo Vare¹² concluded: geopolitics is back. Furthermore, pre-Second World War rhetoric and methods are also being used again.¹³

How to survive when electricity disappears from cities, tankers do not bring any oil and supermarket doors remain closed? We still cannot grasp how much the situation has changed. (Interview with the Estonian politician Kaido Kama)¹⁴

Some do worry, however, which is confirmed by the presence of NATO battlegroups in Estonia. In recent interviews, several state officials have said that the most important reason for a more balanced development of settlement was the evacuation of the population. Estonia needs a plan for extreme situations where due attention has to be paid to low-density areas and small cities.

The key to maintaining low-density areas is the strong county city

As a result of the above-described waves of settlement and changing migration processes, it is expected that people will return home from abroad and large cities. Technological developments and eco-energetics

¹² R. Vare, 'Miks Venemaa Ukrainat kiusab' – *Postimees*, 28.08.2013; <https://arvamus.postimees.ee/1363542/raivo-vare-miks-venemaa-ukrainat-kiusab>

¹³ W. R. Mead, 'The Return of Geopolitics. The Revenge of the Revisionist Powers' – *Foreign Affairs*, May/June, 2014; <https://www.foreignaffairs.com/articles/china/2014-04-17/return-geopolitics>.

¹⁴ 'Intervjuu Kaido Kamaga' – *Eesti Ekspress*, 2.9.2015; <http://ekspress.delfi.ee/intervjuu/kaido-kama-ellujaamisopetus?id=72333675>.

will contribute more than before to the development of cities with 10,000–100,000 residents (in the global context all small cities), and it will be strategically extremely important again for Estonia to maintain viable low-density settlements. How can we guarantee this?

Did those planning the administrative-territorial reform assess how the processes described above would progress and whether the emerging administrative structure would be suitable in the future? Did they estimate the impact of the new administrative system on the development of settlement? Did they assess the strategic needs and risks? The explanatory memorandum to the draft act on the administrative reform states that,

the act will have a positive impact in all areas listed in Article 46(1)1)–5) of the Rules for Good Legislative Practice and Legislative Drafting: social (including demographic) impact; impact on national security and international relations, on the economy, on the living environment and natural environment, and on regional development.

Unfortunately, as in several other memoranda to draft acts, it is a hollow declaration. The main focus was on the voluntary phase and the minimum criterion of 5,000 residents, which was not a sufficient incentive for the formation of divisions based on urban regions. The small size of the grants for mergers resulting in municipalities with more than 11,000 residents and the vague definition of the merger grants for mergers involving several counties were perhaps meant to calm the experts who were against the continuation of micro-sized rural municipalities. Those planning the reform had no spatial vision, and did not look at the map or take into account the wider context.

Small cities, such as Lihula, Otepää and Tõrva, indeed gained residents and increased their tax base as a result of the administrative reform. One could think that this will have a positive impact on their development. As they will also receive some resources from the central government, their post-merger budgets may seem like they have made

big step forward although the merged local governments will have to cater to people living in a considerably larger area than before.

Unfortunately, there are only a few functional areas with 5,000 residents that can be defined as daily commuting areas (see Figure 1b). The reform in fact copied the model of 39 small districts from the 1950s, albeit by occasionally forming even more unnatural combinations. The examples here include the excessively stretched out Pärnu city, the competing centres of the counties of Põhja-Pärnumaa, Järva and Rõuge, and the circular rural municipalities around cities.

A great cause for concern is the development of the cities of Rakvere, Viljandi and Võru, which remained on their own, and the cities of Haapsalu, Paide and Pärnu that merged with some neighbours but whose actual hinterland is much larger than that of the new municipality. Although there is a demand for services from these cities, the willingness to contribute jointly is limited. There is a risk of duplication. In the 1950s, the leaders of small districts built pompous central buildings, and in the 1980s, collective farms and enterprises built sports halls and swimming pools – calling them among others vegetable warehouses and fire water-reservoirs – in small cities and towns but not in the above-mentioned cities which would have been their natural location. The role of county cities will be discussed in the last part of this article.

And now let us turn to the most important aspect – global competitiveness in the future. Someone has to bring together the region's entrepreneurs and other parties, (jointly) finance centres for business development, plan and construct infrastructure, plan transport and education in a larger territory than that of even the most merged municipalities. If a region is unable or unwilling to manage the emergence and entry of new companies, there will be no hope of attracting young educated people to the region.

There is no reason to develop infrastructure and services in a declining region: the cumulative decline will progress even more rapidly, and in the end the gap in the quality of life and services compared with

central regions will widen to such an extent that even holiday-makers will leave. As the fathers of families who either move to or remain in Finland or the county of Harjumaa cannot participate in the Estonian Defence League, there is no need to explain the impact of the situation on the security of the country. Until there is no viable solution to the development of regional enterprise, it is quite difficult to believe that in the new structure of local government and under the leadership of the current leaders the positive impact promised in the above-mentioned explanatory memorandum will indeed materialise.

It is extremely critical that the leaders of small cities, which look like villages in the global context, who have started to transform them into new capitals will be able to see the need for a support system for cross-border enterprise and innovation, and the advantages of jointly organised and financed services. The history of local administration in Estonia and the European experience¹⁵, however, has shown that more often than not they will just be satisfied with their local position and benefits. Next, let us look at administrative reform experiences in selected European countries.

The experience of administrative innovation in European countries and the reasons for the centralisation of administration in Estonia

The sample of comparable countries includes the closest neighbours Latvia, Lithuania and Finland, and some countries whose territory is comparable to that of Estonia. The latter include Denmark, the flagship planner in Europe, which successfully implemented an administrative reform in 2002–2007; the Netherlands, whose population density is ten times higher than in Estonia; and Slovenia, which has a similar population, settlement structure (Maribor is a significant secondary centre like

¹⁵ F. Barca, 'An agenda for a reformed cohesion policy. A place-based approach to meeting European Union challenges and expectations', 2009; http://ec.europa.eu/regional_policy/archive/policy/future/pdf/report_barca_v0306.pdf.

The share of local and regional expenditure in GDP and total public spending in selected countries (%), 2013

Source: OECD 2013

Country	Local and regional expenditure		% EU average	
	% GDP	% Budget	% GDP	% Budget
Denmark	36,4	63,8	229	195
The Netherlands	14,3	30,5	90	93
Finland	23,9	41,4	150	126
Slovenia	9,6	16,1	60	49
Lithuania	8,3	23,3	52	71
Latvia	10,2	27,5	64	84
Estonia	9,9	25,8	62	79
EU	15,9	32,8	100	100

Table 1.

Tartu in Estonia) and location (in the neighbourhood of the rich countries Austria and Italy), and who is considered to be a star pupil in Eastern Europe, just like Estonia. The comparison is based on the still unpublished data from the ESPON COMPASS¹⁶ project and comparable data from the OECD in 2013¹⁷ (Table 2). According to the latter, the share of Estonian local government expenditure in GDP and total public spending was 9.9 % and 25.8 %, respectively, which is considerably lower than the average in EU countries (15.9 % and 32.8 %, respectively) and the average in the OECD unitary countries (13 % and 29 %, respectively).

¹⁶ <https://www.espon.eu/planning-systems>

¹⁷ <http://www.oecd.org/regional/regional-policy/country-profiles.htm>

Despite the universality of spatial processes (like commuting), which should and indeed does lead to functional urban regions with similar geography and mobility patterns, territorial governance across countries is completely different. The formation of administrative structures is obviously determined by political interests rather than the functionality of the space.

Administrative reforms are usually initiated by central governments and tend to meet resistance. It is critical that the ones being reformed are interested in participating in the process. An example of a country where there was broad-based agreement regarding the planned administrative change is **Denmark**, where the state-county-local system introduced by the reform in the 1970s was replaced in 2007 with a model based on competitiveness: 275 municipalities were merged to form 98 municipalities, which are on average the largest divisions in continental Europe, and 14 counties were merged to form 5 regions of state administrations mainly responsible for health. The formation of the large municipalities was possible thanks to the activities of active communities and non-profit organisations whose joint ownership also include some energy companies and public utilities. County-level planning was abolished and focus was placed on economic growth and development strategies as well as obtaining access to EU funding.¹⁸ There were also some local authorities in Denmark which were against the changes, but as the majority wanted more power and money, they were mostly in favour of the reform. Today, Denmark is the most decentralised unitary country in the world (Table 1).

In **the Netherlands**, there have been no significant administrative innovations recently and the provinces continue to play an important role in the balancing of state and local interests. The constitution of 1815 established a decentralised two-level local government system

¹⁸ Niels Boje Groth, 'Targeted project – at the request of regional stakeholders', seminar presentation at 'New thinking of territorial governance with special focus on the Baltic States', Vilnius, 17 November 2017.

that is regulated by the law on provinces and local authorities. In the Netherlands, the chairman of the provincial assembly and the mayors are historically appointed by the central government. Since 2001, local and provincial authorities can participate in these appointments. Over the years, the number of municipalities has decreased through mergers from 913 (1970) to 390 (2016). There has been a discussion on merging the provinces since the 1960s but this has not happened. The activities of the eight urban districts established by the central government in 1995 were stopped in 2015, and the governing bodies of the metropolitan regions of Amsterdam and Rotterdam Den Haag were established. There is a network of 2,200 village and community councils in the Netherlands, whose activities are regulated by the law on local authorities and private law.

Finland is one of the most decentralised OECD countries. There are 313 municipalities in Finland. There are 19 regional councils that function as associations of local authorities. Only one of them – Åland Islands – is an autonomous province with an autonomous administration. In recent years, Finland has implemented several municipal reforms as a result of which the number of municipalities has decreased from 475 in 1976 to 313. One of the problems of voluntary mergers has been that the disparities between the development of the municipalities that merged with urban centres and the development of remote municipalities and those that did not merge has increased. The revenue base of the latter has become insufficient for providing health and social services to their ageing population.

The year 2015 saw the beginning of a county government reform, as a result of which healthcare, social services, rescue services, development and cultural work as well as spatial planning will be the responsibility of the counties. After the implementation of the reform, regional governance will be completely changed: more than a half of the current budgetary resources will be transferred to county councils, elected by direct popular vote. In Finland, 89 local, 21 regional and 9 state level

service centres of the central government are currently being reformed. The reform includes changes to social security, the tax board, employment, the enterprise register, rural development support, land-use planning, citizenship and migration, and the labour inspectorate. These state functions will be essentially duplicated by local governments and the future counties, and the reform aims to bring them all under county governments.¹⁹

Slovenia has 212 municipalities, of which 109 have fewer than 5,000 residents, which is the minimum size criterion under the Local Self-Government Act in force since 2005.²⁰ Prior to the 1994 reform, there were 62 municipalities and 3 specific socio-political communities in Slovenia. These included 1,203 local communities and 5,595 villages. After the 1995 reform, there were 147 municipalities and their number increased later on. In 2000, two NUTS 2 regions under the EU cohesion policy were formed in order to continue receiving cohesion grants from the EU. There are 12 NUTS 3 regions, the smallest of which is Zasavska with a territory of only 264 square kilometres and a population of 43,775. There are associations of municipalities and regional development agencies in these regions, whose activities are somewhat broader than those of the Estonian county development agencies. As in the case of county associations of local authorities in Estonia, it is not easy to reach agreements and joint activities tend to be based on the needs of single municipalities, there is a lack of qualified specialists and significant overlaps with similar local organisations. In 2008 and 2011 there were attempts to create a regional administrative level but these were unsuccessful.

In Lithuania, there are three territorial levels: 10 counties, 60 municipalities and more than 500 elderships. The only administrative

¹⁹ http://valtioneuvosto.fi/en/article/-/asset_publisher/10616/tutkimus-valta-ja-vastuu-jaetaan-uudelleen-maakuntauudistuksessa

²⁰ F. Žohar, 'Possibilities to reform the system of municipalities in Slovenia' – *Journal of Universal Excellence*, 3, 4, 2014, pp. 36–62; http://www.fos-unm.si/media/pdf/ruo_2014_33_zohar.pdf.

level that is elected is municipality. From 1995 to 2010 there were county governments that were also responsible for regional development. County-level administration was abolished from 1 July 2010, and the only remaining levels were local authorities and state authorities. Counties are currently statistical units without territorial governance. The elders of the elderships are appointed by the heads of local authorities. At the beginning of the 1990s, there were 44 districts, 12 nationally governed cities, 80 cities, 19 settlements of other kinds, and 426 village councils in Lithuania. The Seimas adopted a law on government in 1993 and a law on administrative reform in 1994, both of which entered into force in 2005. After the reform the Lithuanian municipalities were the largest in continental Europe at the time. The post-reform local authorities had a significant revenue base but later on the share of their expenditure in GDP decreased and they have a relatively limited role in investment activities.

Estonia's administrative reform copied the model of Latvia

The 1994 Law on Self-Government, the 1998 Law on Regional Development and laws on spatial planning divided Latvian administrative competence between the following divisions: the state level, 26 districts, 7 nationally governed cities and 536 municipalities. The laws facilitated the mergers of smaller municipalities. The state level, nationally governed cities and municipalities elected their representatives directly, while the districts were managed by representatives of local authorities. The limited institutional capacity of the local authorities of small municipalities meant that there was a need for regional agencies. The Latgale Region Development Agency was established in 1999. Thereafter, the other four historical regions established their own development agencies whose main role is to work on EU projects. Therefore, local governments are interested in participating in the work of the agencies.

Since the 2009 administrative reform, Latvia has had 5 planning regions and 119 municipalities, including 9 nationally governed cities.

As a result of the administrative-territorial reform²¹, 424 rural municipalities and 50 (small) cities were reorganised into 110 merged municipalities and 9 (large) nationally governed cities. The reform included the whole country and the merger criterion was set at 5,000 residents. However, exceptions were made in the political process and 20 units ended up with fewer than 5,000 residents. Offices with a reduced number of staff were kept in rural municipalities, which are usually led by the former mayors who then relay the concerns of local inhabitants. The reform had the following positive effects:

- 1) pooled budgets, increased efficiency of expenditure, better possibilities for local authorities to attract public and private sector investments;
- 2) pooled human resources have increased the capacity of local authorities;
- 3) larger electoral territories have increased local democracy;
- 4) the local authorities formed around regional development centres have an opportunity to enhance cooperation between the cities and the country areas.

However, the following problems still persist after the reform:

- 1) the administrative-territorial structure has remained fragmented;
- 2) cooperation between urban and rural regions is limited in municipalities without urban centres;
- 3) insufficient tax revenue and relatively large administrative costs in small municipalities;
- 4) the local authorities of smaller municipalities still have limited capacity to perform certain tasks, which makes further decentralisation of state functions impossible.

²¹ A. Draudinš, Seminar presentation 'Administrative territorial structure and reforms in Latvia' – *New thinking of territorial governance with special focus on the Baltic States*, Vilnius, 17 November 2017.

The Latvian government is trying to solve these issues by promoting cooperation between local authorities in 29 regions (the former districts with no administrative functions) which are, in essence, functional regions, in order to jointly:

- 1) use various resources;
- 2) prepare development programmes and plans;
- 3) carry out large-scale development projects, including the construction of infrastructure;
- 4) create the conditions for economic development and attracting investment;
- 5) establish the necessary institutions and organisations (hospitals, upper secondary schools, vocational educational institutions, registers, healthcare and social services, tourism development, development funds, IT-structures, police, civil defence, etc.);
- 6) organise cultural and sports events;
- 7) plan and organise public transport (school transport, taxis) and road maintenance.

A similar summary could be made of the results of the administrative-territorial reform in Estonia. One difference is, however, that the problems arising from the abolition of county-level administrations have not been fully realised yet. Neither Latvia nor Estonia can decentralise administration due to the heterogeneity of the municipalities and the fact that cooperation based on urban regions does not work.

Centralisation in Eastern Europe

Two completely different trends emerge across countries. On the one hand, more power is given to communities and lower-level administrative divisions in the west. Finland is even planning to create a regional level with directly elected local authorities. A number of countries have special measures in place to foster cooperation between local authorities on the basis of urban regions. In Eastern Europe, on the other hand,

after the chaotic transition period of the 1990s, public administration has been mostly centralised.²² This is also evident in Table 2, which shows that local and regional expenditures of Eastern European countries make up only a little more than a half the EU average. In these countries, the role of the regional administrative level between the local and state levels has decreased or has been abolished or this level has not even been created.

At the end of the 1990s and in the context of accession to the EU, the local forms of governance were increasingly influenced by Europeanisation; that is, harmonisation with the rules of *acquis communautaire*, which has sometimes also been called 'Europeanization'. According to Kungla²³ and Bachtler et al.²⁴, in its pursuit of increased capacity, the European Commission focused on the level of the state, as the administrative capacity at local and regional levels was poor. Therefore, the difference in the capacity of the state and regional/local authorities was increased even further and the important EU principles of partnership and subsidiarity were in fact not applied.

The EU cohesion and regional policies became separate sectoral policies at the state level and new agencies were established for their implementation. Significant funds have been invested through direct EU action for the establishment of new, in fact parallel spatial administrative structures, such as Euro-regions, LEADER and fisheries action groups. This has increased administrative fragmentation and decreased the potential to coordinate different policy areas. The re-centralisation of administration and subjecting it to sectoral legislation was therefore

²² B. Loewen, G. Raagmaa, 'Introduction to the Special Issue: Territoriality and Governance in the Globalizing European Eastern Peripheries' – *Administrative Culture* 2018 (2), pp. 89–101.

²³ T. Kungla, *Patterns of Multi-Level Governance in Europe: The Challenge of the EU's Enlargement*. Tallinn University of Technology, Faculty of Humanities, 2007.

²⁴ J. Bachtler, C. Mendez, H. Oraže, 'From Conditionality to Europeanization in Central and Eastern Europe: Administrative Performance and Capacity in Cohesion Policy' – *European Planning Studies* 22:4, 2014, pp. 735–757, DOI: 10.1080/09654313.2013.772744.

largely a result of pressure from the European Commission. As Estonia wished to use assistance from the Structural Funds to the maximum extent possible, EU rules were adhered to without lengthier discussion.

Another reason for the centralisation was the desire on the part of politicians and senior officials to have more power. After the 1990s, they started to reduce state structures, which in Estonia was called 'creeping administrative reform'. The implementation of the new system of public administration was to contribute to greater flexibility and faster procedures in the public sector. This was achieved to a certain degree.²⁵

The application of the principles of competitiveness in the public sector and intrinsically monopolistic state structures contributed to administrative centralisation and the formation of administrative silos.²⁶ At the end of the 1990s, the national authorities started to centralise the administrative functions of counties. They justified this in terms of the savings in administrative costs and the inability to perform the relevant functions at the local and regional levels:

They did not cope with organisational tasks. At first local authorities and then county governments. We had no choice but to gather the organisational tasks to a government agency. (Interview R10, 2017)

At the same time, no assessments have been made regarding the impact of the increased total social costs that resulted from centralisation, let alone regarding the impact that redundancies in state authorities and enterprises had on the remote regions. Although both the EU and Estonian legislation prescribe the obligation to assess and take into account horizontal, including regional impact²⁷...

²⁵ W. Drechsler, T. Randma-Liiv, 'In Some Central and Eastern European Countries, Some NPM Tools May Sometimes Work' – *Public Management Review* 10, 18, 2016, pp. 1559–1565, 10.1080/14719037.2015.1114137.

²⁶ https://riigikantselei.ee/sites/default/files/content-editors/Failid/oeed_public_governance_review_estonia_full_report.pdf

²⁷ *Läbivad teemad valdkonna arengukavas*. Ministry of Finance, 2014; <https://www.rahandusministeerium.ee/sites/default/files/lcbivad-teemad-valdkonna-arengukavas.pdf>
Mõjude hindamise metoodika. Ministry of Justice and Government Office, 2012; https://www.just.ee/sites/www.just.ee/files/elfinder/article_files/mojude_hindamise_metoodika.pdf

... this is actually not done. Just a few lines are written in official texts to give the impression that the impact has been taken into account, but this is in fact not true. There are no consultations with the authorities who are responsible for relevant areas. (Interview R11, 2018)

The administrative-territorial reform did not address options for decentralisation in any meaningful way. The promises made by politicians in the legislative process of the act on the administrative-territorial reform have materialised only partially. The main problem is, however, that it is not possible to transfer additional functions to local authorities, as they continue to vary greatly in size and capacity.

Estonia 2030+ and the future of county-level administration

The economic, regional and spatial policy in Estonia should be based on the national spatial plan *Estonia 2030+*, which explains that the value of achieving balanced spatial development is primarily seen in terms of the more efficient use of resources and the need to keep commuting within tolerable limits.

This means that it will not be possible in the future to expand local activity spaces indefinitely. The maximum time that is acceptable for people to travel to work in 69% of cases is below 45 minutes. (Estonia 2030+, p. 22)

The national spatial plan aims to balance the settlement system across the entire country primarily through a network of county centres as functional urban regions (Figure 6):

To secure the continued existence of small cities and rural areas under these circumstances, they should be integrated more effectively with county centres and other larger cities within the local activity spaces. (Eesti 2030+, p. 17)

As a result of the abolition of county governments and the administrative-territorial reform, the functional urban regions (except on the island of Saaremaa) remained without an administrative level. This void is expected to be filled by associations of local authorities but not all of them have reached agreement regarding cooperation. The small amount of resources that are redistributed from county governments does not encourage local authorities to engage in joint activities or county cities to develop the necessary services for a wider region. If county cities stay out, then the wider area in conjunction with its local centres will generally also become less attractive. The structure that emerged as a result of the administrative-territorial reform has sometimes made the formation of county associations useless. A case in point is the island of Saaremaa where the county and the rural municipality are essentially the same, or the island of Hiiumaa where the local government system that was created has two levels, or several other counties that have only three municipalities.

Regional structures of the state have to be incorporated somewhere and somehow in the system. It is clear that the state cannot allow local authorities to supervise themselves. State officials should not all work in Tallinn. The presence of state officials is important for both the development and the implementation of policies. If the rules of communal life are to be based on reality, it is necessary to be familiar with local circumstances and interest groups: local problems will have to be defined and taken to the legislature, the new arrangements will have to be explained to the people who also need feedback. This tends to happen less and less frequently. Instead, there are vertical silo-like authorities and one hand of the state does not know what the other is doing.

For example, in several places there are conflicts between environmental protection and heritage conservation officials who interpret the law however it suits them and thus complicate the life of the local inhabitants. Someone will have to resolve such disagreements, bearing in mind the big picture.

Functional areas in Estonia in 2030

Source: *Estonia 2030+*

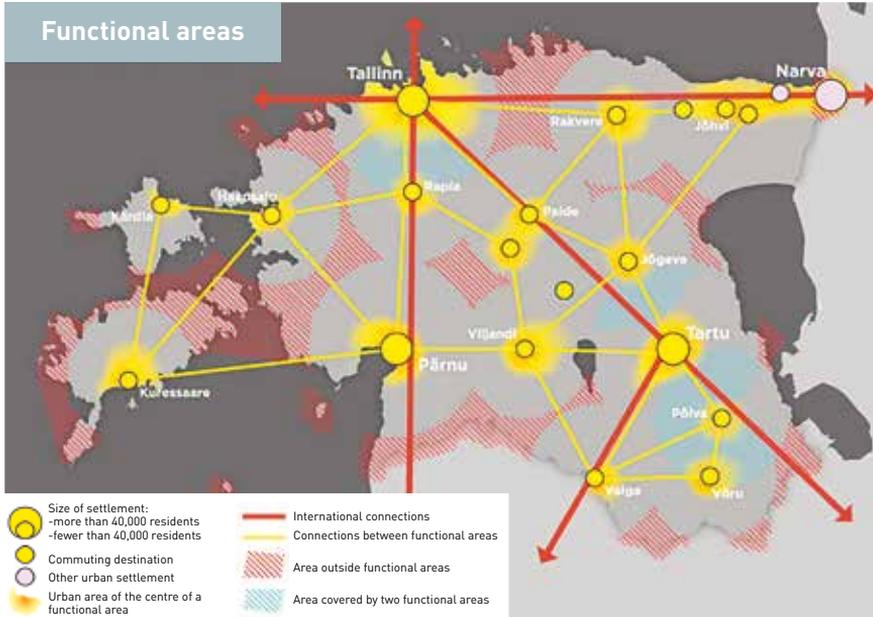


Figure 6. The functional areas whose centres are in the current county cities will grow somewhat in the future. This will be driven by increasing mobility and the processes of the redistribution of jobs, educational institutions and services.

It is a good idea to concentrate the scattered offices of the state administration into state service centres. The establishment of state service centres will presumably be done simultaneously with the removal of the relevant authorities. Opponents of this idea have already described the latter in the media as subversion. There would be less opposition if one took into account the national spatial plan and if the chosen growth centres would be developed on the basis of a 20-year plan. In the context of the current extensive changes it would be possible to develop a

network of centres that would correspond to the actual mobility of the population (Figure 1).

The majority of the Estonian counties are functional areas of historical urban centres, such as Kuressaare and Viljandi. The territories of the corresponding ancient counties of Saare and Sakala, the later counties (*kreis*) of Arensburg and Fellin of tsarist Russia, and the more recent Soviet districts of Kingissepp and Viljandi were all roughly of the same size. The new Soviet districts of Jõgeva, Põlva and Rapla, on the other hand, did not become functional areas even after 50 years, nor are they the centres of their administrative territory today. Märjamaa, Räpina, and Põltsamaa, the capital of the former Kingdom of Livonia (Liivimaa), have always minded their own business and not acknowledged the power of what they call 'railway villages'.

On the other hand, the old county of Võrumaa (Vana-Võromaa) also still exists and would certainly help to find consensus in the region and make it more attractive. Perhaps even the Lääne-Saare bishopric with its former seat in Lihula could provide a historical identity around which the people of western Estonia and the islands could weave their common activities. The history of the county (*kreis*) of Valga is also long and reputable but it is unlikely that there will be a common county with Latvia in the near future. The pieces borrowed from neighbours in 1921 are not fully integrated with Valga even a hundred years later: the inhabitants of Tõrva feel drawn to Viljandi and those of Otepää to Tartu. The people of Jõgeva and Mustvee have always travelled to Tartu.

Põltsamaa has a common history with Viljandi but there are more connections and business with Tartu and Paide. Järvamaa remains quite small. County boundaries within rural municipalities could be adjusted in a number of places (as was done in Puka). However, one should be careful about new mergers and separations of counties. In two generations, the residents of the new counties have developed a fairly strong sense of identity. It would not work to restore an exact map of a certain point in history, as space is like a living organism that is constantly changing.

How is it possible to increase the capacity of localities for development?

The administrative-territorial reform prepared the ground and created better conditions for providing the services required by law in a more efficient manner. However, 5,000 residents are not enough for running an upper secondary school or a swimming pool, let alone a vocational school or an institution of professional higher education, or for organising public transport and promoting enterprise. Small cities and rural settlements depend on the capacity of a (county) city at a higher level in the hierarchy to create jobs and provide services. The local authorities of a municipality with fewer than 10,000 working-age residents do not generally have sufficient capacity to develop enterprise. This is why in the administrative reforms in Denmark and Finland the minimum number of residents was set at 20,000. Estonia, Latvia and Slovenia, on the other hand, focused mainly on administrative efficiency when setting the threshold at 5,000 residents.

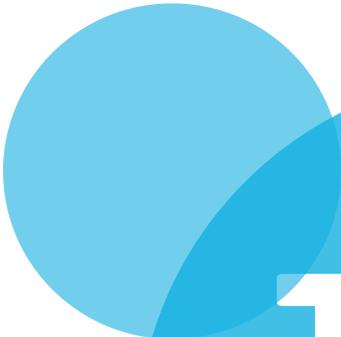
A solution would be to create a new county level: whether as a state planning region or an association of local authorities is largely a matter of taste. There is a need for a strong institution that has a guaranteed budget and capacity, and that is able to hire qualified personnel, negotiate with investors and raise financial support. The current situation where counties are merely districts on a map and where there are some state officials working on issues of regional administration on behalf of the county, and associations of local authorities sometimes function and sometimes not, is not a sustainable solution.

The decisive factor in defining the boundaries of a 21st century county could be the strength of its urban centre, the size and functionality of its actual hinterland from which people and companies already commute to school and work in the urban centre (see Figure 1). Any adjustment to the boundaries must take into account the perceived sense of belonging and history.

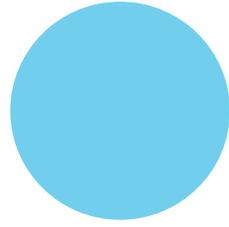
The main input to the formation of a new structure should come from the residents of the new municipalities (and not only from municipal leaders), who have to accept the urban centre. Unlike in the case of the municipal mergers where the key role was played by personal interests and friendships or even political machinations, the reorganisation of counties should rather be based on functionality and size that takes into account the future needs of the area to be administered; for example, using a threshold of 50,000 residents. It is also extremely important to increase the local capacity to develop enterprise, without which the creation of new jobs remains arbitrary. The granting of significantly larger and strategically planned investment support can be made dependent on regional development cooperation, which can be made compulsory.

Conclusion Settlement changes very slowly. So do people's sense of belonging and social relationships. Although people move around, a spirit of place cannot be created overnight. This takes several generations. It can be clearly seen in Estonia, and also proven statistically, that villages with remarkable cultural heritage and manor houses, towns with charming wooden architecture and church spires that are visible from far away across the fields, and cities with rich history dominated by an ancient fortress hold their people. Likewise, the people who live there hold their villages, towns and cities and are proud of them. The farm villages and mining settlements that were built in a hurry have fallen apart house by house in just a few decades.

The maps of the urban centres and their hinterlands which illustrate this article were almost the same 80 years ago. Most of the old county cities are still where they used to be 500 years ago. They will probably stay there for many years to come.



IV



Implementation of the reform

The Merger Contracts Signed During the 2017 Administrative Reform

MIKK LÕHMUS

As a result of the negotiations held during the voluntary stage of municipal mergers, local authorities prepared merger contracts concerning the affairs of the future municipalities for the next four years. First, the merger contracts set out the agreements reached on various legal issues and many of them contain no policy statements at all. The legal issues include technical questions arising from legislation: the validity

of legal acts and development plans, the transition of officials and so on. However, some legal matters also have significant policy implications that affect different aspects of local democracy or identity (size of the municipal council, the boundaries of constituencies, insignia, territorial structure and so on). Second, a merger contract is needed to provide input for the development and administrative strategies of the merged municipality. Merger contracts provide municipal councils with a framework within which to make decisions, ensuring that the strategic objectives of the former municipalities continue to be taken into account.

Article 9¹ of the Territory of Estonia Administrative Division Act states that a merger contract must cover the following:

- the name, type and insignia of the municipality;
- the amendment of statutes and other legal acts that result from any alteration of the administrative-territorial organisation; the validity of legislation (until new legislation enters into force, the current legislation will remain in force in the relevant territory);
- the validity of development plans;
- the issues related to the structure and staff of administrative agencies and their subordinate agencies;
- the settlement of potential issues of organisational, budgetary or other proprietary obligations and rights;
- the formation of a rural municipal district; or city district;
- the number of electoral districts to be formed;
- the number of members in the municipal council to be formed;
- and the expiry of the merger contract.

Based on the above, the topics covered by the merger contracts can be divided into four categories:

- 1) legal matters related to merging;
- 2) the identity of the merged municipality;
- 3) local democracy and management model;
- 4) the development of public services.



Chairs of the municipal councils of the city of Valga and the rural municipalities of Õru, Karula, Taheva and Tõlliste signing the merger contract establishing the municipality of Valga. Photograph: Arvo Meeks / Valgamaalane

Legal matters related to municipal mergers

Merger contracts were used to establish the legal principles for the merged municipalities. Generally, these matters did not cause disputes during the merger negotiations and were sometimes even considered too lightly to see the problems that might subsequently arise.

During merger negotiations, it would not have been possible or reasonable to discuss all the questions related to the validity and content of the legal acts adopted by local authorities, including documents on local development. As a result, the most common agreement was the following:

Until the new legal acts have entered into force, the current legal acts of the contracting parties will remain in force in the territory being established as long as they do not contradict the current agreement.

This principle ensures consistency of work for the merged municipality and is also in line with the Administrative Reform Act. After the mergers, the questions that most local authorities were concerned about was the municipal statutes. As municipal statutes regulate the municipal council procedures and local authorities can only have one set of statutes in effect, most municipalities agreed on using the statutes of one of the merging municipalities until the new statutes for the merged municipality were established.

However, the merger contract for the city of Haapsalu¹ was based on the following principle:

Until the amendment or entry into force of new statutes, the city will operate in accordance with the statutes that have been approved by all of merging municipal councils. The city statutes approved by the parties to the merger contract will enter into force on the date of announcement of the results of the municipal council election in 2017.

In reality, the local authorities did not establish joint statutes and after the elections were faced with a difficult situation where no common statutes or mutual agreement existed on which statutes to apply.

The merger contract between Häädemeeste and Tahkuranna rural municipalities had a somewhat peculiar provision. The agreement stated:

¹ The merger contract between the rural municipality of Ridala and the city of Haapsalu.

‘From 1 January 2018 until the establishment of new statutes, the municipality will operate according to Häädemeeste rural municipality statutes.’ The local authorities had forgotten that the rural municipality should also operate until 31 December 2017. This confusion was most likely caused by provisions of the Act that state that the **administrative agency** of a merged municipality will commence work from 1 January 2018.

The parties also tried to establish various guarantees in the statutes. One of the strongest guarantees was in the merger contract for Kehtna rural municipality² that contained provisions about the amendment of the statutes as follows:

Until the amendment or entry into force of new statutes, the rural municipality will operate in accordance with the statutes that were approved before the merger by the contracting parties of the municipal councils. The new statutes of the rural municipality approved by the parties to the merger contract will enter into force on the date of the announcement of the results of the municipal council election. The statutes can be amended only by the decision of a three-quarters majority vote of two consecutive municipal councils.

One can imagine what might happen when the local authorities need to introduce or change provisions on daily procedures or provisions that perhaps have little to do with the merger guarantees.

Local authorities used various approaches to determine procedures and the amount of compensation, in addition to what was required by law, for the public officials who were being released from service and would not continue in the merged municipality. For those public officials who would not continue in the merged municipality, most local authorities agreed on additional guarantees, such as awarding compensation payments that were higher than those required by law.

² The merger contract between the municipalities of Kehtna and Järvakandi.

But this contradicted the procedures laid out in the Civil Service Act that state that the variable salary (bonus) cannot exceed 20 per cent of the salary (basically an amount equal to two months' income) and this resulted in an amendment to the Local Government Organisation Act in the *Riigikogu* (Estonian Parliament) in summer 2017.

Article 53³ of the Local Government Organisation Act now states: *If the release from office of an official or employee working at an administrative agency of a rural municipality or city takes place in connection with the disestablishment of a post or position arising from the alteration of the administrative-territorial organisation, the official or employee may be paid, by a resolution of the council, a compensation or bonus upon release from office for long-term and exemplary performance of the service or employment duties in the amount of up to three months' salary if the person has worked as an official or employee at an administrative agency of a rural municipality or city for two to eight years, and in the amount of up to six months' salary if the person has worked as an official or employee for more than eight years.*

Despite this amendment, the local authorities of the newly formed Lääne-Nigula rural municipality had to change their merger contract before it entered into force.³ This was one of the situations where the merger negotiations and the signed merger agreements eventually led to the amendment of the Local Government Organisation Act in the *Riigikogu*.⁴

³ In addition to the compensation, the contract included a provision on bonus payments that was to be based on performance and length of service: three months' salary for one to five years of employment and six months' salary for over five years of service.

⁴ The Act Amending the Local Government Organisation Act and Other Acts Related to the Implementation of the Administrative Reform: <https://www.riigiteataja.ee/akt/104072017002>.

The identity of a merged municipality

The name of the municipalities, their insignia and type (city or municipality) are all emotional topics. And because they relate to local identity, these topics were also the cause for the most disputes during the merger negotiations. Often, the local authorities postponed making decisions about the insignia until after the merger, but they needed to reach an agreement on the name and type beforehand.

Although the Place Names Board helped make the choices by recommending names, some local authorities reached a compromise that did not correlate with these recommendations and in some places the name of the new municipality does not have some other reasoning (such as Mulgi, Kastre and Lääneranna rural municipalities). The recommendations of the Place Names Board were not taken into account when smaller municipalities did not want to name the merged municipality after the centre of the larger municipality (e.g. Lihula). Or when the name of the municipality would have covered an area that was too broad or too narrow and would have been misleading (e.g. Liivi rural municipality is on paper, but Mulgi rural municipality became the name of the municipality; Haanjamaa rural municipality became Rõuge rural municipality only by decision of the Government of the Republic).

The questions on what type of municipality should be applied caused the most disputes in historical cities. The result was municipalities named after cities that seem unfamiliar at first, and that were created after the merger of the city and a rural municipality (or rural municipalities) that have a large area with extensive low population density: Haapsalu, Pärnu, Paide, Narva-Jõesuu and others.

Many historical cities and county capitals became part of a larger rural municipality (e.g. Kuressaare, Valga, Jõgeva, Kärddla – the latter is an interesting case as Kärddla is both a city without municipal status and a rural municipal district).

However, the merger contract for Saaremaa rural municipality has provisions about some aspects of the identity of Kuressaare⁵:

- 'The city of Kuressaare will maintain its insignia (coat of arms and flag) and the safekeeping and shaping of its identity will be promoted. This includes keeping the traditions of assigning honorary citizens and decorations, as well as celebrating the city's birthday.
- Kuressaare aims to further the urban living environment along with the design of the public space.
- The rural municipal mayor will perform the duties of the mayor of the city of Kuressaare. The procedure for the use of the mayor's chain and staff of office will be established by the municipal statutes, according to the current principles.'

The local authorities had more options when choosing the insignia. In my estimation, many historical (adopted already before the Second World War) flags and coats of arms were lost during the merger negotiations. Most voluntarily merged municipalities decided to compromise and have a public competition to create a new flag and coat of arms. For example, a common sentence from the merger contract⁶:

A public competition will be held for the design of insignia (coat of arms and flag) for the merged rural municipality. In order to have an applicable version of the insignia of the rural municipality by 1 September 2017, the committee for the competition will start working after the merger contract is signed and the contracting parties of the municipal councils pass the decision to change the administrative-territorial organisation of rural municipalities. Lääneranna municipal council will approve the insignia for the rural municipality no later than six months after the merger.

⁵ <https://www.riigiteataja.ee/aktilisa/4301/1201/6043/leping.pdf>.

⁶ The merger contract between Hanila, Koonga, Lihula and Varbla rural municipalities.



Merger contract being signed in the merging rural municipality of Otepää.
Photograph: Rivo Noorkõiv.

It is not unlikely that despite the public competition some places will still end up reusing the historical flags and coats of arms. Many merger contracts also allowed the use of the former insignia of the municipality in the future.

But some local authorities used the following solutions.

1. They announced the competition, but gave specific criteria for choosing the new flag and coat of arms. For example, the merger contract⁷ for Põhja-Pärnumaa rural municipality specified: 'The design of the new insignia for the rural municipality will incorporate the OAK tree, which symbolises Tootsi rural municipality, and the BEAR that characterises the regions of Vändra and Halinga. The main colour will be yellow.'

⁷ The merger contract between Vändra, Tootsi and Halinga rural municipalities and the town of Vändra.

2. The local authorities decided to use the flag from one rural municipality and the coat of arms from the other (once the department for insignia of the Riigikantselei (the Government Office of Estonia) approved it). Rakvere and Saarde rural municipality also opted for this version⁸.
3. The local authorities reached a compromise that after the merger the new municipality would use the flag and the coat of arms from one rural municipality. This option was quite uncommon; for example, it was used by Pärnu city, Vinni and Lääne-Nigula rural municipalities.

Another topic that was quite emotional, but not directly related to the above-mentioned matters, was the location of the municipal hall and the administrative centre of the new municipality.

I should emphasise that the term *valla keskus* (administrative centre of a rural municipality) is not used in the legislation and 'centre' is usually understood as a place where the administrative offices of the rural municipality are located and from which the rural municipal government and the municipal council operate. The address of the administrative offices of the rural municipality is also the legal address that will be entered into the database of the Centre of Registers and Information System.

This issue became highly topical in areas without a clear and dominant urban centre. That is one of the reasons why the location of the administrative centre of Mulgi municipality was not determined during the merger negotiations and the decision was left for the new municipal council.⁹ In Järva rural municipality, the dispute over the location of the urban centre was one of the reasons why Koeru municipality left the

⁸ The merger contract between Saarde and Surju rural municipalities.

⁹ The merger contract between the city of Mõisaküla and the rural municipalities of Abja, Halliste and Karksi. After the merger, Abja-Paluoja was named the administrative centre of Mulgi rural municipality by the decision of the new municipal council.

merger negotiations. Koeru and Järva municipalities were later merged by the central government.

Local democracy and management model

A topical concern for the local authorities during the merger negotiations was the protection and representation of the interests of smaller regions when introducing the politics of the new municipality. One of the biggest fears of the administrative reform was the fear of regional marginalisation and loss of local decision-making power, and so, it is understandable that there were many lively discussions on that topic.

Many discussions focused on these concerns during the merger negotiations.

The first question about the number of municipal council members and the assessment of the needs of constituencies, was already set by legislation. Other topics are listed in the guide on how to build the structure for a decentralised governance and management organisation (*'Soovituslikud juhised detsentraliseeritud valitsemis-ja juhtimiskorralduse mudeli ülesehitamiseks kohaliku omavalitsuse üksuses'*), issued by the Ministry of Finance, and include the following¹⁰:

- The provision of a permanent or temporary committee for the municipal council, its rights, obligations and responsibilities (Article 8(1)1 and Article 47 of the Local Government Organisation Act);
- the council for the rural municipal district (Chapter 8 of the Local Government Organisation Act);
- the community boards (Article 3(4) and Article 6(3)2 of the Local Government Organisation Act);
- the mayors of cities as administrative divisions with a local government and the elders of towns, small towns and villages (Article 58(3) of the Local Government Organisation Act);

¹⁰ haldusreform.fin.ee/static/sites/3/2016/07/detsentraliseeritud_juhtimismudelid_loplik_21.07.2016.pdf

- regional sub-units of administrative offices of municipalities (the service centres, the officials, the governor and the government of the rural municipal district); administrative offices and the location from which they operate (divisions).

The number of municipal council members and electoral districts

The local authorities did not have significant disputes during the merger negotiations on the number of members on a municipal council. However, merging municipalities tended to agree on having more members in the municipal council for the first election cycle than the number of residents of the municipality would require. This decision aimed to increase the likelihood that smaller regions would find representation in the municipal council.

The former is also connected to constituencies. As earlier experiences of merging have indicated, the tensions between former regions or municipalities will likely continue to remain in municipal councils that were created from separate electoral districts. That is why experts recommended creating a joint electoral district.¹¹ The smaller local authorities would particularly be interested in the municipal council seeing the regions as a single merged municipality that enables sustainable development in all regions.

The desire to establish separate electoral districts was curbed by the fact that, based on the Municipal Council Election Act, the municipal councils would become too big. For example, Rõuge rural municipal council created five electoral districts and ended up with a municipal council that has 27 members. Electoral districts were also established in Saarde, Häädemeeste and Hiiumaa rural municipalities and Pärnu city.

¹¹ R. Noorkõiv, M. Lõhmus, Haldusreform: ülevaade toimunud ja esimesed järeldused; http://www.stat.ee/valjaanne-2017_eesti-statistika-kvartalikiri-3-17.

Municipal council committees

It was agreed in most merger contracts that municipal council committees would be established according to the principle of territoriality.

- The milder approach was to use this as a value-based principle, requiring, for example, that 'municipal council committees should be established to ensure where possible that the former rural municipalities are represented';¹²
- The strict approach introduced municipal committees via specifically determining the principle of the territorial establishment of committees in the merger contract. For example:
*In order to represent the regional interests of territories, a committee for regional development with at least nine members is established and consists of three representatives from each municipality. Other municipal council committees (budget committee, education and cultural affairs committee, social affairs and health committee, revision committee) have at least one representative from each merged municipality.*¹³

Rural municipal districts and city districts

One of the most disputed subjects during the preparations for the administrative reform was determining the responsibilities, the obligations and the rights of the rural municipal and city districts. In the end, the merger negotiators chose an option with enough flexibility to establish the future rural municipal or city district: local authorities must establish a representative council for the rural municipal or city district, and any other institution – governors of the rural municipal or city district and the rural municipal government – will be decided by each rural municipality themselves.

¹² The merger contract for Kanepi, Kõlleste and Valgjärve rural municipalities.

¹³ The merger contract between the city of Paide, and Paide and Roosna-Alliku rural municipalities.

Although this topic raised a public discussion during the preparations for the administrative reform, all things considered, there were not a huge number of rural municipal or city districts created. The local authority mergers established the following rural municipal districts:

- 1) in the city of Pärnu, the rural municipal districts of Paikuse, Audru and Tõstamaa;
- 2) in the rural municipality of Saaremaa, the rural municipal districts of Kihelkonna, Laimjala, Leisi, Orissaare, Põide, Salme, Pihtla, Torgu, Mustjala and Valjala;
- 3) in the rural municipality of Märjamaa, the rural municipal district of Vigala;
- 4) in the rural municipality of Lääne-Nigula, the rural municipal districts of Martna, Kullamaa, Nõva and Noarootsi;
- 5) in the rural municipality of Hiiumaa, the rural municipal districts of Emmaste, Pühalepa, Käina and Kõrgessaare;
- 6) in the rural municipality of Rapla, the rural municipal districts of Juuru and Kaiu;
- 7) in the rural municipality of Kehtna, the rural municipal district of Järvakandi;
- 8) and in the rural municipality of Mulgi, the city district of Mõisaküla.

The councils of rural municipal districts

There were three different ways the councils of rural municipal districts were established in the merger contracts and statutes of the rural municipality:

- **councils formed on the basis of election results** and established from members of the municipal council who live in and are elected from the administrative territory of the rural municipality. When necessary, the council of the rural municipal district will also include people who ran for municipal council. This is conducted based on the number of votes the candidates received from the

residents in the population register for the rural municipal district. These types of rural municipal district councils exist in the city of Pärnu and in the rural municipalities of Kehtna, Märjamaa, Lääne-Nigula and Rapla, as well as in the rural municipality of Saaremaa, the rural municipal districts of Orissaare, Mustjala, Valjala, Pihkla, Torgu, Salme and Kihelkonna;

- **councils based on election results and the representation of villages / small towns** including the representatives of settlements (small towns and villages) and members of the municipal council who live in and are elected from the administrative territory of the rural municipality. These types of councils of rural municipal districts exist in the rural municipal districts of Leisi and Pöide in the rural municipality of Saaremaa;
- **councils based on election results and the representation of various stakeholders**¹⁴ and established from the representatives of stakeholders and members of the municipal council who live in and are elected from the administrative territory of the rural municipality. These types of rural municipal councils exist in the rural municipality of Hiiumaa and in the rural municipal district of Laimjala in the rural municipality of Saaremaa.

¹⁴ For example, the statutes of the rural municipal district of Laimjala states that the council of the rural municipal district includes representatives of the following stakeholders: (1) non-profit associations from the administrative territory of the rural municipal district; (2) settlements; (3) young people aged 16 to 26; (4) the elderly; (5) businesses operating in the administrative territory of the rural municipal district; (6) parents whose children study at the educational institutions that are located in the administrative territory of the rural municipal district; (7) heads of the administrative offices located within the administrative territory of the rural municipal district.

The councils of the rural municipal districts of Hiiumaa are composed of two council members who received the most votes from their constituency, a representative of businesses operating and registered in the district, a representative of the community associations and village elders operating and registered in the district, a representative of the board of trustees for educational institutions operating in the district, and a representative of young people living in the district.



Signing the merger contract in the rural municipality of Lääne-Nigula and establishing the rural municipal districts. Photograph: Rivo Noorkõiv.

Councils of rural municipal districts have three¹⁵ to fifteen members, but most commonly it is seven members.

The governors and governments of rural municipal districts

While the councils of rural municipal districts are obligatory bodies of local authority and only differ from one another in terms of how they are established, the question of establishing the governor and government of a rural municipal district varies much more.

1. The rural municipalities of Hiiumaa, Lääne-Nigula and Vigala have introduced the office of governor of the rural municipal district and created governments for their rural municipal districts as the

¹⁵ One example of a council of a rural municipal district with three members is found in the statutes of Kehtna rural municipality.

regional sub-units of the rural municipal government. The rural municipal government will appoint the governor of each rural municipal district based on the proposal of the rural municipal mayor and the opinion of the council of the rural municipal district. In reality, the governments of rural municipal districts have been established according to very different principles.

2. The local authorities of the city of Pärnu did not appoint the governor of the rural municipal district or establish the government of the rural municipal district, but
in order for the rural municipal district to be able to organise as well as provide and manage accessible public services to its residents, Pärnu city government will introduce the rural municipal district centre as the structural unit of their administrative agency [...] and that will be managed by the head of the rural municipal district centre.
It is within the competency of the council of the rural municipal district to offer an opinion on the candidacy for the head of the rural municipal centre.
3. The same situation exists in the rural municipality of Saaremaa, where no governor or government has been established for the rural municipal district. But instead, local authorities have established service centres and the council of the rural municipal district has the competency 'to approve candidates for the head of the service centre in the administrative territory of that rural municipal district.' Quite similar principles exist in Rapla rural municipality.
4. The statutes of the rural municipality of Kehtna states the following:
The activities of the rural municipal district centre are managed by the assistant rural municipal mayor. This position is filled via public competition and the rural municipal government appoints and releases them from office based on a proposal from the rural municipal mayor after considering the opinion or suggestions of the council of the rural municipal district.

Therefore, even when local authorities introduce service centres as territorial structures, the leadership position or the legal status of the service centres (or rural municipal district centres) might not differ that much from the governor or government of a rural municipal district.

Community board

The guide on the organisation of the structure of municipalities suggests the use of community boards as alternatives to rural municipal districts and councils of rural municipal districts. The community boards have a similar role to the council of a rural municipal district as they are representative bodies established based on regional principles. The topic of community boards is included in the merger contracts for Lääne-Nigula¹⁶, Jõgeva¹⁷, Mustvee¹⁸, Türi¹⁹, Alutaguse²⁰, Röpina²¹ and Saaremaa rural municipalities. The merger contract for Türi rural municipality had the most comprehensive summary of the topic of community boards:

Regional advisory boards are established (Väätša and Käru community boards) and include the members of the municipal council, local candidates who are residents and representatives of regional target groups. The members and competency of the community board are described in the municipal statutes of a rural municipality. The community boards advise on the priorities of regional road reconstruction, on the need for local investments, on organising cultural and sporting events, suggest representatives for the committees of the municipal

¹⁶ The merger contract between Kullamaa, Lääne-Nigula, Martna, Noarootsi and Nõva rural municipalities.

¹⁷ The merger contract between the city of Jõgeva, and Jõgeva, Palamuse and Torma rural municipalities.

¹⁸ The merger contract between Avinurme, Kasepää, Lohusuu and Saare rural municipalities, and the city of Mustvee.

¹⁹ The merger contract between Türi, Väätša and Käru municipalities.

²⁰ The merger contract between Alajõe, Iisaku, Illuka, Mäetaguse and Tudulinna rural municipalities.

²¹ The merger contract between Meeksi, Röpina and Veriora rural municipalities.

council and so on. The rural municipal government establishes the community boards. The community board elects their representative and if necessary, appoints and changes the members of its board.

The terms 'regional board', found in the merger contract of Elva,²² and 'regional advisory board', in the merger contract for Viljandi rural municipality,²³ essentially mean the same thing as community board. The working practices of local authorities will indicate how the community boards will exercise their role in the municipalities, but this type of institution has found a place within the landscape of local government.

Regional sub-units of rural municipal governments

While the topic of establishing rural municipal districts remained fairly uncommon, the merger negotiations included more disputes about matters related to the structure of the rural municipal government as an administrative authority. Generally, the local authorities did not agree on a detailed description of the structure of administrative authorities during the merger negotiations. Instead, they kept to a more generalised plan that was based on areas (but of course, there were exceptions). The logic behind this approach was that the new rural municipal mayor has to have the right to establish the principles that guide his team because the administrative structure usually reflects the vision of both the rural municipal government and the rural municipal mayor. With this in mind, there are two types of exceptions: (1) many local authorities established regional principles for creating the rural municipality or city government (as executive body) in the merger contracts; (2) local authorities determined the regional service centres (in the contracts referred to as 'administrative centre', 'administrative service centre', 'service point',

²² The merger contract between the city of Elva, and Konguta, Palupera, Puhja, Rannu and Rõngu rural municipalities.

²³ The merger contract between Kolga-Jaani, Tarvastu and Viljandi rural municipalities.

and 'the government of the rural municipality district' also belongs in the list) as well as their role and place within the structure of the administration of a city or rural municipality.

The territorial structure of rural municipal (or city) government is simple and is based on the prerequisite that there must be one representative from each rural municipality in the executive body for the merged municipality. However, in the merger contracts most local authorities did not specify how this would unfold legally.

In my estimation, the territorial structure of the rural municipal government as the administrative authority was one of the most important topics of discussion during the merger negotiations. One of the main concerns about the administrative reform was that the elimination of the local administration (the public officials) would mean residents would need to travel somewhere further away to conduct their business. And so, the need to create local representation for the rural municipal government developed into an expression of local identity. As mentioned, most of the local authorities avoided establishing a rural municipal district.

The main focus of the disputes tended to be on determining the structure of the local administrative authorities of the rural municipal government and on the services that needed to be ensured either in the former administrative centres of the rural municipality or in the region more broadly. Many merger contracts contained the following principle:

*The management of the rural municipality will be based on a multi-faceted framework. The administrative centre of the rural municipality will provide strategic management and knowledge-based services, and any matters related to the immediate community of that region will be solved in close proximity to the resident, entrepreneur or relevant civil community.*²⁴

²⁴ The merger contract for Sangaste and Otepää rural municipalities.

Descriptions specifying the roles and responsibilities of service centres varied in the merger contracts. Some local authorities did not define the responsibilities of regional service centres in the merger contracts, but instead kept to establishing some general principles:

*The service centres will provide services that are reasonable to offer residents in close proximity to them. The amount of services provided at service centres will depend on the size and nature of the service area.*²⁵

Another type of merger contract established the extent of competency that the service centres needed to ensure, but did not specify in what capacity the public officials would be employed:

*At a minimum, regional service centres will ensure the following competencies and services: accepting applications and providing first contact consultation, accepting payments, facilitating development in the region, providing first contact social care, providing services regarding the population register.*²⁶

In addition to the above, the responsibilities of the service centre included administrative supervision and assistance in resolving the economic affairs of the rural municipal assets (trustee services) and so on.

The third type of merger contracts established the number of public officials for the service centre:

²⁵ The merger contract for Kanepi, Kõlleste and Valgjärve rural municipalities. See also the merger contract between Haanja, Misso, Mõniste, Rõuge and Varstu rural municipalities: 'The service centres that are established in the village of Haanja, the small town of Misso, the village of Mõniste and the small town of Varstu will offer those services that are reasonable to provide for residents in close proximity.' More generally, the merger agreement for Laeva, Piirissaare and Tartu rural municipalities: 'In order to provide public services in the municipality, the rural municipal government will establish service centres in the administrative centre of the rural municipality. These administrative authorities will provide residents with access to necessary services.' Service centres in Piirissaare and Laeva rural municipalities and Kõrveküla small town. In addition, there will be a service centre in the city of Tartu.

²⁶ The merger contract between Kullamaa, Lääne-Nigula, Martna, Noarootsi and Nõva rural municipalities.

Typically, there are three public officials at the service centre: a social worker, a secretary-registrar and a development official with the proficiency of a project manager. When necessary, the service centres ensure the availability of a construction advisor, who will have consultation hours once a week. Unless the need for these services changes, the service centres operate for at least four years.²⁷

In many areas, local authorities agreed on positions for regional managers, whose role is essentially the same as that of governors of a rural municipal districts and heads of service centres. The city of Paide, and the rural municipalities of Viljandi and Põhja-Sakala established the roles of regional managers in their merger contract.

The development of public services

By law, local authorities were not required to establish development strategies for the municipalities, set long-term strategic goals for the merged municipalities or introduce public services in the merger contracts. But in reality, the topic of developing public services turned into important discussions during the merger negotiations and they formed a significant part in the merger contracts.

One of the most common types of sentences in the merger contracts was something like: 'The existing network of schools will be

²⁷ The merger contract between Hanila, Koonga, Lihula and Varbla rural municipalities. See also the merger contract for Saaremaa rural municipality. 'The strategic management of the RURAL MUNICIPALITY will be conducted from the administrative centre of the RURAL MUNICIPALITY which is in Kuressaare. There will be two to four public officials and employees, who will work at the service centres to be established in the former rural municipality centres as well as in the village of Lümända and the small town of Kärä. The second centre of the RURAL MUNICIPALITY will be Orissaare service centre that will employ ten public officials and employees.' The merger contract for Antsla rural municipality: 'The rural municipality of Antsla will provide services to residents in the service centres located in the city of Antsla and the village of Kuldre. The following services and public officials will continue to be available for assistance – a youth worker, a social worker, in-home carer, a secretary, a specialist to assist with economic affairs, and the centre will ensure the reception hours of a family physician.'

maintained.’ This means that most questions related to the development of public services focused on giving guarantees and assurances that nothing would change for the residents. Strategically, it is understandable that these guarantees became a prerequisite, at least on paper, for signing the merger contracts. But even with these assurances, we can distinguish many other versions of guarantees, ranging from the more general to very specific.

- The first type of guarantees did not focus on retaining specific administrative authorities, but instead assurances were given through values. One example of this type of guarantee can be found in the merger contract for Põhja-Sakala rural municipality:²⁸

The first level of education will be ensured as close to home as possible, the second and third level will depend on whether there is a viable number of students, and upper secondary school education in the region will depend on the number of students, the feasibility of the education institutional network and support from the state financing model. The municipality will support students in obtaining upper secondary school education outside their home municipality.

- Other types of guarantees were given in the manner already mentioned – ‘the existing network of schools will be maintained’ – while not listing the specific public institutions.
- The third type of guarantees did mention specific public institutions that would continue to operate. These guarantees are found in many merger contracts,²⁹ one such example is from Antsla rural municipality:

The new rural municipality of Antsla will include the upper secondary school in Antsla, the secondary school in the village of Kuldre, the kindergarten in both Antsla rural municipality and the village of Kuldre

²⁸ The merger contract for Kõo, Kõpu and Suure-Jaani rural municipalities, and the city of Võhma.

²⁹ The merger contract between Antsla and Urvaste rural municipalities.

along with the music school. The municipality will provide primary, basic, secondary and upper secondary schooling as well as hobby education and adult education (continuing education).

Although local authorities usually avoided referring to potential reorganisations when making decisions about the network of institutions, there were merger contracts that also specifically described the changes. The following examples are from the merger contracts for Vinni rural municipality³⁰ and Türi rural municipality.³¹

- 'Põlula School will continue as the early childhood education and care institution as well as the basic school at least until the end of the 2019/2020 school year. If there are less than 35 students in the 2019/2020 school year, the school will be restructured to operate as a primary school (first four grades).'
- 'The existing cultural and community centres will be merged with Türi Kultuurikeskus to form one institution, Kärü and Väätsa libraries will merge with Türi library after two years, all existing sites, their operations and funding, including supplying the libraries with different formats of resources, will be preserved in the same capacity for the following four years.'

The merger contracts also contained progressive and innovative topics for the merging local authorities, such as:

- 'The rural municipality will create a network of digital workplaces that will encompass the entire rural municipality. This will be used to provide services and make targeted suggestions about creating employment opportunities to state authorities and private enterprise.'³²

³⁰ The merger contract between Rägavere, Laekvere and Vinni rural municipalities.

³¹ The merger contract between Türi, Väätsa and Kärü rural municipalities.

³² The merger contract between Haanja, Misso, Mõniste, Rõuge and Varstu rural municipalities.

- 'Implementation of educational stipends.' 'The development of the procedure for the student and teacher recognition system.'³³
- 'The development of a joint procedure for the rural municipal support system for entrepreneurs.'
- 'A rural municipal style guide will be developed to establish a framework for the corporate identity of the rural municipality. This guide will determine the general principles surrounding the procedures and legal rights covering the use of insignia, elements of style, slogans and visual advertising for the rural municipality.'³⁴

The development of public services was an area that brought a lot of dead weight into the merger contracts; that is, points that either carry no real meaning or address matters that the local authorities deal with on a daily basis anyway. What to think about the following points (without mentioning the merger contract)?

- The reconstruction and maintenance of roads will be continued.
- Continuous analysis of changes in demand and when necessary implementing adjustments.
- Contributions will be made to the development of different opportunities and the quality of extra-curricular education.
- Support for the development of a diverse range of entrepreneurship depending on the availability of means.
- Participation in the development of the public transport system.
- Furthering activities connected to sport and leisure.
- It is important to create appropriate conditions for the promotion of health and for advocating healthy lifestyles.

³³ The merger contract between Kullamaa, Lääne-Nigula, Martna, Noarootsi and Nõva rural municipalities.

³⁴ The merger contract between Kaiu, Raikküla and Rapla rural municipalities.

The merger contracts included points that had essentially already been established when the contract entered into force. This indicates that life moves quickly and we cannot predict everything. For example, some merger contracts describe the salary of kindergarten teachers:

*The earnings of kindergarten teachers will be harmonised. By 2020, the minimum wage of kindergarten teachers will be at least 85 per cent of the minimum wage for school teachers, which is fixed by the state; the minimum wage for assistant kindergarten teachers will be at least 65 per cent of the minimum wage of school teachers, which is fixed by the state. The minimum salary of support specialists (speech therapists, social pedagogical specialists, psychologists, special needs education teachers and so on) will equal the minimum salary for teachers, which is fixed by the state.*³⁵

By now, the state wage subsidy for kindergarten teachers has entered into force and those local authorities who included this point in their merger contract also follow that subsidy system. According to the conditions of the state wage subsidy system, by 2018, the salary of kindergarten teachers has to already be 85 per cent of the minimum wage of school teachers.

In general, we must admit that the local authorities adopted very different approaches to the topic of developing public services. The question of the extent to which the development plans should be prescribed to the merged municipalities is in itself a sensitive topic.

We can certainly agree with the criticism by some experts that local authorities lacked long-term vision and comprehension³⁶ when establishing the new municipalities, but the merging municipalities cannot

³⁵ The merger contract between Põhja-Sakala and Põltsamaa rural municipality contains a practically identical point.

³⁶ R. Noorkõiv, M. Lõhmus, Haldusreform: ülevaade toimunud ja esimesed järeldused; http://www.stat.ee/valjaanne-2017_eesti-statistika-kvartalikiri-3-17.

be solely responsible for this. It was specifically the local authorities of smaller municipalities who focused on agreeing on guarantees and their contracts established principles according to which they had reached a consensus or a compromise. And for this reason, many merger contracts (but not all) were quite general and unspecific. For researchers, this might suggest that disagreements existed between the negotiators and the use of general phrasing in the contract was the only way to reach a compromise.

One topic for future research could be the extent to which different local authorities followed one another's negotiations and were examples for each other in the process of writing the principles. I noticed several phrases that I wrote as an expert for specific local authorities cropping up in a number of other merger contracts. Similarly, some of the principles on the operation of rural municipal districts and their statutes indicated that local authorities were keen to find examples from one other. But this already falls under the topic of merger negotiations, which are analysed elsewhere.

Fifty-One Shades of Public Engagement

SULEV VALNER

This article provides an overview of the public engagement activities during the administrative reform. The activities were carried out by the Ministry of the Interior and later by the Ministry of Finance, beginning in 2013, when the Minister of Regional Affairs, Siim Kiisler, proposed a reform plan based on local commuting centres, and ending in autumn 2017, as the mergers were implemented after the local elections.

This period can be divided into different stages that admittedly overlapped to some extent:

- 1) The main issue until spring 2015 – will there be an administrative reform at all?
- 2) From spring 2015 until summer 2016 – what will be established in the Administrative Reform Act?
- 3) From summer 2016 until autumn 2017 – how, if at all, will the provisions of the Administrative Reform Act be implemented in practice?

The plan based around local commuting centres proposed by minister Kiisler did not find support from his government partners and was put aside. In terms of public engagement, the efforts made toward administrative reform under five different ministers between 2013 and 2017 – Siim Kiisler (Minister of Regional Affairs until 26 March 2014), Hanno Pevkur (Minister of the Interior from 26 March 2014 to 9 April 2015), Arto Aas (Minister of Public Administration from 9 April 2015 to 23 November 2016), Mihhail Korb (Minister of Public Administration from 23 November 2016 to 12 June 2017), and Jaak Aab (Minister of Public Administration from 12 June 2017 to 2 May 2018) – formed a consistent process.

Why write about the public engagement aspect of the administrative reform process in its own right?

Although we cannot be certain, it is likely that without a broad and successful engagement process the necessary decisions for the administrative reform would not have been made.

'A well thought-through and timely engagement process saves money and time (and participants' nerves) in the latter stages of decision-making and implementation.'¹

Engagement does not mean agreeing on the lowest common denominator, but making open and fair decisions. More discussion means participants are more likely to accept the decision even when their opinions are in the minority. It was clear that the administrative reform would not produce all the desired outcomes for those who often had conflicting interests.

Public engagement is not just a recommendation, but it is an obligation in the drafting of legislature. According to the good engagement practices^{1,2} approved by the government (Section 1(2)):

¹ *Kaasamine avalikus sektoris ja vabakonnas*, p. 11, http://www.riigikantselei.ee/arhiiv/sb/osale.ee/kaasamine_avalikus_sektoris_ja_vabakonnas.pdf

² <https://riigikantselei.ee/et/kaasamise-hea-tava>

Public engagement ... means informing and consulting with stakeholders and the public in the decision-making process. [...] Public consultation means asking for feedback from stakeholders and the public at all stages of policy-making, including during the process of raising problems, defining goals, analysing alternative solutions and preparing a draft decision.

This article only discusses part of the engagement work that was conducted through various methods and levels during the administrative reform process. There were definitely numerous other forms of engagement, such as the distribution of information via local channels, organising public meetings or even in the form of word-of-mouth stories shared between a few participants. The parties and politicians informed their networks, every rural municipal leader notified their acquaintances and so on.

As fifty-one new municipalities were formed as a result of the mergers, there can be at least fifty different shades of descriptions and stories about how the process of engagement unfolded in various locations. And not to mention that participants at the same location and even in the same room remember situations differently.

By law, the local authorities that took part in the merger negotiations were required to determine the opinions of all residents over the age of 16. Their opinion was sought on the alteration of the administrative-territorial organisation as well as 'the public disclosure and transparency of the negotiation process.'³ The latter can be accomplished using either more or less formal means.

It is probably not enough to put information up on the public notice boards inside the offices of the rural municipal government. Luckily most merging municipalities took a wider approach to the subject. They produced booklets for residents, created separate pages for the administrative reform on their websites, organised community meetings and so on. Even though some people still felt uninformed, there was a lot of

³ Territory of Estonia Administrative Division Act.



An administrative reform meeting in Viljandimaa county in 2013. In every county, the municipal leaders held numerous often difficult meetings. Source: Elmo Riig / Sakala.

effort put into consulting the public. There is always someone who will say they did not receive the information.

The period before decision-making

In 2013, minister Kiisler did not have the necessary support from the government led by Prime Minister Andrus Ansip so that the administrative reform could be implemented from a strong position. Quite the opposite, Prime Minister Ansip repeatedly confirmed that his government would not introduce a coercive administrative reform. 'The party of the Prime Minister has not indicated the willingness to make a political decision about decisively altering Estonia's administrative division. Like repeating a mantra, they keep reassuring their constituency of voluntariness,' writes journalist Anneli Ammas about the initiative of minister Kiisler in March 2013.⁴

⁴ A. Ammas, 'Väikevenna võimatu missioon' – *Postimees*, 9.3.2013.

In order to make the 'mission impossible' a possibility, or for it to at least remain topical until it could become possible, it was necessary to find more support. In October 2012, minister Kiisler proposed six possible models for public consultation in order to continue the administrative reform and break the impasse⁵ (described further in the article by Ave Viks). The proposal and inclusion of the six approaches to engagement in the early stages of the reform in 2012, could be seen as a response to the failure of the radical administrative reform proposals and the criticism they received in 2009.

Minister Kiisler commented to the newspaper *Postimees* that personally he thinks the best approach is to have a minimum of 25,000 residents and that would mean smaller counties would form a single municipality. On the other hand, he promised to continue with another option if it gained enough support as 'prolonging the current situation in silence would be the worst option.'⁶

There was a significant number of replies to the proposals from local authorities, national and regional associations of local authorities, universities, county governments, political parties and other organisations (69 replies in total). On 12 March 2013, a document⁷ detailing the intention to develop the Act was presented for approval. It concluded that the majority of those consulted were in support of the local commuting centre model and that the draft Act would be based on this.

This initiated the idea that the regional associations of local authorities propose their own candidates for the commuting centres for each county in preparation for the draft act. The hope was that the outcome would be more acceptable to everyone when the proposals came from the counties through the engagement process instead of being suggested by the ministry.

⁵ Minister of Regional Affairs letter No 12-1/134-1 of 10 October 2012.

⁶ S. Valner, 'Riigireformile tuleb otsustav aasta' – *Postimees*, 20.10.2012.

⁷ 'Omavalitsuskorralduse reformi seaduse väljatöötamiskavatsus', <http://eelnou.valitsus.ee/main#Gr7TCazg>.

The Ministry of the Interior issued a guide on how to assign local commuting centres. Most regional associations of local authorities signed a contract to determine the local commuting centres. This was accompanied by a small grant for operating expenses. Many members of several county associations thought it would be better not to express their opinions about the preferred locations of local commuting centres in their counties, as they feared that their answers would later be used to legitimise the reform. For example, Järvamaa county withdrew from the contract. According to the guide, in order to obtain a reply from each county, the list of local commuting centres would be created by the county governor if the association of local authorities failed to submit a proposal.

From April to May 2013, the local authorities from every county held meetings and discussions with Ministry of Interior officials. Most county governors and municipal leaders attended the meetings. In many cases, the atmosphere at these meetings could be described as prejudicial. Often the meetings started with a rather negative view of the subject instead of having an objective approach, because there was a lack of trust in the government's repeated efforts at implementing the administrative reform and its justification for doing so. There was a lot of general discontent toward the state as the partner of the local authorities.

By the due date, most county-level associations of local authorities had nominated their local commuting centres and Harjumaa county did so by the end of that year. Some associations did not make a decision (Võrumaa, Järvamaa and Pärnumaa counties), saying that the local authorities did not reach an agreement. Consequently, the proposals for those counties were made by the county governor. The final proposals for those counties were made by the county governor. The final proposals from some county governors were entirely different from those submitted by the relevant associations of local authorities (Lääne-Virumaa, Harjumaa, Viljandimaa, Tartumaa counties).

A list of 63 local commuting centres were included in the draft Act. In 2014, the draft Administrative Reform Act was officially circulated for

approval, but the procedure was held up in the government, as some ministers, for mostly political reasons, and some national associations of local authorities did not approve it.

The most significant accomplishment in regional areas in 2013 was the engagement of local decision-makers and organising productive meetings on possible mergers. And even if that did not break the ice, it at least got it melting.

These discussions can be considered an important stage in reaching the future regional agreements, as many counties already nominated local commuting centres in 2013 and came very close (e.g. in the counties of Valgamaa, Jõgevamaa, Raplamaa, Saaremaa) to the result that was implemented with the 2017 administrative reform.

In autumn 2013, a number of municipalities were voluntarily merged during local elections (e.g. Viljandi, Põlva, Lääne-Nigula, Kose and Lügánuse). According to local leaders, the drive behind the mergers was the desire to accomplish something that the administrative reform would sooner or later force upon them anyway.

With the help of financial assistance from Enterprise Estonia, the ministry recommended merger consultants to support the local authorities who had expressed interest in or were considering merging. These consultants accomplished a lot by advising local authorities on ongoing and potential mergers. The work of the consultants in the merging of local municipalities was definitely a vital engagement method. Other methods would not have made it possible to advise the local authorities directly about merging or to communicate issues as they emerged between the state and the local authorities preparing for mergers across so many locations.

In 2013, a handbook on local government mergers ('Kohalike omavalitsuste üksuste ühinemise käsiraamat') was completed and a

revised version was released in 2016.⁸ There is no reason to underestimate its importance, as now there was a centralised guide that could be used independently to answer any questions related to the mergers. Merger consultants Georg Sootla, Kersten Kattai, Mikk Lõhmus and Rivo Noorkõiv also compiled a separate summary of the most important lessons that had been learnt during the local government mergers in 2013 ('Peamised õppetunnid pool aastat pärast ühinemisi') and that has also been available on the administrative reform web page.

The administrative reform web page was initially a WordPress blog, but was later integrated into the Ministry of Finance website. Over the years and with various administrators, the development of this web page has been uncertain for many reasons, but it has definitely played an important part in sharing practical information about the administrative reform.

The Minister of Regional Affairs created an advisory board to consult on matters of local government. The board members included representatives of the national associations of local authorities, universities, the National Audit Office of Estonia, the Praxis Centre for Policy Studies and other relevant organisations. In 2013, this think tank held three meetings to discuss any issues related to the administrative reform. In summer 2013, there were three separate working groups of specialists formed, who were asked to submit proposals for the draft Administrative Reform Act – on local democracy, the responsibilities and financing of local authorities as well as local business development and employment. These working groups had two-three meetings where they determined the main problems in the field and possible solutions. The work of the advisory board and the working groups was not officially concluded, but because there were no more meetings organised their activities faded.

Despite the draft being delayed politically, public engagement

⁸ https://haldusreform.fin.ee/static/sites/3/2016/11/2016_kov-uhinemiste-kasiraamat.pdf

continued in spring 2014 in Türi, Otepää, Lihula and Kunda with a series of meetings called *'Tugev omavalitsus – uued võimalused'*. These meetings were advertised in local papers and a significant number of people attended. In addition to discussing the (unlikely success of the) draft Administrative Reform Act, European funding until 2020 was also covered and representatives of the Ministry of Education and Research and the Ministry of Social Affairs presented to local government officials how the reorganisation of the school network and the health centre project would be in line with the possible changes in administrative territorial division. Representatives of municipalities that had already been merged were also invited to ease any fears related to merging. During the last meeting of this round of talks in Kunda on 12 March, Taavi Rõivas was named Prime Minister of Estonia and it became clear that minister Siim Kiisler with the Pro Patria and Res Publica Union would not continue in the government.

From that point, the politicians did not want to hear about local commuting centres, though the new action programme of the Reform Party and the Social Democrat government also included the implementation of the administrative reform. At the same time, the Estonian Cooperation Assembly was actively involved in the Good Governance Programme and nominated the administrative reform as one of its potential components. Consulting on the voluntary merging of municipalities continued. By summer 2014, the authorities of over fifty municipalities, or almost every fourth municipality in Estonia at the time, had officially participated in merger consultations.

Deliberations peak

A new stage in the administrative reform started after the elections for the *Riigikogu* (Estonian Parliament) in 2015, when the administrative reform objective was included in the coalition agreement between the Reform Party, the Social Democratic Party and the Pro Patria and Res Publica Union. With that, the decision had essentially been made but



Merger consultants Rivo Noorkõiv (above) and Mihkel Laan alongside others led dozens of discussions on administrative reform across Estonia.

Photograph: Arvo Meeks / Valgamaalane.

there was still a lot to determine in regard to what kind of strategy would gain the necessary support from all parties in order to implement the administrative reform.

Arto Aas was appointed the new Minister of Public Administration. To include a wide range of experts in developing the basic principles of the administrative reform, the government created a separate government committee⁹ and the Minister of Public Administration convened an expert committee. However, the government committee led by Prime Minister Taavi Rõivas only held two meetings. In terms of public engagement, the importance of the committee of experts that met regularly in 2015, was in facilitating multilateral deliberations on decisions that would later enable broader legitimacy.¹⁰ By autumn 2015, the committee had proposed their suggestions, most of which set the basis for possible options for the draft¹¹.

There were many ways that experts were included in the engagement process. In addition to the committee meetings, researchers from universities (Tallinn University, Tartu University, Tallinn University of Technology) or consultants with extensive experience in the relevant field were commissioned to submit their expert opinions. These opinions were mostly used as input for the draft Act and on preparing deliberations. For example, the commissioned work by Mikk Lõhmus (Tallinn University of Technology) on the role of rural municipal districts and city districts in the model of local government organisation (*'Osavalla ja linnaosa koht kohaliku omavalitsuse valitsemiskorralduse mudelis'*) and Vallo Olle's (University of Tartu) opinion on the constitutionality of the intended draft Local Government Organisation Act (*'Arvamus omavalitsuskorralduse seaduse eelnõu väljatöötamiskavatsuse põhiseaduspärasuse kohta'*).

⁹ <https://haldusreform.fin.ee/2015/06/haldusreformi-valitsuskomisjon-arutas-reformi-rakendamise-ajakava-ja-liitumistoetuste-suurendamist/>

¹⁰ <https://www.siseministeerium.ee/et/uudised/ekspertkomisjon-toetab-valitsuse-soovi-viia-labi-haldusreform>

¹¹ <https://haldusreform.fin.ee/2015/11/esitleti-ekspertkomisjoni-soovitusi-haldusreformiks/>

There was also another round of meetings held in the municipalities. First, in early summer 2015, a series of meetings was organised to inform the county-level associations of local authorities of the plans for the upcoming process and invite them to actively participate. In summer and autumn 2015, the Ministry of Finance compiled information on the administrative reform and sent it to all local authorities in order to avoid complaints about a lack of information. These meetings and information letters presented the potential risk that many questions that had been raised will still be left unanswered. But it probably would have been an even greater risk not to distribute the information during that period.

In August 2015, a panel discussion (*'Minu tuleviku vald pärast haldusreformi'*) at the Paide Opinion Festival explored the future of rural municipalities after the administrative reform. The discussion panel included the Minister of Public Administration Arto Aas, ex-minister Tarmo Loodus, the prime minister's advisor at the time Märt Rask, representative of the Association of Estonian Cities Taavi Aas and Association of Municipalities representative Kurmet Mürsepp. The moderators were Külli Taro from the Estonian Cooperation Assembly and Sulev Valner. Despite some hesitancy, the discussion was supportive of the reform and was covered positively by the Estonian television programme *'Aktuaalne kaamera'*. This may have also helped tilt general opinion on the reform in a more favourable direction.

The next round of county deliberations on the administrative reform was held in autumn the same year. The public contract for organising these discussions was won by Cumulus Consulting OÜ. These seminars were held in every county from 21 September to 14 October. Almost 600 people participated in the county seminars and 180 out of 213 municipalities were represented. As the summary indicates, these events mostly included local government representatives (rural municipal government and municipal council members). The participation of local activists, for example, local entrepreneurs, was modest. Cumulus as the organisers used a consistent method to conduct the discussions, where the representative from the ministry gave an introduction, which was followed by

a group discussion on key issues of the reform:

- the characteristics of a future municipality;
- the size of a municipality;
- the rights and obligations of local authorities;
- the organisation of cooperation between local authorities;
- the engagement of regions further away from their centre.

After the meetings, Cumulus Consulting wrote a report that among others included the following general conclusions:

- Participants were rather positive about the need for the administrative reform. Most participants found that the reform was necessary and that the previous administrative-territorial organisation would not ensure a sustainable solution in the long run.
- Therefore, the state has a strong mandate for implementing the reform as people are expecting it. The answers also indicate that a more radical approach is assumed and that the number of municipalities in Estonia could be decreased three-fold. Only a small percentage of the participants thought that the current situation should continue.
- Peripheralisation and making decisions on municipal borders by simply drawing them on a map were among the fears of the participants (the reform should be substantive and not only a mathematical calculation). People are expecting clear messages about what other amendments the reform will bring in addition to the decrease in the number of municipalities.
- The feedback from the participants indicated that considerable scepticism and unanswered questions remain. Because the success of the reform mostly relies on local opinion leaders, it is worthwhile planning a broad public engagement programme in its subsequent process. The key to the success of the reform lies in engaging with the people and ensuring transparency and openness.
- The financial autonomy of municipalities is a recurring topic.

How many municipalities are there in your county in 2018?

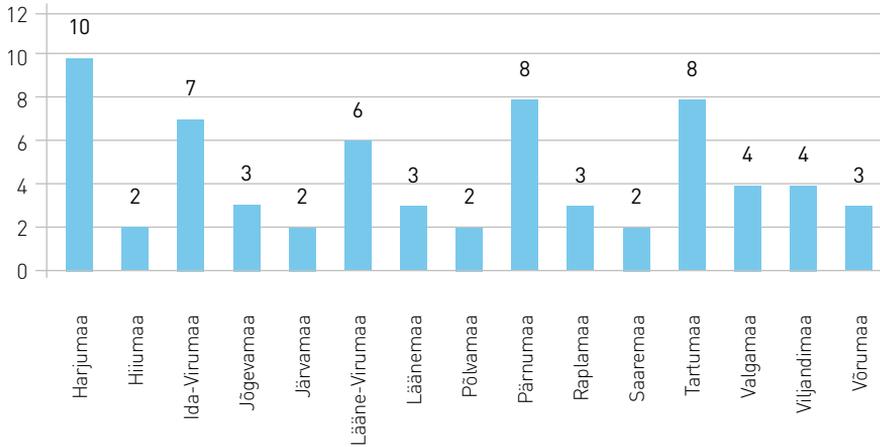


Figure 1. Predictions from the county seminar participants in autumn 2015 (average of the numbers predicted by the respondents).

In retrospect, it is interesting to see what predictions the discussion participants gave in the anonymous opinion poll for the number of municipalities in their county (for 2018).

In October 2015, Märjamaa county hosted a forum for all merged municipalities to share their experience of municipal mergers. Märjamaa county was chosen to host the event, as it was a good example of a municipality that had merged early on and it was, at the time, the largest rural municipality in Estonia. The forum was moderated by journalist Lauri Hussar and more than a hundred people from across Estonia came to listen. There were presentations by merger consultants, by the merged Märjamaa and Lääne-Saare rural municipal leaders, and Jüri

Võigemast shared the experience from the Raplamaa rural municipal merger. The event had lively discussions on issues related to merging, such as the fears and myths about peripheralisation and the options for its prevention and management. How has the range and quality of services as well as competency of public officials changed after the merger? What has improved for the resident as a result of the merger? What were the typical mistakes (or model solutions) in the negotiations, merger contracts and post-merger period management?

The conclusion was that many of the fears associated with merging have not materialised. The atmosphere at the forum probably provided assurance for the participating politicians, including minister Arto Aas, that the administrative reform plan could indeed continue.

In December 2015, the draft Administrative Reform Act was presented for official approval and became public through the Information System of Draft Acts. The proceedings of the draft Act are addressed in more detail in other articles. The draft Administrative Reform Act was submitted for approval to the *Riigikogu* along with an explanatory memorandum containing notes and questions from various participants as well as their replies from the Ministry of Finance.¹²

The subsequent proceedings in the government and the *Riigikogu* were quite swift and they culminated in a series of sittings that lasted all night when the opposition attempted to obstruct the proceedings. But this may have had the opposite effect, as it created coherence between three government parties. The *Riigikogu* adopted the Act on 7 June 2016.

After the adoption of the Administrative Reform Act

In August 2016, visits to the merged municipalities took place. The objective of these visits was to show the public that merging is nothing to fear as there have already been positive experiences. One such tour included

¹² <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/fec18826-0e43-4435-9ba8-598b6ed4ea40>

Kose rural municipality, Türi rural municipality (Kabala) and Viljandi rural municipality. A bus had been organised for the day to transport participants from Tallinn, but many came from other locations in their own cars.

Especially significant was the visit to Kabala, which politicians had brought out many times as an example of a poorly conducted merger. At the meeting, rural municipal leaders and local residents of Türi said they did not think merging at that time was the wrong choice.

The second tour included Saue rural municipality, Lääne-Nigula rural municipality (Risti) and Märjamaa rural municipality. In addition to these tours, information events were held in several places for people to visit on their own and learn about post-merger experiences. These events were used to demonstrate to the participants (on average 30 to 40 interested people had travelled to each location), and the broader public through media coverage, a willingness to talk all good and bad experiences of previous mergers.

In autumn 2016, Estonian newspapers *Maaleht*, *Eesti Päevaleht* and several county papers published an eight-page special edition on the administrative reform. This presented the merger experiences in Tapa, Lääne-Nigula and Märjamaa rural municipalities, the expectations of Tõrva and Saue rural municipalities and provided an opportunity for entrepreneurs and opinion leaders to express their thoughts on the subject. The objective was to encourage merger negotiations across Estonia that were at their peak at that time.

In 2016, the Ministry of Finance in conjunction with the merger consultants compiled two information booklets that they distributed on site at the local meetings. The first contained practical recommendations for the parties and followers of merger negotiations. It emphasized that merger negotiations should not remain a closed matter. Potential fears (myths) and sensitive topics that needed to be prepared for were also mentioned. It recommended researching previous merger experiences and using the help of the merger consultants.

The second one offered recommendations on the decentralised governance of the merged municipalities, suggesting forms of activities that could be used (e.g. by municipal council committees, rural municipal districts, community boards, village elders or service centres) in a larger municipality to prevent a sense of the exclusion of regions that are further from the centre.

By order of the Government of the Republic three regional committees were formed that included county governors of the respective areas, specialists and officials from the Ministry of Finance. The committee for northern Estonia included Harjumaa county, Järvamaa county, Lääne-Virumaa county and Ida-Virumaa county. The committee for western Estonia included Pärnumaa, Läänemaa, Saaremaa, Hiiumaa and Raplamaa county and the committee for southern Estonia Jõgevamaa, Viljandimaa, Tartumaa, Võrumaa, Põlvamaa and Valgamaa county.

This was a good opportunity to include experts and county governors in the discussion, who had a tendency to often make policies in their own way. In addition, the committees received direct feedback – primarily via the county governors who were there in attendance – which probably would not have otherwise reached the ministry. These regional committees made recommendations, on the one hand, to the voluntarily merged municipalities regarding the selection of partners, and on the other, in the case of mergers initiated by the government they recommended which municipalities the national government should merge and which proposals they should consider from the feedback they received. Most of the time the government took the proposals into account, though there were individual cases when it did not.

From among the other public engagement deliberations of the administrative reform it is worth mentioning the Estonian village movement Kodukant. This organised various discussions that mostly took place in smaller places away from the county centres.

Surveys among the local population during the final stage of the voluntary and coercive municipal mergers that the counties were

required to conduct by law have received a lot of criticism. The critics say, and often justifiably, that once the decision has been made it is then misleading to play the public engagement game and give the impression that the participants have the power to influence the decision. At the same time, it is hard to imagine that there would have been no criticism that local opinions were not considered without these surveys prior to the mergers.

It has often been difficult for some people to understand that these surveys were inherently meant as a way of consulting or listening to local residents before the municipal council or the government made their decision, and that they were not meant as a referendum.

In many cases, the results of the opinion poll influenced subsequent decision-making, even if that influence came in the form of an essential argument that was used to justify a decision. One of these arguments was made by Nõo and Luunja rural municipalities after they rejected the coercive merger proposal. Overall, it is likely better that these last-minute surveys were conducted before the mergers, even if it turned out to be a formality.

In 2017, two information days were organised – on 30 October in Tallinn and on 6 November in Tartu. These public engagement events were meant for the local authorities of municipalities that had been merged and both had over 100 participants from municipalities across Estonia. The objective was to share practical recommendations about the activities that post-merger local authorities could undertake, so no one would feel that they have been left by themselves to reinvent the wheel. For example, information on organising the first sittings of a new municipal council or creating a rural municipal government.

Training sessions for municipal council members in each of the 15 counties were organised in the first half of 2018. This was also a good opportunity to receive direct feedback on what it had actually been like for the authorities of new municipalities as they started work.

Lessons on public engagement

Openness was the right approach. Talking is always better than not talking.

But whatever the individual issues associated with merging, the honest portrayal of early experiences was overall positive.

It was probably the right decision to visit areas whenever possible, wherever invited and to organise county deliberations even when it wasn't always possible to give good answers to all of the questions. In hindsight, openness also turned out to be the right call in situations where there were complaints about unanswered questions. The municipal council members who had voted against merging were also included in the public engagement process.

The different types of public engagement practices are **information, consultation, cooperation, partnership** and **empowerment**. At the one end of the spectrum, information activities engage the participant as a passive receiver, while at the other end, empowerment gives an engaged public a leading role. We can find examples of all these public engagement practices from the administrative reform.

Publications, web pages, press releases and information leaflets were used to inform people. The coordination of the draft Act and county discussions can all be seen as forms of consultation. A good example of cooperation and partnership was the work that the expert and regional committees did in shaping important decisions over the course of a long period. An example of empowerment can be found in the first stage of the process when the municipal councils were able to decide who they would negotiate with. Generally, the agreed upon terms and partners were not changed.

The administrative reform process had at least three main public engagement interest groups:

- 1) decision-makers at state level and opinion leaders in the field. Their engagement influenced the process of ending up with the necessary decisions for the administrative reform (which considering previous developments was not self-evident);

- 2) heads of local governments and municipal council members as well as other local influencers. Their engagement influenced how strong the opposition to change would become among local decision-makers;
- 3) Residents and their continuing objective attitude, which was a prerequisite for advancement.

It is often mentioned that the reason behind the failure of previous administrative reform initiatives and many initiated municipal mergers was their broad unpopularity. This did not enable the politicians in the *Riigikogu* or the local authorities to make the necessary but often painful decisions. The opinion polls that were conducted during the last stage of the reform indicate that there was already more support for the administrative reform than opposition among the residents surveyed. For example, 48 per cent of residents supported or would likely support the reform and 28 per cent did not support or were less likely to support the administrative reform in autumn 2015.¹³

Each change in the Minister of Public Administration has meant uncertainty for future developments. In summary, the political powers should be commended on their consistency on the key issues of administrative reform during the whole period in question. Even when the municipal meetings had a sense of uncertainty about whether everything would actually turn out the way it was being talked about, the public engagement organisers were not disappointed.

One of the main rules of public engagement is not to give promises that are not going to be fulfilled. For example, saying that proposals will be taken into account when in reality they will not or promising deadlines that will not be kept.

¹³ <https://turu-uuringute.eu/haldusreformi-toetajaid-on-poole-rohkem-kui-selle-vastaseid/>

Was there a public engagement programme for the whole process that had been agreed upon beforehand? No there was not. As a rule, the engagement schedule was planned for a shorter time frame because planning for a more distant future seemed politically too unpredictable. Just as good communication starts with clear messages, the success of public engagement relies above all on clearly defined positions that can be openly discussed, explained and defended. Many policies of the administrative reform also became clearer over time. One of the advantages of using short-term planning is that it allows greater flexibility in responding to a changing situation.

One might think that the state had some kind of giant machinery operating behind the reform, which by now two consecutive governments have proudly presented as their most important achievement. In reality, over the years, only seven or eight people have worked on the administrative reform at the Ministry of Finance. Considering the scope of all the variations, it has been a very small core team. Of course, when we count everyone that was involved in the process and include the members of the municipal council we get thousands of people.

One lesson is that no matter how much effort is put into bringing a broader range of people to the discussion, such as entrepreneurs and professionals from other fields, most of the participants were still only heads of the local authorities who were directly affected by the reform. Clearly their interest in the topic was greater than that of people from other fields.

There was often a sense of public engagement fatigue due to previous negative experiences. Often people at the county meetings said: we have heard all of this before and have taken part in the discussions. We do not see the point in investing time and energy in the administrative reform when it will end up the same way as before.

Convincing them that this time it was more serious was somewhat successful and somewhat not. We can conclude from the behaviour of many local authorities that some of them did not believe that the Administrative Reform Act would be implemented even after the *Riigikogu* had

adopted it. It is regrettable that many local authorities and other decision-makers lost valuable time at different stages of the administrative reform by making the wrong assessment of the situation, hoping it would pass as it always had. Instead of staying in opposition, that time could have been spent developing more effective and substantial solutions together.

The Changes Made to Place Names in the Course of the Administrative Reform

PEETER PÄLL

Administrative reforms inevitably lead to changes in place names, as merged municipalities may acquire a new name and there may be the need to avoid the repetition of place names within one municipality. Both of these types of changes also occurred in the course of the administrative reform carried out in 2017.

Earlier changes to the names of rural municipalities

By way of introduction, let us make a brief historical digression.¹ The first major administrative reform in the territory of Estonia, primarily in

¹ See also T. Pae, M.-J. Maidla, E. Tammiksaar, 'Vallanimede küsimus 1930. aastate val-lareformis' – Keel ja Kirjandus 2016, No 10, pp. 755–769. Issues related to the names of rural municipalities during the First World War have been discussed by A. Must in his book Muutugu ja kadugu! Baltisakslased ja Esimene maailmasõda (Tartu 2016, pp. 32–37). The data used in this article is taken from the reference work by L. Uuet Eesti haldusjaotus 20. sajandil (Tallinn, 2002) and from the sources collected for the Place Names Database of the Institute of the Estonian Language (a summary is available at <http://www.eki.ee/knab/valik/kbeehald.pdf>).

northern Estonia, took place from 1891 to 1892 and partly also later. Its purpose was to merge some small manor municipalities that had been formed on the basis of the 1866 act on peasant communes. The rural municipalities resulting from these mergers were not always necessarily named after the largest and most important manor. For example, some fairly spontaneous mergers and separations resulted in the Taevere rural municipality in Suure-Jaani and the Võhmuta rural municipality in Järva-Jaani, which had previously been quite small manor municipalities. As a result of the reform, the names of the new rural municipalities were often dissociated from the names of the former manor municipalities, sometimes by using Russian names (e.g. in 1891, Triigi → Aleksandri, Laagna → Peetri (Russian: *Петровская волость*, *Petrovskaya volost*), Palvere → Nikolai). The Russification of names intensified later on, especially during the First World War (in 1913 Väätsa → Romanovi, in 1915 Riisipere → Sergejevi, in 1916 Kirna → Aleksei, Võhmuta → Ivanovi). These last changes were repealed fairly soon after the 1917 February Revolution, and then after Estonia gained independence, the course was set for the Estonianisation of names. The first example here is the renaming of the Vardi (German: *Schwarzen*) rural municipality in the county of Harjumaa to the Varbola rural municipality in 1919 (in 1917 it had been for a short while the Mihaili rural municipality).

While in the 1920s and 1930s there were few changes in the names of rural municipalities, towards the end of that period, the movement to Estonianise the names, led by the Estonian Nationalist Union, gained momentum. Not only did they dislike the names that were clearly foreign (Skarjatina, Voltveti), but they also disapproved of names that were fully adapted but had been derived from a foreign personal name; for example, Aaspere (from the family name Hastfer), Holdre (< Holler), Leebiku (< Klebeck), Riidaja (< Freytag).

By the time of the 1938–39 rural municipal reform, the Estonianisation of names had already reached its peak, which is why the 1938 act on the organisation of place names and names of registered land units

prescribed that foreign place names had to be changed. New names of rural municipalities had to be Estonian (and have Estonian origin) and short (names consisting of several parts were not recommended). For the implementation of the act, the Place Names Board was established at the Ministry of the Interior, whose task was to review the names of rural municipalities and present its opinion. A preparatory meeting focusing on the names of rural municipalities was held on 31 August and the first meeting of the Board on 7 September 1938.

The reasons for changing the names of rural municipalities can be divided into several groups:

- 1) the replacement of foreign names, including those of foreign origin (Kilingi → Saarde, Kloostri → Padise, Laatre → Mõisaküla² → Rajangu, Puurmanni → Kursi, Riisipere → Nissi, Taagepera → Vaoküla, Taali → Paikuse, Voltveti → Tihekõnnu → Tihemetsa);
- 2) the preference for historical names (Koonga → Soontagana);
- 3) the replacement of long or other unsuitable names (Pranglisaarte → Prangli, Järva-Jaani → Järvani → Võhmuta, Tsooru → Lepistu);
- 4) the correction of names according to their local pronunciation (Hallinga → Halinga, Talli → Tali);
- 5) the Estonianisation of the names of border rural municipalities (Skarjatina behind Narva → Raja; in Setomaa, Irboska → Lin-nuse, Kulje → Kalda, Laura → Lõuna).

Some name proposals were rejected because they were misleading with regard to the extent of the area they referred to; for example, Harjuranna (a common name for the rural municipalities of Harku and Vääna).

The initially rejected Alutaguse for the rural municipalities near Narva, still came into use later on (the Board had recommended the name Laagna).

² The names listed above also include provisionally proposed names.

The 1938–39 reform introduced new names that had been derived from historical records; for example, Põdrala (< 1223 *dorff podereial*, later the manor *Morsel Podrigel*), Tihemetsa (derived from Ticonas recorded in 1560, which was interpreted as *Tihekõnnu and which was changed to Tihemetsa by the Place Names Board), Vaoküla (derived from the earlier records of the Taagepera manor's German name *Wagenküll*). One name, Rajangu, was invented; it was derived from the name Raja proposed by the Laatre rural municipality, but the latter had already been promised to the rural municipality beyond Narva.

In 1991, the year Estonia's independence was restored, some former names of rural municipalities were also restored (Alaküla → Röpina, Lauka → Kõrgessaare, Mehikoorma → Meeksi, Riidaja → Põdrala). As voluntary mergers of rural municipalities gained momentum in the second half of the 1990s, in the year 2000 the Place Names Board, which had been restored in 1994, adopted recommendations for the selection of the names of rural municipalities.³ According to these, the first preference was to be given to the names of territorial divisions with a long and continuous tradition, for example parishes. Suitable candidates also included the traditional names of rural municipalities and the names of natural areas, while one had to avoid names that were misleading in terms of the extent of the area they referred to; for example, situations where the borders of the area that was the source of the name and the borders of the new rural municipality to be formed did not overlap to a significant extent. The second option was to name the new rural municipality after its centre (or main town) with the warning to avoid settlement names that had not traditionally been used to designate a larger area.⁴ There was a general recommendation to prefer short, well-sounding names that were clearly distinguishable from other names, and to avoid

³ http://www.eki.ee/knn/knn_vald.htm (14.12.2017).

⁴ This recommendation was based on the case where there was interest in merging the Karksi rural municipality and the city of Karksi-Nuia into the rural municipality of Karksi-Nuia, disregarding the fact that Karksi was the name of the historical parish.

the mechanical joining of the names of merging rural municipalities into hyphenated names (as previously with Kastre-Võnnu, Laitsna-Rogosi).

Changes to the names of rural municipalities in the course of the 2017 reform

When the 2017 local government reform was launched, the Place Names Board discussed the recommendations once again on 28 June 2016, and the final revised list included six recommended sources for names, of which the first two were considered to be the most important⁵:

- 1) names of parishes and old rural municipalities;
- 2) names of the centres of rural municipalities;
- 3) prominent names (of natural objects) in the territory of merging rural municipalities;
- 4) county names containing a compass point;
- 5) new names;
- 6) compound names (with a hyphen) of merging rural municipalities.

In accordance with the applicable procedure, the Place Names Board should have provided its opinion on the names of rural municipalities or cities to the Government of the Republic immediately before the latter made a decision on a merger. However, this ruled out the possibility of intervening in the choice of a name at an earlier stage and, considering the short deadline for the local government reform, would have put the government under pressure had there been a build-up of several unsuitable names. In order to ensure faster feedback on the choice of a name early on in the process, a task force for the names of rural municipalities was set up under the Place Names Board in June 2016 (Raivo Aunap, University of Tartu; Liisi Lumiste, Tallinn Urban Planning Office; Peeter Päll, Institute of the Estonian Language; Evar Saar, Võro Institute; Ilmar

⁵ <https://haldusreform.fin.ee/static/sites/3/2016/11/vallanime-soovitusi-03-11-2016.pdf> (14.12.2017).

Tomusk, Language Inspectorate; Väino Tõemets, Ministry of Finance), whose work was organised by Kadri Teller-Sepp. The task force worked until December 2016 and during that time provided the rural municipalities holding merger negotiations 18 longer opinions as well as short opinions using email and telephone consultations.

The main problems that emerged in the choice of new names for rural municipalities are highlighted below.

- 1. Inventing new names** Although this source for names was not completely ruled out, the Place Names Board and its task force did not expect that it would be used excessively and that new names would be offered instead of place names with a lengthy historical tradition; for example, Lääneranna (instead of Lihula), Põhjaranniku (instead of Toila or Kohtla), Kehtnakandi (instead of Kehtna). Some of the new names were too general and not useful in specifying the exact location (cf. the western shore (*Lääneranna*) or the northern coast (*Põhjaranniku*) of Estonia), or the proposed name was some kind of a hybrid (Kehtna + Järvakandi > Kehtnakandi). In the end, out of these names an official decision was only made on Lääneranna, as at the beginning the task force was not too resolute in fending off such names.
- 2. Taking advantage of major and well-known place names** – including proposing names with ‘territorial pretensions’ Some merging rural municipalities found it tempting to take advantage of a name’s renown and marketability despite the fact that the name proposed did not have any direct association with the respective region or that the meaning of the name was broader (or sometimes narrower) than the territory of the merging rural municipalities. For example, some names proposed for rural municipalities were the names of lakes on a border (the name Peipsi (from Lake Peipus) was requested simultaneously by two groups of rural municipalities – one in the county of Jõgevamaa and the other in the county of Tartumaa; the name Võrtsjärve was requested by the rural municipalities

that had a centre in Elva on the eastern side of the lake Võrtsjärv). The most ambitious name proposal was the rural municipality of Põhja-Liivimaa (Northern Livonia) for the rural municipalities in the southern part of the county of Pärnumaa (currently, there are two rural municipalities – Häädemeeste and Saarde), although it was known that the entire northern part of the former Governorate of Livonia – southern Estonia and Saaremaa – could be considered as Põhja-Liivimaa. Another difficult case was the name of the Lahemaa rural municipality that was proposed by the rural municipalities of Haljala and Vihula. The new rural municipality would have covered only the eastern part of the area known as the Lahemaa natural region (leaving out the part in the Kuusalu rural municipality). At the same time, it would have been larger than the actual region because a part of the Haljala rural municipality is not associated with Lahemaa. As the Kuusalu rural municipality protested, the name Lahemaa was not approved and instead, the rural municipality was formed with the name Haljala, based on the name of the parish. A great deal of conflict arose concerning the name of the Mulgi rural municipality (proposed for the merging rural municipalities of Abja, Halliste, Karksi and Mõisaküla), as it covered only a part of the historical region known as Mulgimaa. As the rural municipalities around Helme, which had for a while considered the name Lõuna-Mulgi (South Mulgi), chose the name Tõrva, and the Tarvastu rural municipality merged with the Viljandi rural municipality, then in the end there were no other contenders for the name Mulgi, which was approved as the name of the above-mentioned merged rural municipality. The Place Names Board also approved the name of the Alutaguse rural municipality with some reservations, although historically Alutaguse has designated a larger area and after the 1938–39 reform the Alutaguse rural municipality was actually situated in the northern part of Vaivara.

- 3. Applications to start from scratch** In some places it was agreed that the name of the new rural municipality would not be based on the names of any of the merging rural municipalities. This often ruled out reasonable name variants; for example, the common name chosen for the rural municipalities of Haaslava, Mäksa and Võnnu was the Kastre rural municipality, although the parish name Võnnu would have been more justified. The common name chosen for Kõo, Kõpu, Suure-Jaani and Võhma was the Põhja-Sakala rural municipality, based on a reconstruction of a historical name, instead of the Suure-Jaani rural municipality that would have been based on the name of the centre.
- 4. Horse-trading** Without mentioning any names, it was said that in some places there was some horse-trading over the name of a new rural municipality in the style of 'we will get the centre of the rural municipality, you will get the name of the rural municipality'. There is no need to explain that this, too, did not contribute to a rational choice of a name.
- 5. Areas that were difficult to name** Sometimes the area that emerged as a result of the merging of rural municipalities was so large that it was impossible to find a suitable historical name for it. For example, the rural municipalities in the Järvamaa county which did not merge with Paide and Türi got the name Järva rural municipality, although the latter covers only the eastern and northern parts of the historical county. The rural municipalities from Noarootsi to Kullamaa that merged in the northern part of the Läänemaa county got the name Lääne-Nigula rural municipality, although the parish with the same name makes up only a small part of the territory of the new rural municipality.

At the end of 2016, the names of the voluntarily merged rural municipalities and cities were submitted to the government for approval. In several cases, the Place Names Board submitted a dissenting opinion or

a recommendation for consideration. The government took into account five of them, approving the names Haljala rural municipality (initial proposal Lahemaa rural municipality), Kehtna rural municipality (Kehtnakandi rural municipality), Rõuge rural municipality (Haanjamaa rural municipality), Toila rural municipality (Põhjaranniku rural municipality) and Võru rural municipality (Võhandu rural municipality).⁶

As the voluntary mergers of rural municipalities were followed in 2017 by mergers initiated by the government, some approved names of rural municipalities changed because at that stage, the decisions were made on the basis of the proposals of the Place Names Board. For example, even though the city of Kiviõli and the Sonda rural municipality had voluntarily merged to form the Kiviõli rural municipality, after their subsequent merger with the Lügánuse rural municipality, the name of the merged rural municipality was chosen on the basis of the parish name Lügánuse.

In total, there were 51 voluntary mergers and government-initiated mergers. In 36 cases (71%), the new municipality preserved the name of one of the merging rural municipalities or cities, in 4 cases the name was preserved together with a changed generic term (Elva city → rural municipality, Mustvee city → rural municipality, Tõrva city → rural municipality, Valga city → rural municipality) and in 11 cases (22 %) a new name was given to the rural municipality (Alutaguse, Hiiumaa, Järva, Kastre, Lääne-Harju, Lääneranna, Mulgi, Põhja-Pärnumaa, Põhja-Sakala, Saaremaa, Setomaa). Of the latter, only Lääneranna is a completely new name, while the rest are based on existing place names.

⁶ Some recommendations had been made in a lenient form; for example, the Place Names Board preferred the names Lihula (instead of Lääneranna), Lääne-Mulgi, Abja-Mulgi or Halliste-Karksi (instead of Mulgi) and Võnnu (instead of Kastre), but these were not taken into account by the government. As there were two municipalities in Hiiumaa that merged at the first stage of the reform, the Board proposed the name Hiiu rural municipality, but the government opted for the Hiiumaa rural municipality, expecting the merger of all municipalities on the island.

The following is an overview of the division of the names of merged municipalities on the basis of the recommendations of the Place Names Board:

- names of parishes and old rural municipalities⁷: Anija, Antsla, Haljala, Häädemeeste, Jõgeva, Kambja, Kanepi, Kehtna, Lääne-Nigula, Lüganuse, Märjamaa, Otepää, Peipsiääre, Põltsamaa, Põlva, Rakvere, Rapla, Rõuge, Röpina, Saarde, Saue, Tartu, Toila, Tori, Viljandi, Viru-Nigula, Võru, Väike-Maarja (in total 28);
- names of centres: Elva, Haapsalu city, Mustvee, Narva-Jõesuu city, Paide city, Pärnu city, Tapa, Tartu city, Tõrva, Türi, Valga, Vinni (12);
- prominent names (of natural objects) in the territory of merging rural municipalities (including names of regions); Alutaguse, Hiiumaa, Järva, Mulgi, Saaremaa, Setomaa (6);
- county names containing a compass point: Lääne-Harju, Põhja-Pärnumaa, Põhja-Sakala (3);
- new names: Lääneranna (1);
- compound names of merging rural municipalities: none;
- unclassified: Kastre (1).

The name Kastre is difficult to classify, as the manor municipality with that name last existed in the 19th century. By the 20th century, it had merged with Võnnu to become the Kastre-Võnnu rural municipality, which existed until the 1938–39 rural municipal reform. If we take Kastre to be a historical fortress name, it could perhaps be included in the third group. The third group in the above classification has been extended with the names of regions, which were not mentioned specifically in the original wording of the recommendations.

⁷ The delimitation of the first two groups is somewhat arbitrary. Here the names are rather included in the first group if the new name is based on the name of the rural municipality that was used before 1940.

The classification of the choice of names by post-merger municipalities

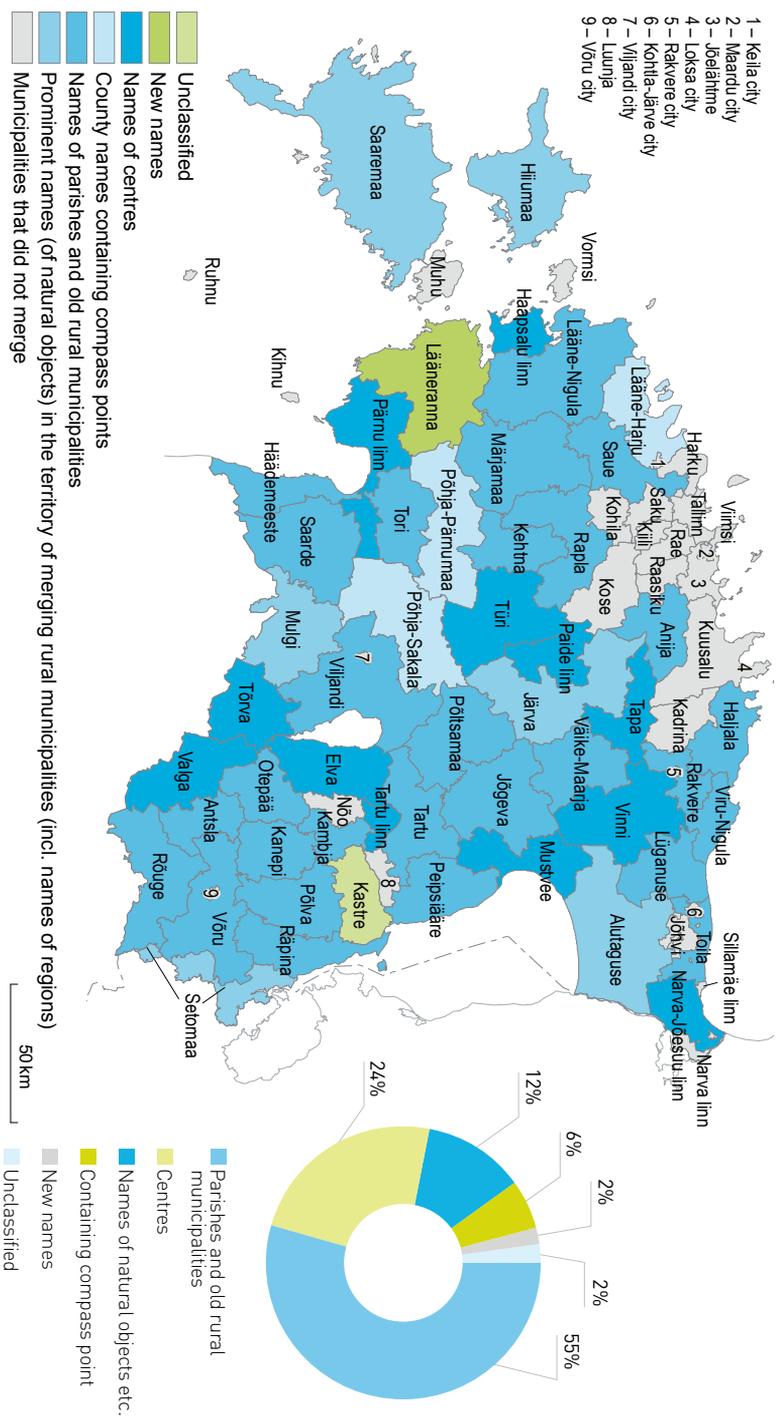


Figure 1.

If we compare the 2017 administrative reform with the reform carried out at the end of the 1930s with a focus on the names of rural municipalities, then it is of course apparent that during the previous reform great importance was attached to the Estonianisation of the names and preference was given to shorter names. Furthermore, quite a few new names of rural municipalities that had not existed before were introduced at the time of the previous reform (Assamalla, Iru, Kalda, Lepistu, Linnuse, Lõuna, Piiri, Põdrala, Rajangu, Raudna, Ruusmäe, Tihemetsa, Tõdva, Vaoküla, Voore etc.). In the recent administrative reform, emphasis was laid on the preservation of historical identity. Although the Estonian origin of the names was acknowledged (it was added to the recommendations that historical names in a foreign language, such as Maritima or Rotalia, were not suitable), this was not the primary concern. Furthermore, the shortness of the names no longer appeared to play a role, as some names that were chosen also included cumbersome hyphenated forms (Põhja-Pärnumaa, Põhja-Sakala). One might perhaps generalise that name-related disputes focused primarily on which identity was stronger – that of a centre (e.g. Ülenurme, Mäksa) or a region (Kambja, Võnnu). In several cases it was the identity of a region that lost out, particularly when it was associated with parishes (Iisaku, Kodavere, Lihula, Torma, Võnnu etc. were discarded). However, there are also examples of cases where the identity of a region won (Häädemeeste, Saarde, Tori, Viru-Nigula), partly thanks to the choices made by the government (Kambja, Lüganuse, Rõuge).

There were undoubtedly also other disputes that took place under the guise of name disputes, which had to do with power; that is, whose word would prevail, but it is difficult to generalise about these. The disputes and the chosen names caused bitterness in a number of places; time will tell which of these names will remain and which will not be accepted in the end.

In the recent administrative reform, the problem that the terms designating administrative divisions and settlement units are in some

cases ambiguous remained unresolved. When one had already become somewhat used to the fact that 'city' could also designate a settlement unit without municipal status (e.g. Otepää city in Otepää rural municipality), then the Administrative Reform Act (Article 14(1)) provided for the possibility that the type of a new municipality formed as a result of a merger of a city and a rural municipality (rural municipalities) could remain a 'city'. The *Riigikogu* generously permitted the application of this principle also retrospectively for previously merged cities and rural municipalities (Article 14(2)). This generosity created a situation where one and the same name can simultaneously designate an administrative division (a larger area) and a settlement unit (a smaller area). There are now in total five municipalities that have ambiguous names: Haapsalu city, Narva-Jõesuu city, Paide city, Pärnu city and Tartu city.⁸

These cases will certainly cause problems in communication and require further explanation and cumbersome clarifications.⁹ The requirement that a name (e.g. Pärnu city) be written twice in an official postal address – first to designate the administrative division and then the settlement unit – has already received public attention. The problem needs further discussion; while four of these cases could be resolved by changing 'city' to 'rural municipality' (e.g. Haapsalu rural municipality), Tartu rural municipality already exists and it would be unacceptable to give Tartu city a different name.

The case of the double meaning of 'city' has clearly to do with a political incentive that was offered to the local authorities of merging municipalities in the hope of dispelling their potential resistance to

⁸ Cf. Otepää city, which is an unambiguous designation that only stands for a settlement unit.

⁹ For example, in the online version of *Eesti kohanimeramat* (a reference book on Estonian place names), for the entry on Pärnu city as a settlement unit, its administrative attachment has been explained with the wording 'a city in Pärnu county in the administrative jurisdiction of Pärnu city'. This means that 'city' as an administrative division in the five above-mentioned cases has been replaced with 'the administrative jurisdiction of city'. This is certainly not ideal but helps to avoid the misunderstanding that a 'city' as an administrative division could be seen as the same as a 'city' as a settlement unit.

giving up established names. The question of whether a municipality is led by a rural municipal mayor or a city mayor should actually be an issue of tertiary importance and could have been resolved the way it was done in Saaremaa, where it was decided that the rural municipal mayor of Saaremaa would also perform the functions of the city mayor of Kuressaare. In what way is the identity of Narva-Jõesuu city more important than that of the cities of Kuressaare or Valga (both have disappeared as administrative divisions) should be a separate topic for the government in an analysis of the results of the administrative reform.

Changes to village names

It came as a surprise to many people that as a result of the administrative reform, village names, too, had to be changed, as names could not be repeated within one municipality. There are many Liivakülas, Metsakülas, Mõisakülas and so on in Estonia; some of them happened to be in one and the same new rural municipality. Under the applicable laws, official village names are approved by the Minister of Public Administration, on the basis of proposals made by the local authorities.

The Place Names Board drew up a short list of recommendations on how to change the names of the villages that had the same name (20.12.2016¹⁰). With regard to the history of names, the most sparing solution was considered to be complementing the repeated names with a qualifying attribute; for example, with the name of the respective former manor, the name of a merging rural municipality, or in some cases the name of a neighbouring village. In individual cases, one could consider restoring a historical variant of the name of the settlement or altering the name in another way. In any case, all settlement names had to be considered as having historical value and it was recommended not to merge settlements with neighbouring villages.

¹⁰ http://www.eki.ee/knn/knn_kulanimed_soovitused.pdf [14.12.2017].

From April to June 2017, the members of the Place Names Board gave rural municipalities concrete recommendations as to what kinds of names they could consider. The task was difficult due to the fact that some combinations of mergers of rural municipalities and hence also repeated names were disclosed at the last minute. Some of the proposals were approved by rural municipalities but in several cases they proposed their own variants. A detailed overview of the steps taken and the ways in which the names were chosen in rural municipalities is provided in the explanatory memorandum added to the list of the settlement units in Estonia (RT I, 16.10.2017).¹¹ Saaremaa had the greatest number of repeating names that needed to be changed; it was agreed early on that the village with the largest population would not be required to change its name. This principle was also applied later on in other cases, and so the number of names to be changed could be nearly halved.

For various reasons, some rural municipalities did not take the initiative to change the repeated names, and therefore it was necessary to apply point 1 of Article 21 of the Place Names Act that obligated the Place Names Board to approve, by a resolution, official place names based on named features for which place names had not been established by a names authority and where it was necessary for an official place name to be established. At the proposal of the Place Names Board, the Minister of Public Administration approved the village names in the merged Hiiumaa rural municipality, and in the Märjamaa and Võru rural municipalities.

The majority of the villages whose names had to be changed were new settlement villages that had emerged on lands expropriated from the manors in the 1920s. These were often villages that had been merged with their neighbouring villages in the course of the 1975–77 rural settlements reform and that had been restored in 1997–98. Apart from

¹¹ https://www.rahandusministeerium.ee/sites/default/files/171010_asustusksuste_nimistu_maarus_sk__0.pdf (14.12.2017).

that, there were also relatively old villages; for example, Kirderanna¹² (former Rannaküla, named after the manor, an earlier record of which probably dates back to the year 1506), Laevaranna (former Rannaküla, first mentioned as a farm name probably in 1645), Pöide-Keskvere (a former manor, first mentioned in 1645).

All in all, changes were made to 50 village names, including 31 in Saaremaa and 9 in Võrumaa. Nine villages were merged with other villages, including eight in Saaremaa and one in Võrumaa. On the basis of the neighbourhoods that were transferred from Kohtla-Järve to Narva-Jõesuu, two new villages (Sirgala and Viivikonna) were formed.¹³

A closer look at the changed names reveals that most of them acquired a qualifying attribute. This was either the name of a parish or rural municipality, including an old manor municipality (Kaarma-Jõe, Kihelkonna-Liiva, Laitsna-Hurda, Pöide-Keskvere, Püha-Kõnnu, Pühalepa-Harju, Rõuge-Matsi, Valjala-Ariste), the name of a region (Sõrve-Hindu), the name of a neighbouring village (Kaali-Liiva, Rootsi-Aruküla, Vaigu-Rannaküla), or another name (Kahrila-Mustahamba after the historical village of Kahrila). Another possibility that was used was restoring an earlier form of a name. For example, Salevere in the former Koonga rural municipality was changed to Salavere, although the Place Names Board recommended reviewing that name once again because it had a misleading similarity with another Salevere village. In a few cases, the qualifying attributes Suur- or Väike- were used, although the respective villages were far away from each other. For example, the village of Ula in the former Salme rural municipality was renamed Väike-Ula, while Ula village, which preserved its name, is situated in the former Pöide rural municipality. The former settlement villages Koidu, Põlluküla, Tamsalu and Viira were merged with Randvere village in the former Lääne-Saare rural municipality and the new village was named Suur-Randvere, while

¹² Here the new, changed names have been used as the main name.

¹³ http://www.eki.ee/knn/muutunud_kylianimed_2017.htm (14.12.2017).

the Randvere village without an attribute remained in the former Põide rural municipality.

In several cases, the possibility was used to alter a name, by adding to it a new element (Laheküla → Allikalaha, Liiva → Liivaranna, Nõmme → Liivanõmme, Rannaküla → Kirderanna and Laevaranna, Veere → Veeremäe) or by changing a part of a name (Väljaküla → Väljamõisa, Nõmme → Nõmjala¹⁴). In five cases, a completely different name was introduced, such as the name of a natural object (Laheküla → Tirbi, Rannaküla → Rooglaiu), a parallel name of a village (Kallaste → Vodi) or the name of a (group of) farm(s) (Metsaküla → Lussu, Pulli → Põdramõtsa).

Except in the case of the formation of the Suur-Randvere village, the reason for merging villages was often the fact that the residents did not consider the name of their village important enough and preferred it to be merged with a neighbouring village. The Laheküla village in the former Orissaare rural municipality was merged with Maasi, the Mõisaküla village in the former Salme rural municipality was merged with Kaugatoma, the Rannaküla village of the former Laimjala rural municipality was merged with Saareküla etc.

The changes to the village names were made over a relatively short period of time, which is why the Place Names Board approved some names (Kirderanna, Salavere) 'provisionally', in order to avoid problems in the address system. The relevant rural municipalities will be sent a recommendation to review these names once again.

Conclusion

The 2017 administrative reform was carried out in two stages: voluntary mergers and government-initiated mergers. The names that were proposed during the first stage gave rise to frequent disputes, as due to its sensitivity, this question in several rural municipalities was left

¹⁴ It was said that the name had been used on the day of villages and that it had been derived from its location between Valjala and Laimjala.

among the last to be discussed, which often did not help. Therefore, the names from the first stage include a larger number of those that were not the first preference of the Place Names Board. As the right of initiative belonged to the government in the second stage, who also accepted the Board's preferences, the proposed names were more in line with the recommendations. All in all, one could perhaps be satisfied with the names of rural municipalities, as the general picture is better than expected.

The need to change village names was largely an unintended consequence of the reform, as in an ideal case, name changes should be avoided altogether. Due to the short time for preparations, it was not possible to propose alternatives in the administrative and address systems, which would have helped to avoid the repeated names. In the long-term, it is probably reasonable to propose alternatives, as it is likely that there will be new mergers in the future that will affect subsequently repeated village names.

The Transfer of Villages from One Municipality to Another

RIVO NOORKÕIV, MIKK LÕHMUS, KERSTEN KATTAI

One of the topics arising from the administrative reform that generated a great deal of heated debate, especially at the end of the voluntary merger stage, was the transfer of territory (villages) from one municipality to another.

Territorial transfers were discussed in at least 24 merger areas. After approval by the relevant municipal councils and the central government, the villages were transferred in seven counties, or eight municipalities, and the process involved 26 villages. According to the population register, the transferred villages had a combined population of 1,674 (as of 1 January 2017) and covered a total area of 368.1 square kilometres.

The transfer of villages and territory from one municipality to another in the course of the 2017 administrative reform

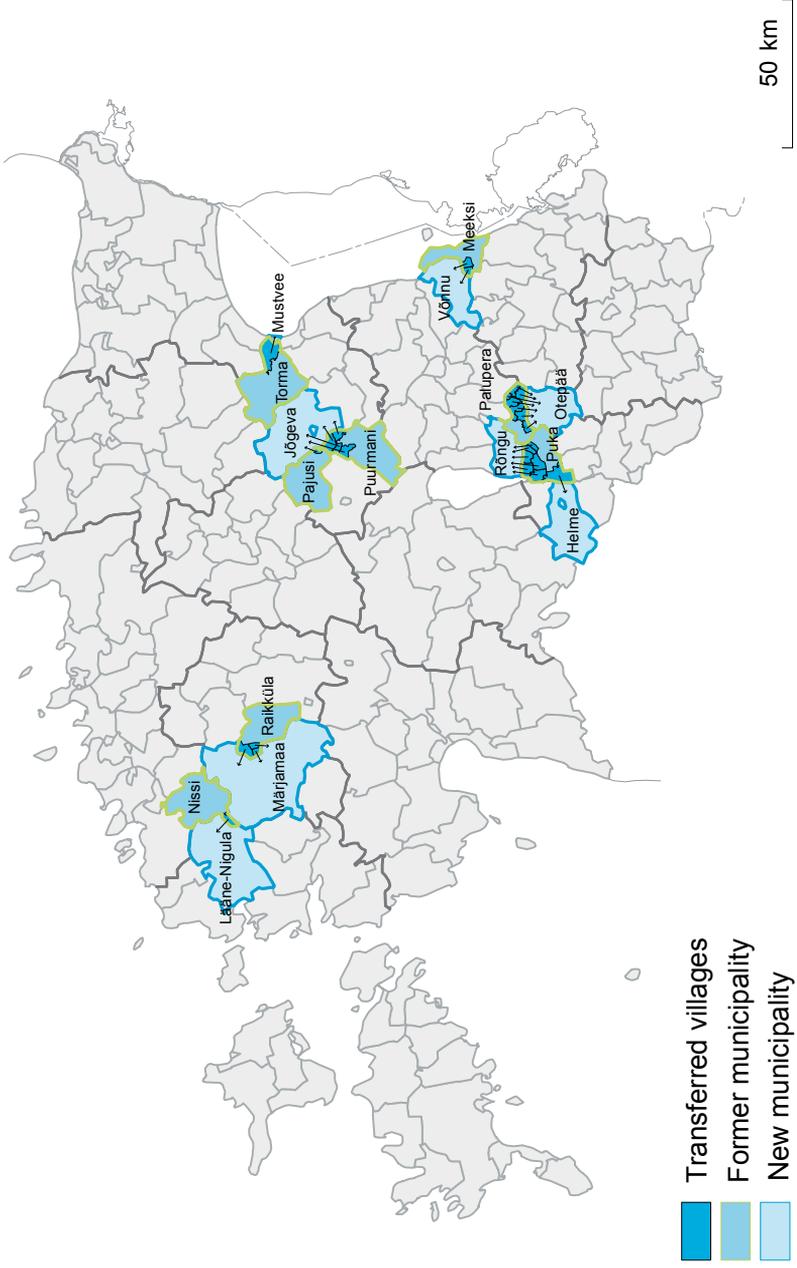


Figure 1.

The territorial transfers carried out during the merger procedure took effect at the same time as the merger, in that the boundaries of the relevant administrative divisions were changed. This happened after the announcement of the results of the municipal council elections. There was only one occasion – when the village of Rehemäe, in Nissi rural municipality, was transferred to Lääne-Nigula rural municipality – that the decision entered into force on 1 March 2017, as the local authorities concerned had applied for it as a procedure for changing boundaries, separately from the rural municipality merger. In that case, the change took effect together with entry into force of the corresponding government regulation.

Compared with the transfer of settlement units, there were considerably more cases where proposals for the transfer of municipalities' territory were not approved. During the administrative reform, there were at least 97 initiatives to transfer a village or a small town to another municipality, in 10 counties and 18 municipalities (8.4 per cent of municipalities) that, due to opposition from municipal councils, did not materialise. The proposals concerned at least 10,070 residents in villages covering a total area of 872.14 square kilometres (1.9 per cent of the area of Estonia).

The initiation of changes in municipal boundaries

There were two approaches to the initiation of changes to municipal boundaries.

- 1. Transfer of villages by popular initiative proposal's made by citizens with the right to vote.** Pursuant to the Local Government Organisation Act, residents have the right to raise issues with regard to local life, including changes to the boundaries of an administrative division, for the municipal council to discuss. In accordance with the Act, in order for a proposal to be included on the agenda of the municipal council, it must be supported by at least 1 per cent of the electorate, but by no less than five residents of the municipality. The municipal council must discuss

the proposal within three months, but there is no obligation to decide in favour of the proposal or to initiate a procedure for the transfer of territory. Before or after initiating the procedure, the council can carry out an opinion poll among the residents, which does not need to follow the procedure set out under the Government Regulation¹ in order to determine residents' opinion, in the event that the transfer of villages is carried out separately from the merger or if the local authorities are still in the process of deciding which other local authorities they should initiate merger negotiations with. In addition to the residents' views, local authorities can ascertain other circumstances that they can use in deciding whether to commence, terminate or continue the procedure for determining the administrative affiliation of a territory.

2. **Initiation of the procedure for the transfer of villages by a municipal council.** No initiative is required from the residents for the initiation of the procedure for the transfer of villages, as the municipal council itself has the right to initiate the process (this applies to both the transferring and receiving municipal councils). For this, the party receiving the proposal must accept it and both councils need to adopt the corresponding decisions. Before initiating the procedure, the council may determine the residents' views, such as by discussing the issue with them at a village meeting or by means of an online survey published on the municipality's website. At the same time, such an approach does not free the municipal council from the statutory obligation to determine in the course of the merger procedure the residents' opinion on the planned specific changes to the boundaries.²

¹ Government Regulation No 87 of 28 July 2016 establishing the extent and procedure for determining the residents' opinion on the alteration of administrative-territorial organisation and boundaries of an administrative division.
See <https://www.riigiteataja.ee/akt/129072016012>

² See Article 6 of the Administrative Reform Act, and Articles 7(7) and 7(8) of the Territory of Estonia Administrative Division Act.

In both of these approaches to the initiation of changes to municipal boundaries, it is important to hold discussions with the local community first and at the same time to make sure that the alteration of the administrative-territorial organisation will achieve the desired goal of the administrative reform. Above all, a change in the municipality that an area belongs to should not break the historical and socioeconomic cohesion of the people and should take into account their daily movement patterns; the new boundaries should also follow the residents' historical links of identity.

A great deal depends on the extent to which the residents are territorially 'anchored', i.e. connected to one another, starting from their perceived identity and family relations to national or religious relations. The specific degree of cohesion depends on the communication that takes place at the corresponding level and on the participation in the institutions at that level. If the community and the residents' participation in local life is active, then the village level identity is considerably stronger and more value is attached to place-based development. This means that importance is placed on communities that are active, tight-knit and innovative, and that are able to develop using their internal resources, especially human resources.

Hence, it is not just the existing and desired development levels of the living environment that are important in the belonging of territories, but also the local identity related to the place, which are two aspects of the same issue.³ As public authority is exercised primarily in the interests of the individual, local authorities must derive their legitimacy from the individual as well.

The process of the transfer of villages is a truly local topic, as without the participation of residents in shaping those decisions that affect them directly, local government would lose its real meaning. A strong

³ A. Paasi, 'Region and Place. Regional Identity in Question' – *Progress in Human Geography*, 28(4), 2003, pp. 475-485.

appeal to the local authorities in Estonia to respect villages' right of territorial choice was made by the rural municipal councils of Haljala and Vihula. The point of their message was to allow, in the spirit of goodwill, the villages to choose their municipality, without hindering their choices with council decisions. They also confirmed that the villages in Haljala and Vihula rural municipalities were free to choose the municipality to which they wanted to belong.⁴

Under the laws in force, a municipality can be divided into several parts. Legally, this means that part of a municipality can be merged with one municipality, while another part of its territory (one or more villages) is transferred to a different municipality (one that does not participate in the merger), thereby changing municipal boundaries.

In such a case, the merger procedure is applied to one territorial part (e.g. the area where the centre is located or which is larger by area or number of residents), while in the other part (even if its area is up to half the size of the merged municipality) the procedure is treated as the transfer of the territory to the other municipality, i.e. a change in the boundaries. Therefore, the merging municipality that transfers its villages is subject to two procedures: a merger on the one hand and a change of boundaries on the other. The merging municipality receiving villages can choose whether to implement the merger and the change of boundaries as one procedure or to have two separate procedures. For example, Lääne-Nigula and Nissi rural municipalities agreed that the transfer of Rehemäe village would be a separate procedure (see the example below). In this example, the village was transferred from Harjumaa County to Läänemaa County, meaning that county boundaries were changed.

In the case of separate procedures, the other municipalities participating in the merger procedure are not participants in the procedure

⁴ *Vihula Valla Leht* No 10, October 2016; http://www.vihula.ee/documents/1124940/10545788/2016_10_VihulaVallaLeht.pdf/59143c79-170c-4cb4-9e5f-080007aff7ff.

for the transfer of villages – that is, changes in the boundaries – but it would be common courtesy to notify them of the procedure. Likewise, when a territory changes during a merger, the other municipalities are not officially parties to the procedure for the transfer of villages.

The procedure for changing boundaries

Practice has shown that in the majority of cases, municipal councils have not supported residents' initiatives for the transfer of territories. There are several reasons behind municipal councils' lack of support for these initiatives:

- 1) there was too little time for the changes and implementation of the transfer of the territory in accordance with the law. They explained that this could be done later on, if necessary;
- 2) they were not interested in decreasing the number of residents in the municipality so as to prevent any problems with meeting the minimum criterion of the number of residents or staying a separate municipality just under the minimum criterion;
- 3) they wished to preserve the existing territory of the municipality, referring to the tradition and established cooperation between the communities;
- 4) they saw a negative impact on the revenue base of the municipality, as giving up residents and territory would lead to a reduction in personal income tax revenues and, due to a decline in economic activity, would have a negative impact (e.g. decreasing land tax revenues) on the revenue base of the municipality that ceded part of its territory.

Obligation to seek residents' opinion

In the case of the transfer of villages, the residents' opinion must be obtained by settlement units. Opinion poll are considered to be an aspect of representative democracy because the final decision is made by the municipal council members as authorised by the people. If villages are

transferred during a merger, then, in addition to the question regarding the merger, the residents of those villages must also be asked a question about the transfer of the villages.

Example: Under the decision taken on 2 February 2017 on the proposal to change municipal boundaries, the Rõngu rural municipal council made a proposal to Puka rural municipal council to initiate the procedure to change boundaries in order to transfer some villages in Puka rural municipality (Aakre, Palamuste, Pedaste, Purtsi, Pühaste and Rebaste) to Rõngu rural municipality. Under the decision taken on 17 February 2017, the Puka rural municipal council accepted Rõngu rural municipal council's proposal.

In order to seek residents' views, the following question was added to the opinion poll: 'Do you support the transfer of the villages of Aakre, Palamuste, Pedaste, Purtsi, Pühaste and Rebaste to Rõngu (future Elva) rural municipality?' with the choice of either 'Yes' or 'No'.

As per the order of 20 February 2017, Puka rural municipality decided that the opinion poll was to be held in the Aakre community centre in Aakre village on 10 and 12 March from 9:00 to 17:00.

The list of participants in the opinion poll included 414 people who were at least 16 years old and lived in the villages of Aakre, Palamuste, Pedaste, Purtsi, Pühaste and Rebaste. There were 228 respondents, of whom 206 replied 'Yes' and 22 'No'. The table below shows the residents' opinion by villages, as obtained through the poll.

In the transfer of the villages, only residents of the villages to be transferred were asked their opinions. The procedure established by the national government to determine residents' opinions does not allow for the possibility to ask the opinion of the rest of the rural municipality's residents. This could have been done through a separate survey that did not form part of the official procedure.

If the residents' opinion polls were conducted at the same time, the opinion of the residents of the village to be transferred was asked in both polls, meaning that their opinion on the merger was sought in the

Village	Yes	No
Aakre	122	16
Palamuste	6	2
Pedaste	9	1
Rebaste	31	2
Pühaste	19	0
Purtsi	19	1

receiving municipality’s merger poll, and in the transferring municipality’s poll, their opinion was sought on the transfer. If the polls were not conducted at the same time, then during the merger procedure, the question about the merger was asked of all residents, and the question about the changes to the municipal boundaries was addressed only to residents of the villages to be transferred.

In the case of a common procedure for the merger and the transfer, the opinion polls for the municipalities that transfer villages and receive villages should be conducted at the same time so that residents of the villages to be transferred would not have to respond to the survey at two different times. If it is not possible to conduct the opinion polls in both merger areas at the same time, the local authorities will have to agree that the residents’ opinion will be sought on both solutions (i.e. the transfer or continuation of the current situation) in the transferring municipality’s opinion poll on the merger. It may be most appropriate to have separate procedures for the merger and the changing of boundaries.

Compensation and obligations related to changes to boundaries

Merger grants were set aside for the transfer of villages. The calculation of the size of the grant was based on the extent of the merger and on the extent of the transfer of territory. In the case of the transfer of territory, the recipient was paid a merger grant only when participating in the merger or if it had more than 5,000 residents. If a municipality with more than 5,000 residents was formed, the size of the merger grant was 100 euros per resident. The municipality that transferred villages and merged with another municipality would receive a merger grant based on population (as of 1 January 2017) before the transfer of the territory.

In the course of the changing of boundaries, agreement would be sought on preparation of legislative amendments resulting from the changes as well as solutions to organisational and other issues.

Functioning of regional committees

Owing to the transfer of villages, Sauga and Puka rural municipalities received most attention from the regional committees. While several villages in Sauga rural municipality wished to be transferred to Pärnu city, the residents of Puka rural municipality showed initiative in changing the administrative placement of the region in three directions: Otepää, Elva and Tõrva. The regional committee of southern Estonia discussed the wishes of the residents of the villages in Puka rural municipality to be transferred from one municipality to another in two meetings.⁵ Historically, the western part of Puka rural municipality in the area of Aakre and Soontaga belonged to Rõngu parish; the eastern villages of Puka rural municipality belonged to Otepää; the area surrounding Puka belonged to the northernmost part of Sangaste parish.

⁵ Minutes No 9 of regional committee of southern Estonia meeting on 9 January 2017; http://haldusreform.fin.ee/static/sites/3/2017/01/2017_jaan_louna-eeesti_piirkondliku_komisjoni_protokoll_9.pdf

The regional committee decided to issue Puka municipal council with a recommendation to consider the transfer of the villages to neighbouring rural municipalities and to complete the procedures before 15 April 2017. The residents of Soontaga village, for example, submitted an application to Puka rural municipal council to transfer the territory to Helme rural municipality. In turn, Helme rural municipality submitted an official proposal to Puka rural municipality to transfer Soontaga village. The committee recommended that Puka rural municipality discuss the proposal submitted by the residents of Soontaga village at the council meeting and inform the residents and the relevant rural municipal councils of the position of Puka rural municipal council regarding the proposal to change the boundaries, so that there would be sufficient time to implement the procedure for changing the boundaries.

The transfer of the villages of Lutike, Makita, Miti, Neeruti, Nõuni, Päidla and Räbi to the merging rural municipalities of Sangaste and Otepää, which was initiated by the rural municipality of Palupera, was also supported by the regional committee of southern Estonia.⁶ The committee found that the merger would result in the formation of a homogenous municipality that would fulfil the criteria, goals and principles of territorial integrity as set out in the Administrative Reform Act, which would have a positive impact on the achievement of the goals of the administrative reform. Similarly, the regional committee of northern Estonia recommended (Minutes No 5 of 27 September 2016)⁷ that Väätsa rural municipality discuss the proposal to transfer Reopalu village and to inform the residents and the relevant rural municipal councils of the position of Väätsa rural municipal council regarding the proposal to change the boundaries.

⁶ Minutes No 9 of regional committee of southern Estonia meeting on 9 January 2017; http://haldusreform.fin.ee/static/sites/3/2017/01/2017_jaan_louna-esteti_piirkondliku_komisjoni_protokoll_9.pdf

⁷ Minutes No 5 of regional committee of northern Estonia meeting on 27 September 2016; https://haldusreform.fin.ee/static/sites/3/2016/11/2016-09-27_pohja-esteti_piirkondliku_komisjoni_protokoll_5.pdf

Conclusion

The transfer of settlement units as part of the implementation of the administrative reform is not a new topic. The strategy document 'Administrative reform in local government', which was prepared by the Ministry of the Interior in 2001, states that 'if different parts of a municipality of any size have closer relations with their neighbouring municipalities than with one another, these parts must be merged with the appropriate neighbouring municipalities'. As a consequence, when preparations were made for the reform in 2001, it was decided that the issue of unreasonable boundaries would have to be solved and this would have to be done in problematic areas by means of opinion polls, in order to determine which municipalities the rural municipalities as well as their outlying areas should belong to.

A comparison of the list of problematic areas that was drawn up at the time with the proposals for changing boundaries that have been made during the current administrative reform shows that a large number coincide. As a result, the transfer of territory that arose as a topical issue was not random but referred to problems that had required a solution for a very long time.

In the Administrative Reform Act, responsibility for decisions on the transfer of territory was left entirely in the hands of local authorities. Although some villages were indeed transferred in the course of the reform, municipal councils in most cases did not take into account the residents' opinions and refused to transfer territory. The reasons for the refusal were wide-ranging, ranging from emotional considerations to causal links with the revenue base of the rural municipality. Municipal councils often did not take a decision for fear of making the merger process more complicated. Based on local authorities' right to autonomy, the national government did not interfere in the transfer of villages, limiting itself to merely giving recommendations in regional committees when residents or experts approached these committees with questions regarding the transfer of villages.

Several debates on the topic of the transfer of villages took place in the *Riigikogu*, mostly at the initiative of the Free Party. These have focused on how best to accommodate the wishes of the residents and potential alternatives to the solutions provided for in the laws currently in force. These questions are likely to remain in policy plans for a long time, although the territorial aspect of the administrative reform has now been completed.

In principle, there are two possible practical solutions in the future. The first is the current arrangement whereby residents have the right to initiate the transfer of villages and municipal councils have the right to decide whether to implement it or not.

Second, more decision-making powers could be granted to the national government for local issues. The weakness of the latter solution is that it would deviate from the long-term practice where territorial changes are part of the decision-making powers of municipal councils, and would constitute a very serious infringement of the autonomy of local authorities. Furthermore, one must not underestimate the risk of excessive politicisation of local boundary changes, a development that would be inevitable if decisions were made at the national level.

A third, theoretical possibility would be a referendum-like solution, where the administrative-territorial organisation would be changed if a majority of the residents of the village support it. However, such an alternative is not very realistic, as there are a number of technical questions relating to issues such as property, legal acts and loans that need to be solved when villages are transferred. Moreover, referenda are often laden with political power struggles and prior to each such decision, it is necessary to provide a detailed explanation of the advantages and disadvantages of a territorial change to the people.

In conclusion, it can be said that there is still considerable room for improvement in the development of democracy in the administrative culture of local authorities. In several cases, the transfer of territory initiated by residents will probably take place at a later development

phase of the new municipalities, as logical administrative boundaries will need to be established, something that was not done in the course of the administrative reform.

Example 1. The transfer of the villages of Lutike, Makita, Miti, Neeruti, Nõuni, Pädla and Räbi to the Otepää rural municipality

As of 1 November 2016, these seven villages had a total of 487 permanent residents and covered a territory of 81 square kilometres.

Palupera rural municipality held merger negotiations with the local authorities of two municipalities: with Otepää, based on a proposal from Sangaste rural municipality, and with Elva based on a proposal from Elva city. Pursuant to law, Palupera rural municipality could merge with only one of them, either with Otepää or Elva. A rural municipality can be divided between two other municipalities only if some villages are transferred to a neighbouring rural municipality. A municipal merger and the transfer of villages are two different procedures.

During merger negotiations, it emerged that the residents of the Nõuni area in the Palupera rural municipality wished to merge with Otepää, and the areas of Hellenurme and Palupera with Elva. These three areas are made up of the following villages (the number of residents is given in brackets): the Nõuni area (505) – Lutike village (27), Makita village (21), Miti village (21), Neeruti village (59), Nõuni village (224), Pädla village (94) and Räbi village (59); the Hellenurme area (303) – Hellenurme village (161), Astuveri village (20), Mäelooga village (40), Atra village (40) and Pastaku village (42); the Palupera area (253) – Palupera village (205) and Urmi village (48) (see map below).

Before taking decisions that would have consequences for the rural municipality's residents, the Palupera municipal council decided to take into account the people's opinion as much as possible and to seek the actual opinion of the residents on the administrative-territorial organisation.

The residents were surveyed on 8 and 11 September 2016, with the survey carried out by village. Residents were asked if they wanted to

The transfer of villages in Palupera rural municipality

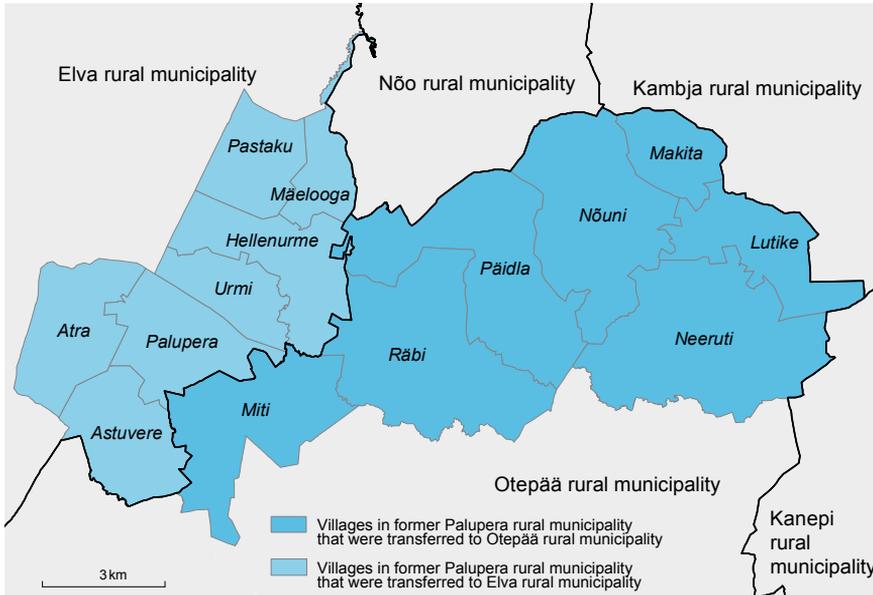


Figure 2.

belong to Otepää rural municipality or Elva rural municipality. In total, 41 per cent of the rural municipality's residents aged at least 16 years participated in the survey.

The results of the opinion poll showed that a majority of the residents of the Lutike, Makita, Miti, Neeruti, Nõuni, Pädla and Räbi villages (87 per cent of the survey participants) rather wished to belong to the Otepää large rural municipality. This preference was also supported by the fact that the region belongs to the historically established common functional area of Otepää with the centre in the Otepää city. Thanks to the jointly published newspaper *Otepää Teataja*, the people in this region have been in a common information space for a long time and they think and see things in a similar way.

Results of the opinion poll in Palupera rural municipality

NO	VILLAGE	Residents over the age of 16 years	Number of participants in opinion poll (% of village residents over age of 16 years)	YES to merger with Otepää (% of participants)	YES to merger with Elva (% of participants)
1	Astuverve	18	12 (67%)	2 (17%)	10 (83%)
2	Atra	34	17 (50%)	0	17 (100%)
3	Hellenurme	137	59 (43%)	1 (2%)	58 (98%)
4	Lutike	27	7 (26%)	7 (100%)	0
5	Makita	19	8 (42%)	8 (100%)	0
6	Miti	16	11 (67%)	8 (73%)	3 (27%)
7	Mäelooga	33	15 (45%)	2 (13%)	13 (87%)
8	Neeruti	50	15 (30%)	15 (100%)	0
9	Nõuni	185	69 (37%)	67 (99%)	1 (1%)
10	Palupera	154	74 (48%)	16 (22%)	58 (78%)
11	Pastaku	34	19 (56%)	2 (11%)	17 (89%)
12	Päidla	73	19 (26%)	13 (68%)	6 (32%)
13	Räbi	62	22 (35%)	13 (59%)	9 (41%)
14	Urmi	39	15 (38%)	1 (7%)	14 (93%)
	Palupera rural municipality in total	881	362 (41%)	155 (43%)	206 (57%)

Table 1.

* One survey sheet was declared invalid.



The amicable division of Palupera rural municipality in accordance with the wishes of the residents of the villages was an ideal example of the transfer of villages in the course of the administrative reform. Pictured: rural municipality mayor Terje Korss. Photo: Delfi.

Under the decision of 20 September 2016, Palupera rural municipal council made a proposal to Otepää rural municipal council to change the boundaries of the administrative divisions, and to transfer the villages of Lutike, Makita, Miti, Neeruti, Nõuni, Päidla and Räbi to Otepää rural municipality. Under the decision of 17 October 2016, the Otepää rural municipal council accepted the proposal from Palupera rural municipal council.

On 16 November 2016, Palupera and Otepää rural municipalities adopted a decision and signed an agreement on changes to the boundaries of their administrative divisions. The agreement also regulates the settlement of organisational, budgetary and other property-related issues. For example, until the adoption of a new development plan for

also agreed that the formation of Otepää rural municipal council's committees would be based on the principles of regional representation.

This can be considered a model example, as during the merger negotiations a solution was found for the logical placement of the villages by taking into account residents' wishes and supporting the protection of their interests in the new municipality by both the local authorities of the municipality transferring the territories as well as the local authorities of the municipality receiving them.

Example 2. The villages of Sauga rural municipality wished to merge with Pärnu

Sauga rural municipality actively participated in merger negotiations with Pärnu city, and Audru, Are, Tõstamaa and Paikuse rural municipalities.⁸ This was the only direction of the merger negotiations of the Sauga rural municipality from the beginning of 2016, when it accepted Pärnu city's proposal to start merger negotiations, until 22 September 2016, when the rural municipal council opened another set of merger negotiations (with Tori, Are, Sindi and Paikuse rural municipalities). At the following council session on 20 October 2016, Sauga rural municipal council ended merger negotiations with Pärnu city.

In Pärnu city's merger area, Sauga was one of the rural municipalities most closely connected with the city. For example, more than 60 per cent of the rural municipality's residents work or study in Pärnu city. The relevant decisions of the rural municipal council were triggered by activists in villages of Sauga rural municipality that are adjacent to Pärnu city. Until then, they had followed merger negotiations with the city at a distance, assuming that the residents' daily activity space that was naturally integrated with Pärnu and the actual administrative space would be merged in the course of the administrative reform.

⁸ For more details about the merger negotiations in the region, see the article 'Merger Negotiations Initiated by Municipal Councils' by K. Kattai, M. Laan, G. Sootla and R. Noorkõiv.

the Otepää rural municipality, the development plan for Palupera rural municipality for the years 2012–2025 as approved on 8 October 2015, the public water supply and sewerage system development plan for Palupera rural municipality for the years 2014–2030 and the comprehensive plan for Palupera rural municipality will remain valid in the transferred villages. A service centre will be established in Nõuni village and will organise its work in a manner that ensures the provision of services, but also a possibility for the local residents to be involved in the decision-making processes locally and across the entire rural municipality in the interests of integrated and balanced development of the rural municipality. The Nõuni rural community cultural centre and village library will continue operating and the employment contracts of the employees will be transferred to Otepää rural municipality, which will be their new employer. In 2018, the merger grant allocated to the Otepää rural municipality in the amount of 40,000 euros will be used for the investment object 'Nõuni scientific tourism and training centre', which is reflected in the budget strategy of Palupera rural municipality for 2017–2021. A loan in the amount of 150,983 euros issued by Palupera rural municipal government for the financing of the construction work of the Nõuni rural community cultural centre, and a loan in the amount of 25,675 euros for the financing of the reconstruction work of the Nõuni sewer drain pipes (in the Kullipesa neighbourhood) were handed over to the Otepää rural municipality on 1 January 2018.

Assets of the agencies administered by the Palupera rural municipal government as of 1 January 2018 were handed over free of charge to Otepää rural municipality, as were the immovables and limited real rights belonging to Palupera rural municipality in the transferred villages.

As the regular 2017 elections for the Otepää rural municipal council were held in one electoral district, a separate electoral committee was formed within the boundaries of the villages in Palupera rural municipality that were transferred to Otepää rural municipality, and the polling station was located in the Nõuni rural community cultural centre. It was

The transfer of the villages to Pärnu city would have had a drastic impact on the rural municipality's revenue base, which is mainly dependent on the population. The villages that would have remained in the rural municipality had large territories and small populations. The regions adjacent to the city also have a younger population with higher employment rates and incomes. The separation of these villages would have probably affected the merger area as a whole as well as all the merger choices. Finally, the merger area would have failed to reach the population threshold of 11,000 residents and therefore would have not received the additional 500,000-euro merger grant.

The municipal council discussed the application by village residents for the first time on 5 December 2016, and decided not to include the issue in the council's agenda, as there had been too little time to deal with it.⁹ An additional reason given during the debate was that the opinion poll had already been announced and there would have been no time to prepare an additional question.¹⁰

The motivation behind the desire of the village residents to take urgent action was indeed the fact that they wanted to be asked, in the course of the opinion poll of the merger area of Sauga, Are, Tori and Sindi, for their alternate preference for a merger with Pärnu. The same is set out in the Administrative Reform Act: if the residents have duly submitted an application, their alternative preferences would have to be determined by villages by means of an opinion poll. The poll was held from 7 to 11 December 2016, meaning that the representatives of the rural municipality would have been able to prepare the question regarding the alternative merger option, if they had so wished.

In Sauga rural municipality, 20.3 per cent of the residents with a voting right participated in the opinion poll for the merger of four municipalities; 24.6 per cent (169) of them were in favour of the merger of

⁹ Minutes of Sauga rural municipal council meeting on 5 December 2016, p. 1.

¹⁰ Minutes of Sauga rural municipal council meeting on 5 December 2016, p. 1.

Sauga, Are and Tori rural municipalities and Sindi city, and 75.4 per cent (519) of respondents were opposed. At the beginning of 2017, the municipal council relieved both the rural municipality mayor and the chair of the council from office, as someone had to take political responsibility in the tensions that had arisen.

Due to the fact that the desire of the majority of the rural municipality's residents to merge with Pärnu city and the guarantees granted to the residents by the Administrative Reform Act (obtaining the residents' opinion, taking a position by the council) had been disregarded, these tensions were inherited by Tori rural municipality, which was formed as a result of the merger. Prior to that, the issue of the villages in Sauga had been very intensively addressed at the highest political levels in Estonia. 2017. In spring 2017, Sauga rural municipal council was visited by Prime Minister Jüri Ratas and Minister of Public Administration Mihhail Korb in order to receive more information. At the same time, activists for the separation of the villages organised a picket in front of the rural municipality government building. The issue was also raised in the *Riigikogu*, where an interpellation was submitted to Prime Minister Jüri Ratas, and the problem of transfer of villages and possible solutions were discussed more generally with Chancellor of Justice Ülle Madise.

These questions were discussed thoroughly and at length in the *Riigikogu*,¹¹ but in the end it was concluded that within the framework of the Administrative Reform Act and its implementation, decisions on the transfer of villages remained the responsibility of municipal councils and that the government would not interfere with the decision-making powers granted to local authorities at that stage. Now that the mergers have already been decided, the issue will have to be solved by the new Tori municipal council.

¹¹ Verbatim record of the sitting of the Riigikogu, 20 March 2017; <http://stenogrammid.riigikogu.ee/et/201703201500#PKP-20556>.

A resident turned to the Chancellor of Justice with a request to verify the legality of the activities of the municipal council in the situation where it declined to determine the opinion of the residents following the initiative for the transfer of villages, and did not take a decision on how to respond to the application of the residents within three months, as prescribed by law. The Chancellor of Justice stated in her letter of 27 March 2017 to the rural municipality that Sauga rural municipal council and government had not processed the residents' initiative in accordance with the principle of good administration. The initiators' right to procedure and determination of the will of the settlement unit's residents had been violated. The will of the residents of Tammiste village regarding the transfer of the territory could and should have been determined prior to the adoption of the decision of 22 December 2016 by the municipal council on the approval of the merger agreement and its annexes. The initiative should have been discussed and a decision made without delay.¹²

The Chancellor of Justice found that there was sufficient time between the initiative and the opinion poll to prepare a question on the alternate merger option, and that the survey could also have been held at a later date but before a decision was taken on the merger. The Chancellor of Justice also stated that in a situation where the merger decision had been made, i.e. the legal and factual circumstances had changed, one could no longer expect that an opinion poll would be organised based on the preconditions provided for in the Administrative Reform Act. The Chancellor of Justice suggested that the rural municipal government and council apologise to the residents that had joined the initiative for their failure to determine the will of the residents and for delaying the decision.

After the elections for the Tori rural municipal council, two electoral coalitions led by the former leaders of the Sauga, Are and Tori rural

¹² Letter of 27 March 2017 of the Chancellor of Justice to Sauga rural municipal council and government, p. 1.

municipalities entered into a coalition agreement.¹³ One of the objectives set in the agreement is to ease the tensions that arose in the villages adjacent to Pärnu city with regard to the placement of the villages and to organise a residents' opinion poll in the course of 2018. On 1 March 2018, the Tori rural municipal council decided to 'initiate the alteration of boundaries in connection with the transfer of the settlement units of Tori rural municipality – Sauga town, Tammiste, Eametsa, Kilksama, Nurme, Kiisa and Vainu villages – to Pärnu city'.¹⁴ It was also decided to request an analysis of the impact of the potential transfer of the villages by an independent expert.

Although in the course of the administrative reform there were a number of smooth and positive transfers of villages from one rural municipality to another, there were also several cases where the rural municipal councils did not or could not take into account the residents' wishes. The example of the Sauga case was one of the most dramatic, as in this instance even the statutory obligation to seek the opinion of the residents was disregarded. In a majority of the other cases, the municipal councils and governments carried out the required actions and thereafter – using the council's decision-making powers and weighing the pros and cons – decided whether or not to transfer villages. In Sauga, the problem was left unresolved and hence was inevitably passed on to the new rural municipality.

¹³ Coalition agreement of the Tori rural municipality electoral coalitions Uus Koduvald and Koduvalla Volikogu, 16 November 2017.

¹⁴ Minutes of the session of the Tori rural municipal council, 1 March 2018.

Example 3. Transfer of Rehemäe village to Lääne-Nigula rural municipality

Applications for changing the placement of villages usually have historical reasons, as was the case here. Rehemäe village was located in Nissi rural municipality and, as can be seen on the map, it formed a 'tail' for Harjumaa County between the counties of Läänemaa and Raplamaa. Rehemäe village covers an area of 11.65 square kilometres and, based on data in the population register as at 1 September 2016, had a total of 43 residents. In the academic year 2015/2016, there were two students and one child from Nissi rural municipality attending Lääne-Nigula rural municipality's general education school and kindergarten, respectively. The practice list for the family physician working in Risti town shows approximately 27 people living in Rehemäe village in Nissi rural municipality. According to residents, they go to the pharmacy and dentist and do their shopping in Risti. The nearest larger bus station is also located in Risti.

Until 1940, the area of Rehemäe village, together with the villages of Ellamaa and Lepaste (Turvaste) belonged to Piirsalu rural municipality, in what was then Läänemaa county. Within the current area of Rehemäe village, however, there were also the villages of Kuke and Rõuma. In the historical turmoil following the Second World War, the area merged with the Harjumaa county, primarily because of the boundaries of the large agricultural holdings at that time and their alterations. Rehemäe village was merged with Nissi village council in Harjumaa county in the 1960s. Rehemäe village, within its current boundaries, is also a product of the 1960s; before that, there was no village with that name in the area.

The transfer of Rehemäe village, however, was initiated by citizens in the course of the disclosure of the merger agreement of the future formation of Saue rural municipality.¹⁵ On 6 March 2016, the residents of Rehemäe, Lepaste and Ellamaa prepared a joint statement to the Har-

¹⁵ Merger negotiations were held between Saue rural municipality, Saue city, Kernu rural municipality and Nissi rural municipality.



The transfer of Rehemäe village to Läänemaa county was celebrated with a thematic cake. Photograph: Mikk Lõhmus.

jumaa county governor, where they proposed restoring the historical boundaries of the county of Läänemaa. The statement was signed by 80 residents of Ellamaa, Lepaste and Rehemäe.

The Lääne-Nigula rural municipal government held unofficial negotiations on the initiative with the Nissi rural municipal government. The latter agreed to hold negotiations with Rehemäe, but not with Ellamaa and Lepaste.

Under the decision of 26 May 2016, the Lääne-Nigula rural municipal council made a proposal to the Nissi rural municipal council to initiate the procedure to change the boundaries in order to transfer Rehemäe village from Nissi rural municipality to Lääne-Nigula rural municipality in the course of the alteration of the administrative-territorial

organisation following the announcement of the results of the 2017 municipal council elections. Under the decision of 9 June 2016, the Nissi rural municipal council agreed to hold negotiations on changing the boundaries of the administrative division.

The Nissi rural municipal council organised an opinion poll among the residents of Rehemäe village and approved its results on 25 August 2016. The list included 39 persons; 22 villagers were for the merger and 4 were against.

An application to national government to change the boundaries was made by the decisions of 17 November 2016 of the Lääne-Nigula rural municipal council and the Nissi rural municipal council, and the transfer of the village took effect on 1 March 2017.

On the one hand, the transfer of Rehemäe village was an example of a successful transfer, as the local authorities cooperated fully with each other and problems were solved quickly and promptly. The transfer was of course made easier by the fact that no municipal authorities were located in Rehemäe village and no investments had been made in the village for decades.

On the other hand, the refusal on the part of Nissi rural municipality to discuss the placement of the villages of Lepaste and Ellamaa unfortunately remains a point of contention. Predictably, this topic will emerge again in a couple of years.

Although the process generally went smoothly, a few problems will need to be highlighted.

1. State authorities were not prepared for the merger. Initially, there was a great deal of confusion in the registers and for a few days, Lääne-Nigula rural municipality and Nissi rural municipality were unable to access either the population register or the building register. Confusion in the registers culminated in an error in the Tax and Customs Board system, which resulted in the transfer of four times the annual land tax to Lääne-Nigula rural municipality.

2. Service levels provided by rural municipalities differ across regions, which is why several regulations had to be changed. For example, Nissi rural municipality paid an allowance to parents for transporting their children to school, as there was no public transportation or school bus. This option was not available in Lääne-Nigula rural municipality and the relevant regulation had to be changed, because it was not reasonable to add another school bus round in Rehemäe village for logistical reasons. Nissi rural municipality did not mow the roadsides in Rehemäe village, but Lääne-Nigula rural municipality did. There were many differences of this kind.
3. A great number of investments had to be made in the village (Rehemäe was literally a periphery), as the technical infrastructure was outdated or even missing (lighting in the bus stops, paving the main access road, etc.).

Transfers of villages initiated by municipal councils and approved by the national government in the course of the administrative reform

Source: Ministry of Finance

Changes to boundaries	Number of residents on 1 January 2017	Area in square kilometres
Harjumaa and Läänemaa		
Lääne-Nigula rural municipality, Rehemäe village in Nissi rural municipality	47	12
Jõgevamaa		
Jõgeva rural municipality, Jõune, Pööra, Saduküla and Härjanurme villages in Puurmani rural municipality	396	52
Jõgeva rural municipality, Kaave village in Pajusi rural municipality	25	4
Mustvee city, Võtikvere village in Torma rural municipality	93	47
Raplamaa		
Märjamaa rural municipality, Riidaku, Pühatu and Kõrvetaguse villages in Raikküla rural municipality	66	32
Põlvamaa and Tartumaa		
Võnnu rural municipality, Järvselja and Rõka villages in Meeksi rural	48	19
Tartumaa and Valgamaa		
Rõngu rural municipality, Aakre, Palamuste, Pedaste, Purtsi, Pühaste and Rebaste villages in Puka rural municipality	486	79
Valgamaa		
Otepää rural municipality, Lutike, Makita, Miti, Neeruti, Nõuni, Päidla and Räbi villages in Palupera rural municipality	483	81
Helme rural municipality, Soontaga village in Puka rural municipality	30	42

Table 2.

The Protection of the Constitutional Guarantees for Local Government during the Administrative-Territorial Reform

VALLO OLLE, LIINA LUST-VEDDER

Introduction

The article analyses the issues related to the protection of constitutional guarantees for municipalities that arose during the 2017 administrative reform.

The judicial disputes over the lawfulness of the reform took place in two stages. First, many local authorities put before the Supreme Court the question of whether the Administrative Reform Act,¹ which introduced the general conditions for the implementation of the reform,

¹ RT I 21.6.2016, 1; 21.12.2016, 32.

including authorising the Government of the Republic to coercively merge specific municipalities, was in accordance with the Constitution of the Republic of Estonia.² Subsequently some of the local authorities contested the government's coercive merger regulations in an administrative court and/or the Supreme Court. This article discusses the main issues faced in these court cases.

In particular, the article looks at the conditions under which local authorities may file an application directly with the Supreme Court for a constitutional review and the conditions under which a government regulation for the coercive merging of municipalities may be considered lawful. Finally, the authors offer suggestions for future reference.

Conditions under which local authorities can have recourse to the courts to protect their constitutional guarantees

The state must implement administrative-territorial reform in full compliance with the constitutional guarantees for local government. These are established in Chapter 14 of the Constitution (Articles 154–155 and 157–160). In conjunction with the guarantees provided in the European Charter of Local Self-Government (ECLSG),³ these constitute the set of guarantees for local government.

There are too main ways for a local authority to protect its constitutional guarantees, depending on the nature of the activity or legislation that it seeks to contest. It can either turn to an administrative court or have its municipal council file an appeal with the Supreme Court.⁴

² RT 1992, 26, 349; RT I 15.5.2015, 1.

³ RT II 1994, 26, 95.

⁴ Indirectly, the protection of constitutional guarantees can also be sought through the President of the Republic (under Article 107 of the Constitution) or the Chancellor of Justice (under Article 142 of the Constitution, and to seek the constitutional review of international agreements, which is particularly relevant in connection with the ECLSG in the context of this article).

Jurisdiction depends on the nature of the activity or legislation that is being contested. A local authority can file an application directly with the Supreme Court if the conditions arising from Article 7 of the Constitutional Review Court Procedure Act⁵ are met. If an application is filed in accordance with these conditions, the Supreme Court is required to review it. The following three conditions must be met:

- the application must be filed against a legal act of the kind specified in Article 7 of the Act (i.e. either to establish the unconstitutionality of a legislative act that has been promulgated but has not yet entered into force or a government or ministerial regulation that has not yet entered into force, or to repeal an act or a government or ministerial regulation, or a provision thereof, that has entered into force);
- the contested legislation, or a provision thereof, is in conflict with the constitutional guarantees for local government;
- the application is filed by a municipal council.

In the following sections, we will discuss these conditions in more detail.

Filing an application to contest a legal act

No one questioned the fact that local authorities were allowed to contest the Administrative Reform Act directly in the Supreme Court. However, the question did arise as to whether local authorities seeking to contest a coercive merger regulation adopted by the government under the Administrative Reform Act should turn to an administrative court or directly to the Supreme Court. In other words, can a legal act of the kind specified in Article 7 of the Constitutional Review Court Procedure Act

⁵ RT I 2002, 29, 174; 26.6.2017, 17.

be contested based on its form⁶ or does it have to be sufficiently general in nature to fall under the definition of a legislative act?⁷ In the latter case, it must be determined whether a coercive merger regulation is a legislative act of sufficiently general nature. If not, then it is a piece of legislation of specific application and reviewing its lawfulness is within the jurisdiction of the administrative courts.

While the problem of jurisdiction was raised already in the court dispute over the constitutionality of the Administrative Reform Act, the Supreme Court did not rule on jurisdiction and the related procedural rules at that point. Justice of the Supreme Court Jüri Põld criticised this in his dissenting opinion accompanying the Supreme Court judgment, going on to state that the legislature should quickly establish legal clarity regarding the procedural rules.⁸ The legislature did not adopt the appropriate legislation.

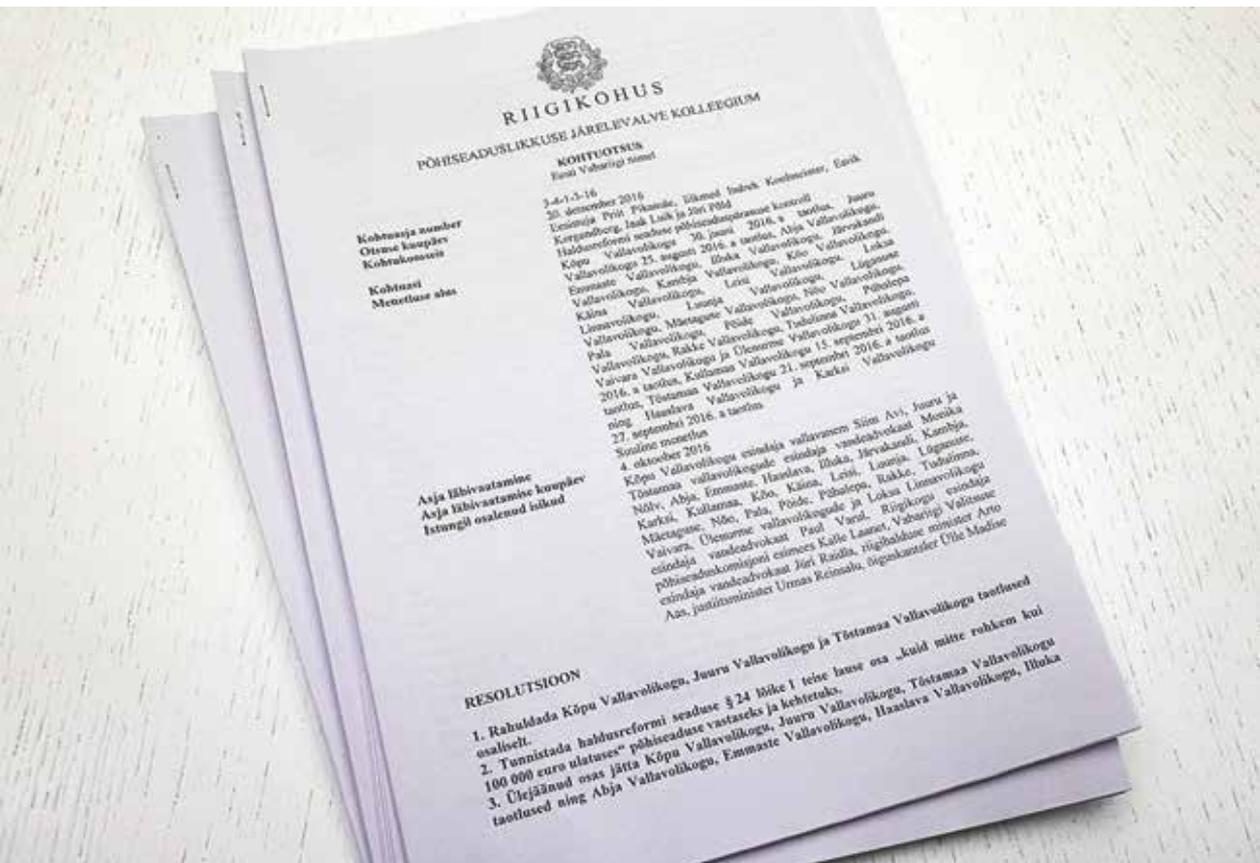
The local authorities then went on to first contest the coercive merger regulations in the administrative court. They relied on the argument that the legal nature of a coercive merger regulation is that of legislation of specific application (in particular, a general order within the meaning of Article 51(2) of the Administrative Procedure Act⁹), the verification of the lawfulness of which falls within the jurisdiction of the administrative courts.

⁶ This approach was supported by the Chancellor of Justice as one of the parties to the proceedings. See Chancellor of Justice opinion of 29 August 2018 in Constitutional Review Case No 3-4-1-3-16, p. 5; http://www.oiguskantsler.ee/sites/default/files/field_document2/arvamus_pohiseaduslik_kuse_jarelevalve_asjas_nr_3-4-1-2-16.pdf (last accessed 18.12.2017). As an argument in comparative law, it can be pointed out that in Germany, for example, the legislature is recognised as having broad discretion in deciding the form of a legal act and the court does not change the classification of a legal act by the legislature. See U. Ramsauer, 'Abgrenzung von Allgemeinverfügung und Rechtsverordnung' – *Juridica International* 2014, Vol 21, pp. 69, 75; <https://ojs.utlib.ee/index.php/juridica/article/view/JI.2014.21.06> (last accessed 18.12.2017).

⁷ The latter approach seems to be supported by Constitutional Review Chamber of the Supreme Court judgments Nos 3-4-1-2-03, 21.2.2003, paragraph 12, and 3-41-14-08, 15.12.2008, paragraph 28.

⁸ <https://www.riigikohus.ee/et/laheidid?asjaNr=3-4-1-3-16> (last accessed 12.11.2017).

⁹ RT I 2001, 58, 354. 26.6.2017, 1.



Constitutional Review Chamber of the Supreme Court judgment of 20 December 2016, which declared the Administrative Reform Act to be constitutional in all material aspects. Source: Delfi.

Both the Tallinn Administrative Court and the Tallinn Circuit Court held that the coercive merger regulations were legislative acts and the resolution of applications to contest them was not within the jurisdiction of an administrative court. The Circuit Court based its ruling mainly on the fact that, despite being directed at specific local authorities and adopted as part of a one-off administrative reform, the contested

regulations essentially altered the Estonian administrative-territorial organisation as a whole, with the aim of establishing a new, permanent division of administrative units.¹⁰

The Circuit Court also pointed out that, unlike individuals, municipalities can file an application with the Supreme Court for the annulment of a government regulation concerning them directly under Article 7 of the Constitutional Review Court Procedure Act¹¹. The Supreme Court rejected the local authorities appeals against the Tallinn Circuit Court rulings, thereby agreeing with the Circuit Court that the coercive merger regulation must be contested directly in the Supreme Court.¹²

For example, in Germany and Austria constitutional courts also review coercive municipal mergers through a constitutional review procedure.¹³

Applications to protect the constitutional guarantees for local government

The second precondition for a local authority to be allowed to have direct recourse to the Supreme Court is that it must file an application for

¹⁰ Tallinn Circuit Court rulings Nos 3-17-1427, 3-17-1428, 3-17-1433, 3-17-1435, paragraph 13 (12.7.2017); 3-17-1454 and 3-17-1458, paragraph 8 (7.19.2017); 3-17-1486 and 3-17-1488, paragraph 7 (26.7.2017); 3-17-1682, paragraph 10 (30.8.2017); and 3-17-1590, paragraph 10 (4.9.2017).

¹¹ Tallinn Circuit Court rulings Nos 3-17-1427, 3-17-1428, 3-17-1433 and 3-17-1435, paragraph 13 (12.7.2017).

¹² See Supreme Court press release 'Government regulations regarding coercive merging cannot be contested in an administrative court' from 17 July 2017; <https://www.riigikohus.ee/et/uudiste-arhiiv/sundliitmist-puu-dutavaid-valitsuse-maaruseid-ei-saa-vaidlustada-halduskohtus> (last accessed 18.12.2017). The press release was based on Administrative Law Chamber of the Supreme Court rulings Nos 3-17-1427, 3-17-1428, 3-17-1433 and 3-17-1435 (17.7.2017); 3-17-1421 (14.8.2017); 3-17-1421 (18.8.2017); 3-17-1590 (4.9.2017); and 3-17-1682 (6.9.2017).

¹³ See e.g. judgment of the German Federal Constitutional Court of 19 November 2002, No 2 BvR 329/97, paragraph 32; http://www.bverfg.de/e/rs20021119_2bvr032997.html; judgment of the Constitutional Court of Austria of 23 September 2014, G 44/2014-20, V 46/2014-20, https://www.vfgh.gv.at/downloads/VfGH_G_44-2014__V_46-2014_Gemeindefusionen_Waldbach.pdf.

the protection of the constitutional guarantees of local government. According to the case law of the Supreme Court, it is enough for a local authority to meet this condition if it claims in the application it files that a legal act (or a provision thereof) of the kind specified in Article 7 of the Constitutional Review Court Procedure Act is in conflict with the constitutional guarantees for local government.¹⁴

An application for declaring a legal act or a provision thereof to be unconstitutional can be filed only with respect of those provisions of the Constitution that are included among the constitutional guarantees of local government. An application based on a constitutional rule that does not regulate a constitutional guarantee of local government is inadmissible under Article 7 of the Constitutional Review Court Procedure Act and will be returned without review in accordance with Article 11(2) of the Act.¹⁵ An application is admissible if a municipal council contests a legal act or a provision thereof on the basis of several constitutional rules, some of which can be regarded as a constitutional guarantee of local government while others cannot.

The fact that Article 7 of the Constitutional Review Court Procedure Act requires the applicant to refer to a conflict with the constitutional guarantees for local government, does not in itself restrict the Supreme Court's authority to verify that a regulation is in agreement with the legislation (Article 87(6) of the Constitution), provided that the legislation specifies the constitutional guarantees for local government.

In regulating the relations between local authorities and the state, the legislature must also consider the general principles of law. If a municipal council requests the repeal of a legal act on the grounds that it

¹⁴ When ruling on the admissibility of applications, the Supreme Court used to also assess whether the alleged infringement of constitutional guarantees was possible in the given situation. However, the Court changed this case law as of 16 March 2010 (judgment of the Supreme Court en banc No 3-4-1-8-09, paragraph 48).

¹⁵ Judgment of the Administrative Law Chamber of the Supreme Court of 16 March 2010, No 3-4-1-8-09, paragraph 45.

is in conflict with a general principle of law, the council must explain how the conflict damages a constitutional guarantee for local government.¹⁶

The Supreme Court considered the applications¹⁷ of the municipal councils that contested the constitutionality of the Administrative Reform Act insofar as these claimed that the provisions of the Act infringe on the following constitutional guarantees for local government: individual legal personality, which is guaranteed by Articles 154 and 158 of the Constitution (and in turn ensures the right to administer local matters), and the financial guarantee provided by Article 154 of the Constitution.¹⁸

The Supreme Court also reviewed the formal constitutionality of the Act, verifying compliance with jurisdictional, procedural and formal requirements, as well as the principles of parliamentary reservation, legal certainty and legal clarity.¹⁹

On the other hand, the Supreme Court dismissed the application filed by the municipal council of Kōpu, which claimed that there was a conflict with the principles of democracy and legal certainty because the deadlines for the implementation of the reform were so close to the local elections that, the council thought, the contesting of the relevant government regulations in court might deprive the local population of clarity as to which municipality the elections were being held in and whom to vote for.²⁰

¹⁶ Judgment of the Constitutional Review Chamber of the Supreme Court of 15 December 2008, No 3-4-1-14-08, paragraph 29. See also judgments of the Constitutional Review Chamber of the Supreme Court of 19 March 2009, No 3-4-1-17, paragraph 26, and of 19 January 2010, No 3-4-1-13-09, paragraph 39.

¹⁷ In reviewing the constitutionality of the Administrative Reform Act, the Constitutional Review Chamber of the Supreme Court essentially deliberated on three different applications together. These were filed by a total of 26 municipal councils (for more details, see judgment of the Chamber of 20 December 2016, No 3-4-1-3-16, paragraphs 2–11).

¹⁸ See judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraph 83.

¹⁹ *Ibid.*, paragraphs 106–108, 111–113 and 131–136. Paragraphs 137–147, in which the Supreme Court refers to the deadlines specified in the Administrative Reform Act, are also relevant, as the local authorities contested their constitutionality by appealing to the principle of legal certainty.

²⁰ *Ibid.*, paragraphs 170–172.

The Chancellor of Justice as a party to the proceedings supported the admissibility of the application on the grounds that, according to the case law of the Supreme Court,²¹ the internal organisation of elections is a local matter (as opposed to the external organisation, which is a national matter), and the municipal council of Kõpu was contesting the very possibility of carrying out elections in accordance with the constitution, rather than just the conditions of the elections.²²

However, the Supreme Court found that, in this respect, the application concerned the protection of the active right of voters to vote, rather than the constitutional guarantees for local government.²³

Although the Supreme Court referred to active suffrage, this problem is in fact more about passive suffrage, or the right to stand for election. Potential councillors have to choose the municipality where they set up their candidacy and the area where they run an election campaign – in a situation where it may still be unknown whether the local authority will contest the relevant coercive merger regulation.

For future reference, the Supreme Court's position on this shows that the President and the Chancellor of Justice in particular should, where appropriate, consider filing applications with the Supreme Court to contest the possible unconstitutionality of deadlines for the organisation of elections.

Of course, individuals themselves may also have recourse to the courts to protect their fundamental right of active or passive suffrage, but this is probably difficult to do in the limited time before elections because both candidacy and suffrage are established relatively close to

²¹ The Chancellor of Justice referred to the judgment of the Constitutional Review Chamber of the Supreme Court of 9 June 2009, No 3-4-1-2-09, paragraph 33.

²² Chancellor of Justice supplementary opinion of 22 September 2016 in Constitutional Review Case No 3-4-1-3-16, paragraph 7; http://www.oiguskantsler.ee/sites/default/files/field_document2/riigiko-hus_arvamuse_taiendus_haldusreformi_seaduse_pohiseadusparasusele.pdf (last accessed 18.12.2017).

²³ Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraphs 171 and 172, with reference to previous similar case law.

the election day²⁴ (nor are the authors of this article aware of any cases where a voter or candidate has filed a court case for this reason before elections). Therefore, the legal dispute would not be resolved in time for the elections, anyway.

The applications for constitutional review submitted to the Supreme Court in regard to coercive merger regulations focused on violations of the guarantees provided in Articles 154(1) and 158 of the Constitution (the right of self-administration and the right to be heard, respectively).²⁵

The applications either contested only the specific provisions concerning coercive merging or, in some cases, the entire merger regulation, claiming that all the provisions of the regulation were interrelated and aimed at merging the municipalities by the government.²⁶

The Supreme Court adopted the strict position that there was no reason to review the constitutionality of the entire merger regulation, as it would also contain provisions that do not infringe the guarantees for local government. Reviewing the constitutionality of the provisions directly related to coercive merging was decided to be sufficient.²⁷

It is worth noting that, in the constitutional review cases concerning the Administrative Reform Act and the merger regulations, neither the local authorities nor the Supreme Court referred to the first paragraph

²⁴ See Articles 27(2)–(4), 35(1) and (2), and 37(1) of the Municipal Council Election Act (RT I 2002, 36, 220; 21.6.2016, 1). However, it is arguable that individuals have a right of recourse to the courts even before registering as a candidate, by claiming that their rights are already being violated by the fact that it is unclear to which municipal electoral committee they should apply for registration.

²⁵ Judgments of the Constitutional Review Chamber of the Supreme Court of 13 October 2017, Nos 5-17-14, paragraphs 47 and 51; 5-17-15, paragraphs 51 and 55; 5-17-16, paragraphs 51 and 55; of 19 October 2017, Nos 5-17-17, paragraphs 68 and 72; 5-17-18, paragraphs 49 and 53; 5-17-19, paragraphs 56–63; 5-17-20, paragraphs 54; 5-17-24, paragraph 56; and of 4 October 2017, Nos 5-17-21, paragraph 53; and 5-17-22, paragraph 51.

²⁶ Judgments of the Constitutional Review Chamber of the Supreme Court of 13 October 2017, Nos 5-17-14, paragraph 51; 5-17-15, paragraph 55; 5-17-16, paragraph 55; and of 19 October 2017, Nos 5-17-17, paragraph 72; 5-17-18, paragraph 53; 5-17-20, paragraph 54; and 5-17-24, paragraph 56.

²⁷ See e.g. judgment of the Constitutional Review Chamber of the Supreme Court of 19 October 2017, No 5-17-24, paragraph 57.

of Article 155 of the Constitution, which states that local government entities are rural municipalities and cities. It must have seemed impossible (or at least difficult) to argue that the post-reform administrative-territorial entities were essentially so different from the ones that existed before that they no longer constituted rural municipalities or cities within the meaning of Article 155.

Applications filed by municipal councils

In order to meet this requirement, a majority of the membership of the municipal council must decide to file an application with the Supreme Court under Article 7 of the Constitutional Review Court Procedure Act, as required by the second sentence of Article 45(5) of the Local Government Organisation Act.²⁸ The Local Government Organisation Act does not specify whether it is only the decision to file the application that must be adopted by majority rule or whether the application itself must be put to vote.

In the court dispute over the constitutionality of the Administrative Reform Act, the Kōpu municipal council did initially decide with the required majority to file an application with the Supreme Court under Article 7 of the Constitutional Review Court Procedure Act, but then authorized the chairman of the council to draw up and sign the application,²⁹ meaning that the council itself did not vote on the text of the application.³⁰

The Supreme Court ruled that the requirement is intended to ensure that the council's decision to turn to the Supreme Court is taken in full knowledge of the content of the decision and the council must therefore vote on the final text of the application to be filed with the

²⁸ RT I 1993, 37, 558; 4.7.2017, 2.

²⁹ Decision of the municipal council of Kōpu of 21 June 2016, No 33 'Filing an application with the Supreme Court', paragraphs 1 and 2.

³⁰ Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraph 78.

Supreme Court.³¹ According to the Court, this reading will help prevent further disputes over whether the final text of the application is in line with the council's intention in authorising the application.³²

In this case the Supreme Court did not yet consider it justified to rely on the above reading in assessing the admissibility of the application filed by the municipal council of Kōpu, as there was no established case law on this kind of assessment, nor was there reason to believe that the council decision was made on insufficient information or was otherwise biased).³³ In the subsequent court cases to contest the government's coercive merger regulations, on the other hand, the Supreme Court applied this reading strictly. If neither the application nor the supporting documents established, when deciding to file an application, that the council had also voted on its final text, the Supreme Court returned the application without review and gave the applicant(s) a deadline for eliminating the deficiencies.³⁴

Interim legal protection for local authorities being merged

The contestation of the government's coercive merger regulations in the administrative court and later in the constitutional review procedure gave rise to the question of applying interim legal protection or the option of suspending the regulations so that the preparations for elections by municipal councils and the voting would not be carried out within the new municipal boundaries until the court dispute was resolved.

³¹ Ibid., paragraphs 79 and 81.

³² Ibid., paragraph 81.

³³ Ibid., paragraph 82.

³⁴ See judgments of the Constitutional Review Chamber of the Supreme Court of 19 October 2017, Nos 5-17-14, paragraph 44; 5-17-15, paragraph 49; 5-17-16, paragraph 49; and of Nos 5-17-17, paragraph 64; 5-17-18, paragraph 47; 5-17-20, paragraph 48; and 5-17-24, paragraph 49.

The municipalities³⁵ that requested interim legal protection claimed that the suspension of the coercive merger regulations was required because otherwise the municipalities' legal personality might be terminated with the elections before the end of the court dispute. The newly formed municipality would replace the terminated municipality in the court proceedings and it would be in its own interests to withdraw the application filed with the Supreme Court. Consequently, the municipality would be deprived of the opportunity to defend itself against an arbitrary decision taken by the national government, which is in conflict with the guarantee arising from Article 154 of the Constitution. In that case, the contested regulation has irreversible consequences, as it is impossible to restore the status quo ante. Furthermore, it would be necessary to suspend the regulation in order to avoid confusion with the preparations for elections.

The municipalities also pointed out that there was a possible scenario whereby the county governor carries out preparations for elections for the new municipality while the municipal council does the same for the existing municipality. The county governor's preparations do not replace those conducted by the applicant or annul them. It would therefore be possible for two simultaneous municipal elections to be held in the same territory, which would go against the principles of legal clarity and democracy. If the county governor's election preparations replace those of the municipal council, then elections will be held only in the new municipality that is to be formed. If the regulation is not suspended, the county governor's election preparations must not be obstructed and the elections will be based on an unlawful coercive merger.³⁶

³⁵ In particular, the rural municipalities of Emmaste, Illuka, Kambja, Ülenurme, Pala, Tõstamaa, Lasva, Koeru, Mikitamäe, Lügánuse, Rakke, Padise, Vastseliina, Võru ja Sõmerpalu.

³⁶ Rulings of the Constitutional Review Chamber of the Supreme Court of 7 August 2017, Nos 5-17-14, paragraphs 3-5; 5-17-15, paragraphs 3-5; 5-17-16, paragraphs 3-5; 5-17-17, paragraphs 3-5; 5-17-18, paragraphs 3-5; 5-17-20, paragraphs 3-5; and 5-17-24, paragraphs 3-5.

Some local authorities also claimed that if the merger regulation entered into force before the Supreme Court decision, this would have other legal consequences the reversal of which would be impossible or involve considerable difficulty. For example, the legal acts adopted by the council of the newly formed municipality would have to be repealed, new budgets would have to be drawn up for the unconstitutionally merged municipalities, and questions relating to the formation of new local government bodies and recruiting their staff would have to be addressed. It was further argued that the situation whereby, just a month before the elections, the candidates and voters did not know in which district or for which municipal council they were going to run or vote was not in the public interest.³⁷

The local authorities first contested the government's merger regulations in the administrative court and at the same time filed applications for interim legal protection. In some cases, the administrative court initially suspended the merger regulation for up to 30 days,³⁸ but later revoked this ruling before the expiry of the suspension period, taking the view that the resolution of the dispute was not within the jurisdiction of an administrative court, which also precluded the application of interim legal protection.³⁹ Higher courts agreed with this.

In the following constitutional review procedure based on the applications filed by local authorities, the Supreme Court dismissed all the local authorities' applications for interim legal protection. According to Article 12 of the Constitutional Review Court Procedure Act, the Supreme Court may, on the basis of a reasoned request of a participant in Supreme Court proceedings or on its own initiative, suspend with

³⁷ Rulings of the Constitutional Review Chamber of the Supreme Court of 7 August 2017, Nos 5-17-21, paragraphs 4–6; 5-17-22, paragraphs 4–6; 5-17-23, paragraphs 4–6; and of 21 August 2017, 5-17-19, paragraphs 9 and 10.

³⁸ See e.g. ruling of the Tartu Administrative Court of 7 July 2017, No 3-17-1421.

³⁹ See e.g. ruling of the Tartu Administrative Court of 14 July 2017, No 3-17-1421 (on 24 July 2017, the Tartu Circuit Court dismissed the appeal against the Administrative Court ruling of 14 July 2017).

good reason, the enforcement of a contested legislative act, or a provision thereof, until the entry into force of a Supreme Court judgment. The Supreme Court agreed with the applicants' view that this required that the legal act, or the relevant provision, had not yet entered into force.

The applicants claimed that the provisions of the coercive merger regulations entailing the termination of the legal personalities of existing municipalities, while not yet formally in force, had a material effect already before the elections, as based on these provisions, the relevant county governors would commence election preparations regarding the municipalities being merged. In other words, they would start implementing the regulations.

The Supreme Court still ruled that the provisions entailing the termination of the municipalities as legal personalities had not yet entered into force. (In doing so, the Court conceded that the formal prerequisites for the application of Article 12 of the Constitutional Review Court Procedure Act in order to suspend the entry into force of the provisions resulting in the formation of a new administrative division were met. However, this alone was not sufficient to grant interim legal protection, which also has substantive prerequisites.) The Supreme Court supported its disagreement with the applicants by reasoning that, under the applicable legislation, the provisions of the regulation entailing the formation of a new municipality would enter into force on the day of the announcement of the results of the local elections for the new municipality.

The Supreme Court also found that neither the contested regulation as a whole nor any specific provisions thereof affected whether the local elections would be held in the existing or new municipalities, as the responsibilities to be fulfilled by the local authorities and county governors in connection with the 2017 local elections derived from the Administrative Reform Act, the Territory of Estonia Administrative Division Act⁴⁰

⁴⁰ RT I 1995, 29, 356; 4.7.2017, 28.

and the Municipal Council Election Act,⁴¹ and the preparations of the county governors were already warranted by the initiation of the alteration of the administrative-territorial organisation by the government. (It follows that, according to the Supreme Court's reading, Article 12(9) of the Administrative Reform Act does not require the county governor to await the government's final decision on the coercive merger.) As a result, the suspension of the validity or execution of the contested regulation would not have had the outcome intended by the applicant.⁴²

In other words, the Supreme Court found that the entry into force of the coercive merger regulation did not affect the obligation to abide by the preparatory activities of the county governor. However, we believe that the adequacy of this conclusion can be called into question with another conclusion reached by the Supreme Court, that the elections would be held within the existing municipal boundaries if the government had decided to terminate the previously initiated alteration of administrative-territorial organisation (i.e. to not adopt a coercive merger regulation) in respect of the municipalities in question.⁴³ That is to say, these two views of the Supreme Court seem to logically contradict one another. If the government's decision to terminate an alteration procedure has decisive bearing on the obligation to abide by the county governor's activities (in terms of eliminating that obligation), then the opposite decision (to complete the procedure) by the government should also be decisive.

In other respects, the Supreme Court held that, at the time of ruling on the request for interim legal protection, the need to suspend the provisions that had not yet entered into force had not yet arisen, and that the

⁴¹ RT I 2002, 36, 220; 17.11.2017, 7.

⁴² Rulings of the Constitutional Review Chamber of the Supreme Court of 7 August 2017, Nos 5-17-14, paragraphs 7-13; 5-17-15, paragraphs 7-13; 5-17-16, paragraphs 7-13; 5-17-17, paragraphs 7-13; 5-17-18, paragraphs 7-13; 5-17-20, paragraphs 7-13; 5-17-21, paragraphs 8-13; 5-17-22, paragraphs 8-13; 5-17-23, paragraphs 8-13; 5-17-24, paragraphs 7-13; and of 21 August 2017, No 5-17-19, paragraphs 13-15.

⁴³ Ruling of the Constitutional Review Chamber of the Supreme Court of 7 August 2017, No 5-17-19, paragraph 13.

need for such a procedural decision could only arise if it becomes likely that the court case might not end before the election results are announced.

The Supreme Court noted that, if it did not reach a decision before the announcement of the election results, it could, if necessary, suspend the entry into force of the provisions of the contested regulation on its own initiative. As an advantage of postponing the resolution of this issue, the Supreme Court stated that it would allow for the prospects of granting the main application (a prerequisite for granting the application for interim legal protection) not to be assessed before a thorough examination of the positions of the parties to the proceedings.⁴⁴

However, the Supreme Court did not reach a decision in a number of cases concerning the constitutionality of coercive merger regulations before the local elections.⁴⁵ Nor did the Supreme Court apply interim legal protection on its own initiative before election day, despite the fact that it must have become evident at some point before the elections that the relevant judgments could not be handed down before the announcement of the election results. This was probably due to the fact that the deliberations held in the meantime had established that there were no prospects for the main applications to be granted.

On the one hand, we might as well agree with the reading that it was the county governor's activities and legal acts that were binding in cases where conflicting election-related activities and legal acts had been adopted by the municipal council and the county governor in respect of the same municipality. However, the reading is not quite unproblematic because, among other things, a county governor does not have the authority to adopt a regulation, which is a legislative act

⁴⁴ Rulings of the Constitutional Review Chamber of the Supreme Court of 7 August 2017, Nos 5-17-14, paragraph 11; 5-17-15, paragraph 11; 5-17-16, paragraph 11; 5-17-17, paragraph 11; 5-17-18, paragraph 11; 5-17-20, paragraph 11; 5-17-21, paragraph 11; 5-17-22, paragraph 11; 5-17-23, paragraph 11; and 5-17-24, paragraph 11; and of 21 August 2017, No 5-17-19, paragraph 11.

⁴⁵ Judgment of the Constitutional Review Chamber of the Supreme Court of 19 October 2017, Nos 5-17-17, 5-17-18, 5-17-20 and 5-17-24.

(or legislation of general application), and Article 22(2) of the Municipal Council Election Act specifically requires that matters related to elections be established by regulation.

Moreover, the clarity provided by the case law came as hindsight for the candidates. From a candidate's point of view, it makes quite a lot of difference whether final clarity as to the municipal boundaries in which elections will be held already exists by the time of registering candidates, or the typical beginning of election campaigns, or whether it is only established directly before the start of the vote. In the latter case, candidates are forced to try to predict the outcome of the court dispute throughout much of their election campaigns as they are deciding what campaign messages to direct at which constituency (the residents of either the previous or future municipality). If their predictions fail, the candidates are not compensated for the time and money spent on campaign advertising.

The specific requirements for the formal constitutionality of a coercive municipal merger regulation

Delegating coercive merging to the national government

The main problem here can be put as follows: Can the legislature delegate a specific coercive municipal merger to the executive and, if so, under what conditions?

The Constitution does not specify which state institution has the authority to change municipal boundaries. However, it has been argued in legal literature that this comes under the requirement of form appropriate to importance (essentially similar to the principle of parliamentary reservation), according to which coercive merging should be carried out by law.⁴⁶ The Constitution does not rule out the possibility of delegating matters that are within the competence of the legislature to the

⁴⁶ Ü. Anton, 'Kohaliku omavalitsuse garantii Eesti Vabariigi 1992. a põhiseaduses' – *Juridica* No 6, 1998, pp. 305–313.

executive, provided that the law defines a sufficient basis and conditions for the non-arbitrary exercise of executive power.⁴⁷

According to the second paragraph of Article 2 of the Constitution, Estonia is a unitary state in terms of the organisation of its government, and the administrative division of its territory is provided by law. The administrative-territorial division is not relevant for state administration alone; the constitutional provision is designed to ensure that matters of administrative division are regulated by law, which is also important for the autonomy of municipalities. For the purposes of Article 2 of the Constitution, the administrative division of territory also includes the territorial organisation of local government.⁴⁸ The Territory of Estonia Administrative Division Act does not contain a list of administrative divisions, but it has been argued in legal literature that, in order for the administrative division of territory to be provided by law, the specific administrative divisions must be listed in the law.⁴⁹ While the general conditions for coercive municipal merging were provided by law with the adoption of the Administrative Reform Act (in particular the minimum population size criterion in Article 3 and the possible exceptions in Article 9(3) of the Act), the power to decide on specific coercive mergers was delegated to the government. The question arose whether this was compatible with the Constitution.

The Supreme Court held that the Administrative Reform Act was not in conflict with the principle of importance. With the Act, the legislature provided the purpose, basis and procedure for the reform. The Supreme Court found that the basis and procedure for the government-initiated alteration of the administrative-territorial organisation of local

⁴⁷ Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraph 111.

⁴⁸ Constitution of the Republic of Estonia. Commented edition, Article 2, comment 6, p. 50; judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraph 112.

⁴⁹ Constitution of the Republic of Estonia. Commented edition, Article 2, comment 7, p. 51.



4 October 2016: The Supreme Court discussing the applications filed against municipal mergers. Source: Õhtuleht.

government were sufficiently regulated by law. The law provided the procedure and deadlines for the commencement and conduct of the process, as well as the general framework for exercising discretionary power.⁵⁰

For example, in Germany, the established view is also that, while strictly speaking administrative reform can only be implemented by law,

⁵⁰ Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraph 112.

it can also be done by a regulation, provided that the law is specific enough on this.⁵¹

The procedural requirements for the government-initiated alteration of the administrative-territorial organisation of municipalities

The Administrative Reform Act distinguishes between the municipal council-initiated and government-initiated alteration of the administrative-territorial organisation of municipalities, which are provided for in Chapters 2 and 3, respectively. It is the government-initiated alteration that is relevant when discussing the protection of the constitutional guarantees for local government.

It fell to the government to initiate the administrative-territorial alterations in accordance with the procedure provided in Article 8 of the Territory of Estonia Administrative Division Act, with some exceptions (some provisions did not apply).⁵² By 15 February 2017, the government was required to initiate administrative-territorial alterations with respect to the municipalities that did not meet the minimum population criterion (5,000 residents) according to the population register as of 1 January 2017 and for which the government had not adopted a regulation regarding a municipal council-initiated administrative-territorial alteration or applied for an exemption based on Article 9(3) of the Administrative Reform Act.

For this purpose, the government was to submit a draft regulation, or proposal, for a coercive merger to the relevant municipal councils and request their opinion. A proposal could also be made to the municipalities – both those that met the minimum population size criterion and

⁵¹ Th. Maunz, G. Dürig, *Kommentar zum Grundgesetz*. 76. Auflage, 2015, GG Art. 28 Abs. 2, Komm. 153. See also e.g. judgment of the German Federal Constitutional Court from 19 November 2002, No 2 BvR 329/97; http://www.bverfg.de/e/rs20021119_2bvr032997.html (last accessed 24.12.2017).

⁵² Article 9(1) of the Administrative Reform Act.

those that did not but in respect of which the government had already adopted a voluntary merger regulation – if the coercive merger would have a positive impact in terms of the criteria set out in Article 7(5) of the Territory of Estonia Administrative Division Act⁵³ and was both necessary and reasonable for ensuring the administrative capacity of a municipality that did not meet the minimum size criterion.

The government submitted its proposal on 14 and 15 February 2017.⁵⁴ The local authorities were to respond with their opinions by 15 May 2017 or else the proposal would be considered accepted (Article 9(8) of the Administrative Reform Act). The opinions were submitted on time, although some local authorities did not respond at all.

Where the municipality responded with a negative reasoned opinion, the Administrative Reform Act allowed the government to either (a) refrain from merging the municipality based on the reasons given and the circumstances referred to in Article 9(2) and (3) of the Act, or (b) to decide to coercively merge the municipality by issuing a regulation if it did not consider the reasons sufficient.

In the latter case, the Ministry of Finance was required under Article 9(10) of the Act to promptly notify local the authorities concerned before the regulation was adopted. According to the explanatory memorandum to the Act,⁵⁵ the government was required to rebut the objections of the local authorities in an explanatory memorandum accompanying the draft government regulation, and notify the local authorities of these

⁵³ Article 7(5) of the Act requires that the following be considered when altering the administrative-territorial organisation: (1) historical reasons; (1) effect on residents' living conditions; (2) residents' sense of cohesion; (3) effect on the quality of public services; (4) effect on administrative capacity; (5) effect on the demographic situation; (6) effect on the organisation of transport and communications; (7) effect on the business environment; (8) effect on the educational situation; and (9) effect on the organisational functioning of the municipality as a common service area.

⁵⁴ See <http://dokumendiregister.rahandusministeerium.ee/?a=ram&pealkiri=vabariigi+valit+sus+ettepaneku+esitamine&op=otsi&pg=2>.

⁵⁵ Explanatory memorandum to the draft Administrative Reform Act, p. 38; <https://www.riigikogu.ee/tege-vus/eelnoud/eelnou/fec18826-0e43-4435-9ba8-598b6ed4ea40/Haldus-reformi%20seadus> (last accessed 10.12.2017).

rebuttals before adopting the regulation in question. This notification requirement arising from Article 9(10) of the Administrative Reform Act is unprecedented. The notification could have served a purpose only if the local authorities had had an accompanying right for a further hearing. No such right, however, was provided by the Act. Nor did the Ministry of Finance send draft coercive merger regulations out to the local authorities as required by the explanatory memorandum to the draft Administrative Reform Act. The government sent out only the minutes for agenda item No 10 of the government session of 15 June 2017 and an accompanying explanatory statement specifying the reasons why the government had decided to proceed with the merger.⁵⁶ As the explanatory memoranda of draft acts are not legally binding, the above should be considered sufficient in terms of meeting the notification requirement, the government was not bound by the requirement to notify the local authorities by submitting the draft regulation and its explanatory memorandum in advance, which was included in the explanatory memorandum to the Administrative Reform Act.

The reasoning behind coercive mergers is available to the public in the explanatory memoranda to the draft coercive merger regulations. Unfortunately, the same does not apply to the reasons behind the decisions to cancel a coercive merger,⁵⁷ as no draft regulation or explanatory memorandum was drawn up in such cases. No reasons are specified in the minutes of the 15 June 2017 government session. We can only assume that the government acted on the reasons provided for the proposals submitted to the government in the explanatory statement

⁵⁶ https://haldusreform.fin.ee/static/sites/3/2017/06/15juuni2017_istungi-protokollnr-27_pkp10-2.pdf (last accessed 10.12.2017).

⁵⁷ Agenda item No 10(1) of the minutes of the government of 15 June 2017 terminated the procedures for the alteration of the administrative-territorial organisation for the merging of Loksa city with Kuusalu rural municipality; Häädemeeste and Tahkuranna rural municipalities with Saarde and Surju rural municipalities; and Kanepi, Kõlleste and Valgjärve rural municipalities with those of Ahja, Laheda, Mooste, Põlva and Vastse-Kuuste. https://haldusreform.fin.ee/static/sites/3/2017/06/15juuni2017_istungi-protokollnr-27_pkp10-2.pdf (10.12.2017).

accompanying the draft decision.⁵⁸ In future, it would be appropriate if the government added its reasoning to decisions of such importance and finality for the local authorities. This is particularly necessary in view of equal treatment, an issue that arose with particular urgency in connection with the decision to refrain from merging Loksa city and Kuusalu rural municipality as opposed to many other similar municipalities that were merged by the government.⁵⁹ The reasons for coercively merging one municipality and not others with similar characteristics should be transparent to the public.

The lawfulness of a partial termination of coercive merger procedures is an issue in its own right. On 15 June and 6 July 2017,⁶⁰ the government reduced the number of municipalities subject to coercive merging. It did so by terminating, under Article 9(9)1) of the Administrative Reform Act, the procedures for an administrative-territorial alteration with respect to some of the municipalities specified in its proposals, while continuing the procedures with respect to several others, under Article 9(9)2) of the Act. (The Act does not explicitly provide for the option of changing the number of municipalities subject to coercive merging while the procedure is ongoing). This raised the question of the significance of the fact that local authorities were at first asked for an opinion on being merged with a certain set municipalities but were subsequently not asked about being merged with only a subset of those municipalities.

For example, in its constitutional review application, the municipal council of Illuka claimed that merging only the rural municipalities of

⁵⁸ Explanatory statement accompanying the decision 'Alterations of administrative-territorial organisation initiated by the Government of the Republic as part of the administrative reform'; https://haldusreform.fin.ee/static/sites/3/2017/06/vv_protokolliline_otsus_vv_uhendamis_d_kinnitamiseks_sk.pdf (10.12.2017). See e.g. the proposal for Loksa city and Kuusalu rural municipality, p. 4.

⁵⁹ See also the judgment of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, No 5-17-23, paragraph 91.

⁶⁰ 'Alterations of administrative-territorial organisation initiated by the Government of the Republic as part of administrative reform', paragraph 2; <https://dhs.riigikantselei.ee/avalikteave.nsf/documents/NT00302D1A?open> (last accessed 10.12.2017).

Illuka, Alajõe, Iisaku, Mäetaguse and Tudulinna, without those of Toila, Kohtla and Kohtla-Nõmme (which were in the original proposal), should have called for a new public opinion poll and an additional hearing of the local authority.⁶¹ The Supreme Court did not agree with the applicant's view and held that, while the inclusion of new municipalities in the course of a merger procedure was not allowed without issuing a new proposal, the exclusion of municipalities was allowed, and the law did not provide for a new hearing or further inquiry into the residents' opinions in such cases. The Supreme Court also noted that in this case a new poll or hearing would probably not have changed the outcome of the procedure.⁶² Although this may have been true in the case in question, the authors of this article believe that it would have been more appropriate if the possibility of changing the set of municipalities subject to coercive merging, and the related right for a hearing, had been clearly established by law.

According to Article 12(2) of the Administrative Reform Act, a municipal council that had received a proposal from the government was required to do the following: (1) determine its residents' opinion regarding the alteration of the administrative-territorial organisation in accordance with the procedure specified in a government regulation;⁶³ (2) submit to the county governor a reasoned opinion, prepared in the form of a decision, regarding the government proposal by 15 May 2017; (3) agree, by 15 June 2017, with the other municipal councils concerned, on the name, type and insignia of the new municipality, the settlement of any organisational, budgetary or other issues related to proprietary rights and obligations as well as issues concerning the preparation of

⁶¹ Judgment of the Constitutional Review Chamber of the Supreme Court of 13 October 2017, No 5-17-15, paragraph 29.

⁶² *Ibid.*, paragraph 69.

⁶³ Government Regulation No 87 of 28 July 2016 establishing the scope and procedure for determining the residents' opinion on the alteration of the administrative-territorial organisation and boundaries of an administrative division (RT I 29.7.2016,12; 21.3.2017,12).

the statutes of the new municipality and making any other necessary amendments to legal acts (merger agreement).

The opinion polls were duly conducted by the local authorities. However, regardless of what they showed, the Supreme Court agreed with the government that the results of the opinion polls were not binding when deciding on the alteration of the administrative-territorial organisation and that Article 158 of the Constitution did not make them binding either.⁶⁴

As mentioned above, no second polls were conducted if the scope of the original merger proposal had been reduced by terminating the merger procedure for municipalities, and the Supreme Court did not consider this legally problematic. It can be said without exaggeration that the poll results did not carry significant argumentative weight with the Supreme Court.

As the government adopted most of the coercive merger regulations on 22 June, 10 July and 13 July 2017, the municipal councils had no time to sign merger agreements after the coercive mergers had been decided because, according to Article 12(2)3 Administrative Reform Act, the agreements were to be signed by 15 June 2017. In an opinion submitted to the Supreme Court, the Chancellor of Justice stated that the fact that the municipalities were not given enough time to decide matters related to elections and those specified in Article 12(7), (8) and (10) of the Administrative Reform Act amounted to an infringement of the municipalities' constitutional right to self-administration. The legislature should have considered this right when establishing the deadlines set out in the Act. The Chancellor of Justice further stated that since the municipal councils could not reasonably have been expected to take the relevant decisions before the government decided on the coercive

⁶⁴ Judgments of the Constitutional Review Chamber of the Supreme Court of 20 December 2016, No 3-4-1-3-16, paragraph 136; of 13 October 2017, No 5-17-15, paragraph 69; and of 19 October 2017, Nos 5-17-17, paragraph 88; 5-17-18, paragraph 66; 5-17-20, paragraph 77; and 5-17-24, paragraph 74.

mergers, it would have been appropriate for the government to decide the mergers well before 15 June 2017 in order to leave the municipalities a realistic amount of time to reach an agreement among themselves. However, the Chancellor of Justice also held that the above does not warrant the conclusion that the coercive mergers were unconstitutional, as it should not be assumed that the small municipalities could have achieved more favourable conditions in the negotiations that would have followed the decision on coercive merging.⁶⁵ Regrettably, the Supreme Court did not express a view on this.

The standard of providing reasons and the division of the burden of proof

During the court disputes, the question was raised about whether a coercive merger must have a positive effect simultaneously in terms of all the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act, for all the municipalities being merged with each other. The Supreme Court took the view that the above provision does not require that. In making proposals for administrative-territorial alterations, the government was only required to consider the impact in terms of all the circumstances specified in Article 7(5) of the Act and assess which municipalities should be merged to help achieve the purpose of the administrative reform – to increase the capacity of local authorities to provide public services, use regional potential for development, increase competitiveness and ensure a more balanced regional development – while not neglecting cost savings as one of the purposes of the state governance reform (Article 1(2) of the Administrative Reform

⁶⁵ Judgments of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, Nos 5-17-21, paragraph 37; 5-17-22, paragraph 36; and 5-17-23, paragraph 37; of 13 October 2017, Nos 5-17-15, paragraph 36; 5-17-16, paragraph 36; and 5-17-19, paragraph 43; and of 19 October 2017, Nos 5-17-17, paragraph 49; 5-17-18, paragraph 36; 5-17-20, paragraph 34; and 5-17-24, paragraph 35.

Act).⁶⁶ In other words, the Supreme Court allowed that a coercive merger may also have a negative impact in terms of some of the circumstances or for some of the municipalities being merged. This can hardly be disputed because as the Chancellor of Justice noted, being merged with a municipality of limited administrative capacity may, at least for some time, inevitably affect the performance of a municipality with better administrative capacity.⁶⁷

Whether the government was required to prove that the municipalities being coercively merged had insufficient capacity to perform the functions of local government was also disputed. In their constitutional review applications, some local authorities stated that the burden of proof rested with the government rather than the local authorities in respect to all the relevant circumstances. The Supreme Court held that, in the explanatory statement accompanying the proposal, the government did have to indicate why it had chosen the particular option for a coercive merger, what in its opinion the impact of the merger would be in terms of the circumstances specified in Article 7(5) of the Territory of Estonia Administrative Division Act and that the particular coercive merger was necessary for the alteration of the administrative-territorial organisation of a municipality that did not meet the minimum population size criterion. However, according to the Supreme Court, all this did not make it obligatory to demonstrate the insufficient capacity of the municipality that failed to meet the minimum size criterion – the assumption of insufficient capacity is derived from the law.

⁶⁶ Judgment of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, No 5-17-23, paragraph 72.

⁶⁷ Opinion of the Chancellor of Justice of 8 September 2017 in case No 5-17-19, *Lasva, Sõmerpalu, Vastseliina, Võru*, paragraph 22; http://www.oiguskantsler.ee/sites/default/files/field_document2/Arvamus%20Riigikohtule%20Lasva%2C%20S%C3%B5merpalu%2C%20Vastseliina%20ja%20V%C3%B5ru%20valdade%20sund%C3%BChendamise%20p%C3%B5hiseadusp%C3%A4rasuse%20kohta.pdf (18.12.2017).

The Supreme Court found that the aspects that the government needed to consider for a coercive merger required it to make a prediction, which it could not prove but only support with arguments. Furthermore, the law required the local authorities themselves to give reasons if they submitted a negative opinion and the government to weigh those reasons to determine the presence of exceptional circumstances that might strongly support the idea that a municipality had sufficient capacity despite its small population.⁶⁸ The Supreme Court, then, held that the government had an obligation to state reasons, rather than a burden of proof, and even that obligation was divided between the government and the local authorities.

In fact, the government did not analyse the impact in terms of all the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act with equal thoroughness in the explanatory statements accompanying the coercive merger regulations; its statements were sometimes general and conjectural. This did not, however, constitute a violation of statutory requirements, which the Court also confirmed.⁶⁹

The applications by the local authorities for legal protection and the government's coercive merger regulations exhibited conflicting assessments of the impact in terms of the circumstances specified in Article 7(5) of the Territory of Estonia Administrative Division Act. While the government usually considered that the impact of a coercive merger for the municipality in question was positive in terms of all or most of the criteria, the municipality itself felt that the impact across all the criteria was negative. This black-and-white approach to some extent compromised the credibility of the arguments of both sides.

⁶⁸ Judgment of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, No 5-17-23, paragraphs 72, 73 and 87.

⁶⁹ *Ibid.*, paragraph 86.

The criteria for reviewing the material constitutionality of a coercive municipal merger regulation

Until the judgment of the Supreme Court of 20 December 2016, No 3-4-1-3-16, regarding the constitutionality of the Administrative Reform Act, it could be argued, on the basis of the Supreme Court's earlier judgment of 16 March 2010, No 3-4-18-09, that the lawfulness of an infringement of the constitutional guarantees for local government should be reviewed using criteria derived from the doctrine of fundamental rights, including a three-step proportionality test.⁷⁰

The Supreme Court judgment of 20 December 2016 introduced a fundamental change. In particular, the Court held that, as the Constitution grants the *Riigikogu* (Estonian Parliament) a wide margin of discretion to establish the administrative division of the country's territory and as the principle of the unitary state (Article 2 of the Constitution) should also be considered, the requirements of a proportionality test cannot be followed rigorously in reviewing the constitutionality of the Administrative Reform Act. The Court stressed that the case was significantly different from the earlier case in which a proportionality test was applied to review compliance with the financial guarantee for local government.⁷¹

For future reference, this gives reason to expect that the Supreme Court will review infringements of the different guarantees for local government with varying degrees of rigour (depending on the discretionary margin that the Court believes the Constitution to grant the legislature in respect of the guarantee in question). On the other hand, we should not rule out the possibility that the Court will discard the proportionality test with respect to all local government guarantees, as the judgment also makes the general statement that, in view of Article 14 of the Constitution,

⁷⁰ For an explanation of the three-step proportionality test, see M. Ernits, 'Kommentaar §-le 11' – Ü. Madise et al. (eds.), *Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne 2017*, paragraphs 10–21.

⁷¹ Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2017, No 3-4-1-3-16, paragraphs 89–91.

a local authority cannot be the bearer but only the addressee of fundamental rights.⁷² It is worth noting by comparison that the German Federal Constitutional Court, for example, has avoided applying proportionality to the reviewing of infringements of any local government guarantees, not only those related to administrative-territorial reform.⁷³

Instead of applying a proportionality test in the Administrative Reform Act constitutionality case, the Supreme Court only verified that the legislature had complied with the prohibition of arbitrariness. The Court derived this prohibition from Articles 154(1) and 158 of the Constitution, holding that these provisions in combination give rise to a prohibition against arbitrary action by the state when altering the administrative-territorial organisation of local government. The prohibition requires compliance with formal constitutional requirements when making such alterations.⁷⁴

Later, when contesting the constitutionality of the government's coercive merger regulations, some local authorities still requested a proportionality test, arguing that the constitutional guarantees for local government were not adequately protected without it. The Supreme Court dismissed this argument, maintaining the position it had already held in Case No 3-4-1-3-16.⁷⁵

⁷² Ibid. A similar point has been made by the Chief Justice of the Supreme Court Priit Pikamäe: '[A]dministrative reorganisation cannot be subjected to the same standards as the protection of the fundamental rights of individuals. It is arbitrary to lump together the principle of democracy and suffrage on the one hand, and the organisation of local government on the other.' (Priit Pikamäe, 'Priit Pikamäe: kui kohtuotsus ei meeldi, ei sobi mistahes selgitus' – Postimees, 17.11.2017; <https://arvamus.postimees.ee/4312991/priit-pikamae-kui-kohtuotsus-ei-meeldi-ei-sobi-mistahes-selgitus>.)

⁷³ For a discussion of the judgments of the German Federal Constitutional Court and the criticisms that these have attracted, see: A. L. Göhring. 'Experimentierklauseln im Kommunalrecht – Rechtsprobleme im Spannungsfeld zwischen Regelungswut und "laissez faire"', doctoral thesis, 2003, pp. 78–79.

⁷⁴ Judgment of the Constitutional Review Chamber of the Supreme Court of 20 December 2017, No 3-4-1-3-16, paragraphs 88, 106–113.

⁷⁵ Judgments of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, Nos 5-17-21, paragraphs 65–66; 5-17-22, paragraphs 63–64; and 5-17-23, paragraphs 64–65; and of 13 October 2017, No 5-17-19, paragraph 67.



4 October 2016: The Supreme Court discussing the applications filed in respect to the Administrative Reform Act. In the foreground, Chancellor of Justice Ülle Madise. Source: *Õhtuleht*.

The representatives of the state defending the Administrative Reform Act before the Supreme Court were sworn advocate Jüri Raidla, Minister of Public Administration Arto Aas, Chairman of the Constitutional Committee of the Riigikogu Kalle Laanet and Minister of Justice Urmas Reinsalu. Source: *Õhtuleht*.

The Court held that the judicial control over the government's decisions regarding administrative-territorial alterations of local government in order to achieve the objectives of the administrative reform was limited. The legislature has given the government a wide margin of discretion when deciding on alterations of administrative-territorial organisation.

Moreover, most of the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act are such that the actual impact of administrative-territorial alterations in terms of these circumstances can only be evaluated after the municipalities formed as the result of a coercive merger have existed for some time. The actual impact of a coercive merger in terms of these circumstances also largely depends on the future actions and decisions of the newly formed municipality. In light of the above, the court can only verify that the government has, in changing the administrative-territorial organisation of a municipality, taken into account the relevant material circumstances and not relied on incorrect facts. Among other things, the court can verify that the government has assessed the reasons stated by a local authority in support of its negative opinion and has provided, in the explanatory memorandum to its regulation, the relevant reasons as to why it does not consider the local authority's reasoning sufficient.⁷⁶ The Supreme Court identified no cases of unconstitutional coercive merging.

An important point emphasised by the Supreme Court was that the Court cannot not take the place of the government in order to assess whether another possible alteration of the administrative-territorial organisation of a municipality would have a more positive impact in terms of the circumstances specified in Article 7(5) of the Territory of

⁷⁶ Judgments of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, Nos 5-17-21, paragraphs 75; 5-17-22, paragraph 73; and 5-17-23, paragraph 74; and of 19 October 2017, No 5-17-24, paragraph 55.

Estonia Administrative Division Act or would be useful for achieving the objectives of the administrative-territorial reform.⁷⁷

By way of comparison, the German and Austrian constitutional courts, for example, also use a very limited approach to reviewing the decisions to apply coercive municipal merging.⁷⁸

This, of course, raises the question of whether local authorities have any chance at all of winning a constitutional review case regarding a coercive merger. It is our belief that, while not impossible, this requires very serious errors in the implementation of the reform (for example, violations of procedural requirements established by law).

Conclusion

If we divide administrative reform into the three main components of local government functions, the financial resources for the performance of those functions and administrative-territorial organisation, then the changes made in 2017 were limited to the simplest of these – the administrative territorial organisation of local government. Even this was an achievement, considering the two decades of ruminations and failed reform attempts that went before it. However, territorial changes alone do not make for a systematic reform of local government. It is to be hoped that this, too, will be carried off in the coming years.

⁷⁷ Judgments of the Constitutional Review Chamber of the Supreme Court of 4 October 2017, Nos 5-17-21, paragraphs 41–42, 44, 71, 75, 89, 91–92; 5-17-22, paragraphs 40–43, 73, 86, 88–89; and 5-17-23, paragraphs 41–44, 70, 74, 86; of 13 October 2017, Nos 5-17-15, paragraphs 41, 64; 5-17-16, paragraphs 41, 43, 64; 5-17-19, paragraphs 47–48, 50, 80; and of 19 October 2017, Nos 5-17-17, paragraphs 54–56, 84; 5-17-18, paragraphs 40–41, 62; 5-17-20, paragraphs 39, 41, 73–74; and 5-17-24, paragraphs 40, 42, 70–71.

⁷⁸ See judgment of the German Federal Constitutional Court of 19 November 2002, No 2 BvR 329/97, marginals 78 and 89 (http://www.bverfg.de/e/rs20021119_2bvr032997.html) and judgment of the Constitutional Court of Austria of 23 September 2014, G 44/2014-20, V 46/2014-20, paragraphs 44, 50–51 and 55, including references to previous relevant case law (https://www.vfgh.gv.at/downloads/VfGH_G_44-2014__V_46-2014_Gemeindefusionen_Waldbach.pdf).

In what follows, we will outline some of the most important conclusions to be drawn and then offer suggestions to be considered for a future administrative-territorial reform. As an administrative-territorial reform of this scope is unlikely to be repeated in Estonia in the near future, the suggestions may be more useful for other countries where a similar reform is being planned.

What is commendable is the fact that the reform was organised in two stages, during the first of which voluntary merging was encouraged, and the use of expert committees in implementing the reform and the highly committed work of many officials at the Ministry of Finance to solve problems as they emerged.

The Supreme Court judgments show that the Constitution gives the legislature a wide margin of discretion to design the objectives, criteria and procedure for administrative reform. The legislature may in turn give the government extensive discretion regarding coercive municipal mergers. Judicial control over the government's coercive merger regulations is therefore limited and, among other things, does not include the assessment of possible alternative mergers. The (coercive) alteration of the administrative-territorial organisation of local government is not subject to a proportionality test. This is replaced by verifying that the legislature or executive set legitimate objectives and comply with the prohibition of arbitrariness.

When filing constitutional review applications with the Supreme Court, municipal councils should keep in mind the following. The municipal council must vote on the text of the application, which must be supported by a majority of the votes of the membership of the council.⁷⁹ Where a municipal council requests the repeal of a legal act on the grounds that it is in conflict with a general principle of law, which is not

⁷⁹ The council should also file the application as soon as possible, as the Supreme Court may suspend the entry into force of the contested legislative act, or a provision thereof, only if it has not yet entered into force.

in itself a constitutional guarantee for local government, the council must explain how the conflict damages some such guarantee. If this condition is met, the application should further contain arguments contesting the formal constitutionality of the legal act (in particular, compliance with the jurisdictional, procedural and formal requirements, as well as the principles of parliamentary reservation, legal certainty and legal clarity of the adoption of the act). While a coercive municipal merger can be contested directly in the Supreme Court, the prospects for success are not promising, unless the government has made very serious errors in the implementation of the reform (for example, violated essential procedural requirements established by law).

The President and the Chancellor of Justice should focus particular attention on legal provisions that negatively affect individuals' right to stand for election to a municipal council, as this is not covered by the constitutional guarantees for local government even if the very possibility of constitutionally held council elections is being disputed.

The legislature should seek to formulate the conditions for carrying out even a complex reform in terms that are as simple and clear as possible. In Estonia, case law ultimately resolved the legal question of whether it was possible for a coercive merger regulation adopted by the government under the Administrative Reform Act to be contested by a local authority directly in the Supreme Court. However, the legislature would be well advised (as per the dissenting opinion of Justice of the Supreme Court Jüri Põld cited above) to establish jurisdiction and procedure at the same time as it passes the legislation regulating the implementation of the administrative-territorial reform.

It is important to set a deadline for contestation, so as to prevent local authorities from postponing contestation until just before the local elections in bad faith; although no local authority acted this way during this reform, the possibility should be ruled out. At the same time, it would provide clarity to the public earlier (including candidates in municipal elections). At least in the municipalities that have not gone

to court by the deadline it would be clear that the council elections will be held within the boundaries decided by the government.

The procedural deadlines should be laid down by law in such a way as to allow time for the local authorities to negotiate merger conditions among themselves after a coercive merger has been decided.

Overall, more time should be planned for carrying out an administrative-territorial reform, so that court disputes could be settled before the start of the campaign period for local elections. As there is no way to fully ensure this, even by reserving more time, the law should clearly specify the municipal boundaries in which local elections will be held if a court dispute over the constitutionality of the coercive merging of the municipalities in question has not been settled by a certain deadline before election day (for example, by the start of the registration of candidates). A situation whereby, just a few months before elections, candidates and voters do not know in which district or for which municipal council they are going to run or vote should be prevented. At the same time, the law should specify the body whose election preparations and legal acts take precedence in the event of a conflict between the preparations or legal acts of different bodies. The legislature should also provide for the reversal of consequences (including organising new elections) where elections have already been held in municipal boundaries that a court ultimately determines to be incorrect.

The law should be clearer on the possibility of changing the set of municipalities involved in a coercive merger while the procedure is ongoing. In such cases, it would also be appropriate for the law to ensure the right for an additional hearing of the local authorities.

The government should be required by law to also state its reasons for terminating a procedure for the alteration of the administrative-territorial organisation (i.e. where it decides not to coercively merge a municipality). This would make the reasons for coercively merging one municipality and not others with similar characteristics transparent to the public.

The legislation should be more specific about the legal nature of merger agreements and about the scope in which they extend to coercively merged municipalities that are not party to these agreements.

If You Dislike a Court Judgment, No Explanation Will Do

PRIIT PIKAMÄE

CHIEF JUSTICE OF THE SUPREME COURT

In an opinion piece (in the newspaper *Postimees*, 15.11.2017), member of the *Riigikogu* (Estonian Parliament) Artur Talvik called for a discussion of Supreme Court judgments. More specifically, he had in mind the Supreme Court's decisions on the constitutionality of the local government reform. I have always welcomed the idea of discussing court judgments that enter into force, even more so when talking about the decisions made by higher courts that close the legal dispute and the motives for which are not subject to further criticism by another court.

It is worth recalling the exact legal setup of the recent administrative-territorial reform of local government. First, it is difficult to get rid of the feeling that the way the reform was carried out, at least from a legal perspective, was one of the most complicated.

Article 2(2) of the Constitution clearly states that the administrative division of Estonia's territory is must be provided by law. In essence, this provision unambiguously allows the *Riigikogu* to establish the borders of the administrative divisions without the need to involve any other institutions in the making of these decisions. With that in mind, the *Riigikogu* could have chosen, for example, to establish by law the existing counties as the new administrative divisions with local governments.

This law would also have been subject to constitutional review by the Supreme Court, but in any case it would have meant implementing the local government reform in one stage. Instead, a multi-stage approach was chosen, whereby the local authorities would first merge voluntarily and then those that failed to meet the criteria provided by law would be coercively merged by the government. However, the decisions made in both stages could be contested in court.

On the plus side for local authorities, this approach gave them a great say in choosing which municipality to merge with and limited the central government's decision-making power in the coercive merger stage by not allowing the government to separate municipalities that had already merged voluntarily.

On the other hand, a definite downside to this choice was the unpredictability of the outcome. As the voluntary merger was quite literally voluntary, meaning that the local authorities were able to decide according to their own sympathies, the nationwide outcome might not end up being the most reasonable one.

Because subsequent adjustments of the outcome are probably inevitable, the question that Artur Talvik posed in the title of his opinion piece, whether the administrative reform was completed, has also been answered. The disadvantages also include the length of the process, as the emergence of court disputes was inevitably written into the scenario.

The fact that the Supreme Court had to make 12 decisions on the local government reform shows that this is what in fact happened. The first court judgment, pronounced on 20 December 2016, decided on the

constitutionality of the Administrative Reform Act itself and the 11 judicial decisions made in autumn 2017, based on the applications of 17 local authorities, assessed the legality of the regulations on coercive mergers issued by the Government of the Republic. I will refer to the latter as subsequent judgments.

In what follows, I will once more summarise what and why the Supreme Court decided in settling these disputes.

Fundamental rights are held by people

The basic approach to solving the local government reform cases was developed with the first judgment. First, the court did not question the legitimacy of the administrative reform's goal. Even without a long explanation, it is obvious that having 213 local authorities in a country with fewer residents than a suburb in Paris is too much.

Another important question was whether fundamental rights extend to local authorities. According to the Supreme Court, they do not. Article 14 of the Constitution states that it is the duty of local governments, as well as the legislature, the executive and the judiciary, to guarantee rights and freedoms; however, it is clear that a guarantor of the rights of others cannot at the same time be a holder of those rights.

For this reason, the Supreme Court did not implement a proportionality test, as proposed by the parties to the proceedings, when evaluating the constitutionality of the Administrative Reform Act, as this is an instrument used to control the restriction of fundamental rights.

In other words, and a substantial simplification: fundamental rights are held by people and the aim of a proportionality check is to protect their freedoms. For this purpose, the proportionality test prescribes a very clear step-by-step procedure, which involves asking whether it would have been possible to achieve a given goal via another, less restrictive method. Therefore, the Supreme Court also did not have to evaluate to what extent methods other than merging local authorities could have been used to achieve the objectives of the administrative reform.

Or to put it differently: the alteration of the state organisation cannot be held to the same standards as the protection of the fundamental rights of individuals. It would be arbitrary to lump the principle of democracy and the right to vote together with the organisation of local government.

When reorganising local authorities, the *Riigikogu* is given much more room for making decisions than when imposing restrictions on fundamental rights. Third, the Supreme Court held that although the *Riigikogu* could have established a new administrative division, it is not unconstitutional to entrust the government with solving the more decisive questions related to the reform.

In making all these fundamental points, the court also took into consideration the fact that according to the Administrative Reform Act, the coercive merger was to take place only after the voluntary merger stage was completed. Or as mentioned above, from among all the legally possible approaches to implementing the administrative reform, the *Riigikogu* had chosen the most favourable for the local authorities.

For these reasons, the Supreme Court established in the first case that, while unconstitutional in its attempt to limit the compensation to the local authorities for expenses incurred during the reform, the Administrative Reform Act in itself was constitutional.

***Riigikogu* and government mandate**

In the subsequent judgments pronounced this fall, the Supreme Court maintained all the above views. The request from some parties that the Supreme Court apply a proportionality test in the proceedings to determine whether local life will in fact improve as a result of the local government reform in no way falls within the cognitive scope of the judicial system.

Therefore, in these cases, the court could only assess whether the government had considered all the pros and cons that it was required to by law when applying coercive merging. In doing so, the court did



Chief Justice of the Supreme Court Priit Pikamäe explaining to the journalists the Supreme Court decision to declare the Administrative Reform Act constitutional.
Source: Delfi

not limit itself to the explanatory memoranda accompanying the government's decisions but, where appropriate, also assessed the entire procedure.

There is no conflict between these various judgments by the Supreme Court. Whether the local quality of life will improve as a result of the reform will still be up to the leaders of the new local authorities. In other words, as with any other important reform, only the future can

tell whether it was successful but predicting the future cannot be the function of the constitutional review procedure. Finally, we should also note that even if some of the Supreme Court's subsequent judgements had identified an abuse of discretion by the government, this would not have amounted to a ban on coercively merging those specific municipalities, but instead would have meant that the government would have to review the merger in question. And that is simply because it is the *Riigikogu* and the government, rather than the judicial system, that have the mandate to carry out an administrative reform. The courts cannot start making decisions instead of the political power on how and in what way the administrative reform should be carried out but can only review its constitutionality.

To conclude, I have to recall an old truth that someone who does not like a court judgment will never be content with the court's reasoning, no matter how extensive. It is worth noting that the administrative reform court cases were heard by two different panels of the Supreme Court and both supported the same approach.

And as for the more general question of the Supreme Court's role in protecting the constitution, laying down the appropriate judicial proceedings, as in adopting the Administrative Reform Act, is up to the *Riigikogu*. While seeing no need to establish a separate constitutional court in Estonia, I have shared my thoughts on the possible directions for constitutional review with the representatives of the people on at least two occasions in my addresses to the *Riigikogu*.

The continued discussion on these matters is still welcome.

Published in the newspaper *Postimees*, 17.11.2017.

The Light and Dark of Administrative Reform at the County Level

NEEME SUUR

Introduction

Finding a suitable solution for county-level administration has been one of the most complex challenges for the reform ideologists of various times. In opting for single-tier local government in 1993, the idea of county-level local government was consciously abandoned. This decision was perhaps somewhat emotional: by focusing on the primary tier, there was an attempt to move away from the Soviet-era model whereby village councils were small and insignificant, while administrative capacity and power were concentrated at the district (raion) level. Of course, there was also certain degree of political expediency in this decision.¹

¹ G. Sootla, S. 'Lääne, Keskkvalitsuse ja kohaliku omavalitsuse suhted' – *Eesti poliitika ja valitsemine 1991–2011*. Tallinn University Press, 2012, p. 300: 'It was mainly the elite with Soviet-era leadership experience that stood for preserving the autonomy of the counties, prioritising capacity, while the elite that had entered politics with the Popular Front of Estonia (for example, with the meeting of 11 April 1991) and afterwards with the Congress of Estonia, tried to establish their power base at the primary tier of local government.'

Unfortunately, this decision failed to satisfy, and the design and the development of various territorial (national and local) levels of administration has been an ongoing issue in the years since the restoration of independence. Attempts have been made to find the most effective management model that would (a) be simple enough to be cost-effective; (b) at least partially qualify as communal autonomy; (c) meet the need for politicians to secure an electorate;² (d) allow national authorities to maintain their power; and (e) constitute a manageable sphere of power for local government politicians.

The dilemma between one- and two-tier systems of local government experienced at the time is well described in all its complexity by Georg Sootla and Sulev Lääne in their 2012 collection of articles *Eesti poliitika ja valitsemine 1991–2011* (Estonian Politics and Governance 1991–2011).

Indeed, the current processes are supported by similar aims, only with mostly rational supporting arguments. Since the various groups have set such diverse (and often even contradictory) conditions for the territorial-administrative management model, there has thus far been no common understanding of how (and even whether) the county level of administration should be organised. They also failed to reach an agreement during the drafting of the concept document for the administrative reform and establishing the legislative environment in 2015–2017, which led to the reduction in the number of municipalities in 2017.

Those involved in the process have known all along that the number of municipalities should decrease, and that these should be larger in size so as to be more capable than the former village councils. However, the main dilemmas have remained more or less the same over 28 years.

The administrative-territorial reform that led to a significant reduction in the number of municipalities in 2017 is clearly part of a longer process of more general (regarding statehood) and narrower (regarding

² *Ibid.*, p. 301.

national administrative organisation) restructuring that began in 1989. This is why it is not appropriate to describe only the concept for the administrative reform and the process of developing the Administrative Reform Act and related acts in 2015–2017; we should instead look at the changes in administrative arrangements over a longer period of time.

This article will aim to describe and analyse county-level administrative arrangements as well as changes made at the county level over the past few decades, which can be directly or indirectly viewed in the context of administrative or state reform.

Counties as administrative units

Without entering into a discussion over the deeper historical roots of territorial administration (how the counties emerged in Estonia and why there are so many of them), and assuming that Estonia is a state based on the rule of law and that administration is an unambiguously understood concept, analysis of the changes made at the county level should start with two legal documents: the Constitution of the Republic of Estonia and the Territory of Estonia Administrative Division Act. Attention should also be given to the Local Government Organisation Act.

Although the Constitution of the Republic of Estonia does not describe the administrative division of the country, it declares: 'In terms of the organisation of its government, Estonia is a unitary state whose administrative division is provided by law.'³ The Constitution establishes entities for local self-government as territorial administrative units that determine and administer all local matters and discharge their duties autonomously in accordance with the law.⁴

Thus, the Constitution refers in particular to the unity of national practices in Estonia and attributes special significance and status to local self-government. Although it does not specify the national administrative

³ Article 2[2] of the Constitution of the Republic.

⁴ Article 154 of the Constitution of the Republic.

structure, it does define the administrative space of local government as all-encompassing insofar as a matter can be considered a local one. The right of local authorities to resolve matters autonomously also refers to the capability to develop different solutions within the law.

The county level is an administrative level where local and state administration intertwine. Now there is left only to determine what constitutes a local matter and what does not, and the extent to which the laws allow for different solutions in different entities of local government, especially considering the constitutional rights of the individual and the principle of equal treatment. How much of the social functional area has the legislator actually left for local authorities to administer? Which part of local life is actually and practically organised by national authorities? Should the administrative division, the state administrative structure and the functional area of local government be similar?

These questions need to be answered in particular to perceive another important dilemma⁵ for which resolution has been sought for some time, including during the drafting of the concept document and the legal acts for the administrative reform in 2015–2017. What is the size of an effective entity of local government? From which size of population does an entity of local government actually gain the capacity for strategic management and development?

The choice has always been between the effectiveness of local administration (resulting from economy of scale) and community-based arrangement of life, i.e. the 'local' aspect of 'local government'. It is commonly understood that an entity of local government with 500 inhabitants is indeed very 'local,' yet also does not have much capacity. What is more effective, then: 5,000, 11,000 or 20,000 inhabitants?

If we were to determine the appropriate size of a local government entity by a certain minimum number of inhabitants from which it is able

⁵ The first dilemma – the choice between one- and two-tier local government – has been described in the introduction to this article.

to provide services with a sufficient economy of scale,⁶ the focus of the administrative reform would shift one step upwards: from the local to the county level. Such an approach would require an amendment in the Constitution which lists rural municipalities and cities as entities of local self-government. It has also been argued that in such a case an amendment in the Constitution would not even be necessary, because there is provision for the formation of other entities for the realisation of local self-government in accordance with the law and pursuant to a procedure provided by law⁷.

The question of whether the administrative reform should simply shift the primary tier of local government to the county level has remained. This question has been repeatedly asked even after the implementation of the Administrative Reform Act. Such an idea was presented among the experts involved, at least rhetorically, but it was quickly abandoned, pointing to the well-known fact that this option would not find political support. As far as the author of this article knows, for the reasons mentioned above, the alternative choice of 'one county – one municipality' was not seriously considered by the specialists drafting the basic texts of the administrative reform in the ministry.

Within political circles, the idea of counties being the only tier of local government (Pro Patria and Res Publica Union) or the second tier of local government (Social Democrats) has bandied about, but once practical steps are required, the idea is abandoned again. The reason for this is the fact that counties as a national and local administrative level do not meet the five criteria listed in the introduction of this article.⁸ The merger of the two biggest islands, Saaremaa and Hiiumaa, to form

⁶ Draft concept document for the administrative reform developed by the Ministry of Finance, 2015, pp. 9, 10.

⁷ Article 155 of the Constitution of the Republic.

⁸ The criteria: (a) simple enough to be cost-effective; (b) at least partially defined as communal autonomy; (c) responding to the politicians' need to secure an electorate; (d) suitable for national authorities to maintain their power; and (e) manageable for local government politicians as the space of power.

a single municipality, is an exceptional phenomenon deriving from the fact that they are islands. We can only consider counties to be a strong administrative level when one of the parties retreats from prioritising the condition they have set.

One might also think about whether a county is primarily a functional space of local or national government. When considering the Local Government Organisation Act to see which matters are defined by law as local, it is debatable whether primary-level healthcare, special care, education, rescue management and maintaining public order are more related to the national level than waste management, elderly care, youth work, housing and communal services and water supply and sewage. We could also ask why the state uses approximately 75 per cent of the government sector funds, while local government uses 25 per cent.

Realising that the expansion of the functional space of local government, which was set as a goal for the administrative and state reform, is in fact appropriate and that the public sector itself still continues to resolve local matters to a very large extent (in contrast to the spirit of the Constitution), this raises the question of whether we should have dealt more carefully with shaping the counties as local government functional areas in the course of the administrative reform. If the state intends to continue to carry out state administration in the counties and also resolve local matters by means of public funds, the question arises as to whether the state administrative structure should be in line with the national administrative division.

According to the Territory of Estonia Administrative Division Act, the territory of Estonia is divided into rural municipalities, cities and counties, where rural municipalities and cities exercise local self-government and counties are subject to national administration. The Act was adopted in 1995, clearly defining counties as national administrative units. This did not change with the amendment to the Act that entered into force in 2017, stipulating the dissolution of county governments and

the position of county governor. While state administration in counties was performed by the county governor and the government agencies according to the Act in force until 2017, the amendment transferred them to the competency of the minister and government agencies responsible for the respective area. Counties are still described by law as national administrative units. However, the county-level administrative structure is about to be abandoned.

The county level was omitted from the focus of the 2017 administrative reform, which primarily consisted of restructuring local government. Counties were considered an area of potential cooperation between local authorities that had been legally assigned some of the functions to be jointly exercised by local authorities. However, the common form of cooperation was not specified. While municipalities were merged, county governments were dissolved and county-level administration became even more blurred.

The question of whether county-level administration even has a place in Estonia – from both the local and national perspective – remains unanswered. Counties have been left aside as a national decision-making and co-ordination level, but they are still recognised as areas of historical cultural cooperation and, to some extent, statistical and administrative areas. They are also partly recognised and partly disputed as national service areas.

Establishment and dissolution of county governments

The current national administration system emerged in the counties together with the re-establishment of Estonia's independence, when administrative reform was launched following the Supreme Council's decision in 1989. In 1990, county governments were established based on the district executive committees of the Council of People's Commissars. In 1991, the Estonian term *maakonna valitsus* was replaced with *maavalitsus*. This was the second tier of the two-tier local government system which consisted of a county council and county government.

The County Administration Act implemented in 1993 defined counties as national administrative units and county governors as state officials subordinated to the Government of the Republic. The Local Government Organisation Act implemented at the same time dissolved the county self-government bodies and provided for the establishment of county assemblies, or advisory bodies to the county governor composed of the heads of local government, which, in turn, were dissolved with an amendment to the Act in 1994. In 1995, the Territory of Estonia Administrative Division Act entered into force. It created a system where county administration meant primarily national administration. However, in the context of local administration, counties were, and still are, voluntary areas of cooperation. From 1993 until 2017, county governments were institutions that independently executed national administration and coordinated the activity of other government agencies.

When the institution of county governors was formed, it was first given strong universal competency and responsibility. When distinguishing between universal territorial and sector-based extraterritorial administration, both systems exist side by side. However, county-based territorial administration initially held a relatively strong position. County governors were officials with a mandate from the Government of the Republic. Until 1999, they had the right to attend government sessions; they also had some capacity to direct public funds (the state investment programme allocated among counties) and the right to coordinate the appointment of local directors of other state agencies. The scope of responsibility for county governments was very broad.

Subsequently, this scope of responsibility gradually decreased and the power of county governors diminished. This has its specific reasons.

There are two main aspects to the county-based administrative division and national administrative arrangements implemented in the counties. One of these is the economic aspect, or the question of which organisational structure is most economical in solving the tasks. The other is the power aspect, or the political approach. The latter is not only

related to party politics, but also to the division of power among public authorities. Both aspects have had a significant impact on the structure of public administration, including the county-level administrative structure, and eventually led to the dissolution of county governments at the beginning of 2018.

Economic aspect

Looking at state administration with its different governance models first, the transition from territorial to sectoral management started as soon as the agencies subordinated to ministries gathered enough strength. The most significant changes started to take place at the beginning of 2000. In 2006, county governments were transferred from the jurisdiction of the Government of the Republic to the Ministry of the Interior. From 2000 to 2010, environmental management, rescue services, building registers and museums were transferred from county governments to sectoral executive agencies or ministries, and county-level crisis committees were dissolved. In 2010–2016, social facilities and several sports facilities were removed from the administrative scope of county governments; the position of county doctor was eliminated, etc.

The dissolution of county governments started in 2017 with the transfer of educational functions to the scope of the Ministry of Education and Research and SA Innove, and the transfer of the remaining social functions to the Social Insurance Board. The dissolution process was completed at the end of 2017 with the allocation of the remaining functions among the Ministry of Finance, the Ministry of the Environment, the Land Board, the Ministry of the Interior and other state institutions and local authorities.

In 2011, the OECD published the report 'Towards a Single Government Approach', pointing to the fragmented relationship and weak horizontal coordination among the ministries. According to the report, each sectoral ministry operates on its own, within the scope of its tasks and activities, planning and implementing sectoral policies that



To emphasise their importance, county governments were usually based in representative buildings of county centres. The former Võru County Government Building. Source: Arvo Meeks / Valgamaalane.

are independent from others, or weakly linked to them. Among other things, the report primarily recommended making horizontal coordination more effective, clarifying the responsibility for multi-sectoral initiatives, ensuring sustainable cooperation, strengthening accountability and making it more institutionalised.⁹

⁹ OECD, 'Estonia: Towards a Single Government Approach', OECD Public Governance Reviews, OECD Publishing, 2011.

Looking at the general administrative structure of the state, county governments were the only national structures with the function of direct horizontal coordination besides the Government of the Republic. The horizontal (cross-sectoral) function is still carried out by the Prime Minister, the Minister of Finance, the Minister of Justice, and due to the nature of their area of work, the Minister of Foreign Affairs and the Minister of Public Administration as well. Nevertheless, sector-specific protectionism is clearly evident at the government level, which was best expressed in the comment of Siim Kiisler, the former Minister of Regional Affairs: 'I do not interfere with the work of others.'¹⁰

At the county level, the impact of such sectoral fragmentation was less significant. This was first due to the practical need for cooperation at the primary tier of administration, and second, due to the direct mandate given to county governors by the Government of the Republic, which was generally not contested.

While the state has followed OECD recommendations in certain aspects (for instance, by increasing the coordinating role of the Ministry of the Interior in the framework of the new Emergency Act), most of the changes that have taken place in the state structure can be characterised as centralisation and sectoral fragmentation. The final example of the fragmentation of public administration is the dissolution of the county governments and the distribution of their functions among the various authorities.

This has been mainly justified through process economics, or the need to consolidate competencies into a few centres functioning state-wide, and to create direct chains of command from the top to the lowest functional levels.

The document 'Analysis of state tasks'¹¹ prepared by the Ministry of Finance on state reform describes the situation where ministries have difficulty communicating with 15 institutions in the counties, the

¹⁰ J. Jõgis-Laats, 'Võtke need omavalitsused ükskord käsile, et elu maal toimiks!' – *Eesti Päevaleht*, 1.3.2012.

¹¹ 'Riigiülesannete analüüs', Ministry of Finance, 2016, p. 75.

intermediate level fragments management, local resources have an uneven workload and lack professionalism due to their universality, and so on. The meaning of the horizontal coordination referred to in the OECD report still seems to be a mystery.

It is still unclear where the organisers of place-sensitive services (such as public transport, primary healthcare, social welfare and education) could discuss these matters.

As a result of the processes taking place in the state, administrative fragmentation will increase even further, alongside consolidation of the organisation of technical and support services. There have been attempts to mitigate this effect with the creation of state offices in county centres. In particular, this mitigation concerns the provision of services, but not coordinated decision-making.

In Estonia, the principle of subsidiarity is dealt with at the national level. In most cases, it is believed that Estonia is such a small country that decision-making and process management conducted from a single centre by a relatively small circle of people is the level closest to the general population. The extent to which this approach will affect the initiative and responsibility of local officials and how much it will support or inhibit the development of the state can probably be assessed later.

Political aspect

The second aspect to be discussed when speaking about the role of county governments and its change is the political one. In principle, the institution of county governor was established as being apolitical, as part of the administrative apparatus of the state. Having relatively robust power, independence and direct access to the government initially, local governors became important local persons who were often able to be part of the locally visible positive changes, while avoiding being part of negative changes that stemmed from national policies.

We can also create logical connections between the political success of county governors and the change of their position and role. From

1999, county governors were no longer expected to attend the sessions of the Government of the Republic (at first, one of their representatives, the co-ordinator, was still invited), the locally allocated resources were gradually reduced and the position of a county governor was politicised. Officially, county governors still maintained an image of neutral state officials and intermediaries between the national government and local authorities.

Arto Aas, the Minister of Public Administration, admitted that the politicisation of county governors was a mistake.¹² Indeed, the minister said this in a more specific context of the administrative reform, but this sentence describes the entire process. With the politicisation of county governors, the government lost a local representative that could be relied on when implementing state policies.

One of the main arguments and positions of the state reform has been that such representation is not even necessary because policies are created and enforced on a sectoral basis; they are centrally managed and implemented through the local representatives from ministries. However, territorial administration becoming purely local – at least according to the plan.

Understandably, the state, although about to assign the task of drafting the county development strategy to local authorities, is reluctant to abandon the owner's role in the process of developing county spatial plans. It is rational that the planning of regional development and the territorial planning of the same region should not be the task of different organisers, especially when these organisers are in constant conflict over the principles of distributing resources that are scarce in any event.

By giving up the county spatial planning process, the state would lose an important means of influencing the local level and would thus almost completely exit the realm of territorial administration. As such,

¹² L. Kann, 'Arto Aas: maavanemate politiseerimine oli viga' – *Lääne Elu*, 29.8.2016.

the mainstream of centralisation and fragmentation, one part of which is also the administrative and state reform in its present form, may instead create a situation where the central government loses a great deal of its power. This, however, is probably not the goal.

Nevertheless, the strengthening of local administration and the distancing of the state from the local level may be in line with the constitutional principle according to which local authorities will decide independently on all local matters.

Administrative division and public administration

The convergence of the economic and political aspects led to the adoption of the draft act 432 SE by *Riigikogu* (Estonian Parliament) on 14 June 2017, Act Amending the Government of the Republic Act and Other Acts Regarding the Abolishment of County Governments.

The explanatory memorandum of the draft legislation states:

*The reduction in the role of county governments has not been slowed down, and the need for restructuring and ending the activities of county governments has become inevitable. At the cabinet meeting on 12 January 2017, the Government of the Republic decided to terminate the activities of county governments from 1 January 2018 and transfer the functions of county governments to the existing agencies of the ministries and local authorities. This will be the end of one phase in the organisation of state governance.*¹³

From everything described above, we will once again return to the Territory of Estonia Administrative Division Act which establishes counties as the units of state administration. This is not confirmed by the actual situation, as most of the agencies have already withdrawn, or are about to withdraw, from regional division of work. Regions formed

¹³ Explanatory memorandum to the draft Act Amending the Government of the Republic Act and Other Acts Regarding the Abolishment of County Governments (432 SE), 2017.



A notice on the door of the former Järvamaa County Government in January 2018.
Photograph: Järva Teataja.

within agencies have no legal meaning, and they are a matter of division of work within each agency separately.

The decision-making level has been consolidated since 2000. Taking the provision of services out from counties is more a trend of recent years. Knowing that counties are national statistical units, in some respect areas for the allocation of resources and recognised as national

service areas¹⁴ (which is, however, not supported by law and is still partially not accepted by the authorities), is it justified to call them national administrative units? Providing services to citizens is only a small part of administration.

Therefore, it could be said that state territorial administration is disappearing; it is being replaced with territorial service-providing (with disputes over its necessity and purposefulness), and the Territory of Estonia Administrative Division Act has proved to be inadequate in this regard. The arrangement of life in counties is becoming mostly a matter of local government.

There are four paths from here: (a) counties will continue as voluntary cooperation areas for local authorities; (b) county-level co-operation between local authorities will be made legally binding; (c) the next stage of the administrative reform will be carried out and the counties will be established as the primary tier of local government; or (d) cooperation between local authorities will fail and counties will remain areas of culture and identity, with no direct role in the organisation of people's lives.

In any case, it would be necessary to amend the Territory of Estonia Administrative Division Act and other acts defining the county level. However, choosing the latter alternative would mean the biggest administrative change since the times of Lembitu. Having a state service centre in a local town does not necessarily make the surroundings of that town a county.

In the context of public administration, the key issue is whether or not the concept of county spatial planning is maintained in the Planning Act. If it is, are we dealing with local or national planning? Will the state establish regional planning areas or abandon planning activities at a local level, limiting itself to the preparation and implementation of special plans, should the need arise?

¹⁴ *Ibid.*, p. 259, 260.

Counties as the level of inter-municipal cooperation

The third important dilemma faced by the designers of the administrative reform, which directly concerned the county level, was the voluntary *versus* compulsory nature of inter-municipal cooperation. As described above, the state decided to retreat in part from the county level. It was decided that some of the functions of the dissolved county governments should be transferred to the local authorities to be carried out jointly.^{15 16}

Associations of local authorities have been the primary form of inter-municipal cooperation at the county level. These are non-profit associations formed under special legislation and are recognised as partners by the state, which, for example, allocates earmarked funds for the organisation of educational cooperation at the county level through these associations.

According to the Local Government Associations Act, the objectives of a county association are, through the joint activity of the local authorities in the county, to foster balanced and sustainable development of the county, to preserve and promote the cultural traditions of the county, to represent the county and the members of the association, to protect the common interests of its members, to promote cooperation between the local authorities in the county and to create possibilities for improved performance of the statutory functions of its members.

In addition to the associations of local authorities, inter-municipal cooperation at the county level has also been expressed in the formation of joint foundations or non-profit associations (e.g. as part of county development centres or tourism development organisations), the establishment of joint companies (e.g. waste management centres) or participation in specific joint projects.

¹⁵ *Ibid.*, pp. 259, 260.

¹⁶ Explanatory memorandum to the draft Act Amending the Government of the Republic Act and Other Acts Regarding the Abolishment of County Governments, 2017, p. 12.

Looking at the associations of local authorities as universal bodies of inter-municipal cooperation and representatives of common interests at the county level, it should be noted that voluntary cooperation via associations has been widespread (there has been an association of local authorities in each county), but it has not been particularly deep or permanent.

Local authorities have often opted out of membership in associations, whether on rational or emotional grounds. For instance, the city of Võru has withdrawn from the local government association three times: in 1997, 2008 and 2012. During the period before the reform, it was common that not all local authorities in a county belonged to an association of local authorities.

To assess the depth of cooperation, we can analyse the joint budgets of associations of local authorities and compare these with the budgets of the respective local authorities separately. Local authorities have not allocated more than 1 to 2 per cent of their budget revenue for joint use. The National Audit finds in its audit report:

[T]he cooperation of local authorities within the scope of the county association's activities has been largely project-based, and cultural, sports and education events stand out in this cooperation. Associations have not been trusted with the organisation of the more important functions. The National Audit Office also found that many associations have not considered it necessary to prepare a long-term action plan that would express their common positions of what should be done in the coming years and what the goals of these activities are.¹⁷

The organisation of inter-municipal cooperation has been a widely discussed and debated issue. One of the positions prior to the reform (which has remained to this day) was that local authorities possess all statutory opportunities for cooperation. The other side of this argument

¹⁷ Activities of county associations of local authorities and functionality of internal control system. National Audit Office, 2012, pp. 3–9.

has always concerned the autonomy of local government and the voluntary nature of cooperation. Advocates of this position often have a liberal world-view, or have been defending this situation since before the reform.

According to an alternative position (which still prevails), cooperation between local authorities is obligatory and should be mandatory. This position stems from the citizens' right or need to receive services with the best possible quality and the recognition that a limited legislative environment does not allow for the strengthening of inter-municipal cooperation. Citizens' right to equal treatment has been a direct motive for the administrative reform as well as the reduction of the overall number of municipalities,¹⁸ and has also served to justify the need for strengthening inter-municipal cooperation.

In any case, designers of the administrative reform acknowledged the importance of inter-municipal cooperation, especially in a situation where we can witness the disappearance of county governments that used to be the main coordinators of cooperation at the county level. The strengthening of inter-municipal cooperation was meant to replace the coordinating function of county governments. Here, three efforts can be described to clarify inter-municipal cooperation.

The first concerned the discussion of the public-law status of the bodies of inter-municipal cooperation (county associations of local authorities). Experts and specialists rejected this idea, based on legal analyses carried out by the Ministry of Finance.¹⁹ However, since being

¹⁸ Indrek Teder, Chancellor of Justice: 'The fulfilment of several tasks assigned to local authorities by law is clearly inefficient in small municipalities. There are many errors and irregularities in the activities and legislation of local authorities with a small number of staff of insufficient legal competence. The number and quality of the provided public services is affected by the lack of competence of local authorities, which in turn means poorer protection of fundamental rights.' – *Õiguskantsler: suur osa omavalitsusi ei suuda piisavalt tagada isikute põhiõigusi*, 2009; <http://www.oiguskantsler.ee/et/%C3%B5iguskantsler-suur-osa-omavalitsusi-ei-suuda-piisavalt-tagada-isikute-p%C3%B5hi%C3%B5igusi>.

¹⁹ Draft concept document for the administrative reform, Ministry of Finance, 2015, p. 17.

a person in public law is vital for the performance of local government functions, the ministry has developed a new form of cooperation as a substitute measure – joint agencies of local authorities.²⁰ The extent to which local authorities will use this new form of cooperation will be seen in the future.

The second option concerned the local authorities' mandatory membership in a cooperation organisation. This possibility was outlined in the concept document for the administrative reform, and the obligation of membership was indeed included in the preliminary draft. However, it was left out of the final version of the document. The reason was that such a solution would certainly not be approved by the coalition. This, in turn, was due to the desire to maintain the autonomy of local authorities.

The third option required the strengthening of inter-municipal cooperation through joint implementation in certain areas – for instance, ensuring the balanced development of the county through the preparation of a county development strategy or working on security and health promotion. Although cooperation is mandatory in certain areas, local authorities are free to choose between different forms and solutions of cooperation. Such a procedure was also set out in the Act.²¹

In order to compensate for the voluntary nature of membership, the Act stipulated that the jointly adopted development strategy also applies to the municipalities that did not participate in its preparation and approval, if the document was approved by two thirds of the municipalities including the country centre, with their combined number of inhabitants accounting for two thirds of the county population.

²⁰ Draft Act Amending the Local Government Organisation Act and Other Acts Related to the Implementation of the Administrative Reform, 433 SE, 2017.

²¹ *Ibid.*

Defining county-level administration through mandatory inter-municipal cooperation

In the Estonian judicial area, inter-municipal cooperation has always been voluntary. It has been based on the awareness of local authorities and the hope that they will recognise the need for cooperation. It must be admitted that the situation did not change much with the administrative reform.

At present, it can only be hoped that in a situation where most areas of cooperation are not defined as mandatory by law (e.g. social or educational fields), the new local authorities will be wise enough to maintain the current networks of cooperation.

In theory, local authorities should, in their joint activities, also stand for maintaining statehood in the county, preserving a common identity, develop external cooperation, etc. Time will tell how they actually succeed at it, especially in counties where only three or four municipalities remain. It would be sad if county song festivals were lost, or if we stopped celebrating the anniversary of the Republic. However, the collapse of public safety, social work and education networks would directly affect the quality of public services and people's lives.

The autonomy of municipalities is an argument, as long as ignoring the need for cooperation does not result in a directly disadvantageous situation for their residents.

Local authorities also tend to encapsulate and focus on their own inner vision instead of cooperating, especially when external conditions become less favourable, financial means diminish, or political leadership 'hides in the trenches'. In public administration, formal structures have always compensated for the inevitable uncertainty caused by the volatility of individuals.

As a result of the administrative reform, formal structures have essentially been removed from the county level. The biggest force that keeps it together is the sense of identity and location resulting from the historical spatial pattern, but that too is easy to break when the dispute

over the last remaining funds from the European Union becomes sufficiently fierce.

Following the reform, the most influential document treating counties as unitary entities is the county spatial plan. Its holder is still the state sector. The concept of county development strategy was introduced into the legislation. Linking the county development strategy to state budget planning and national sectoral development plans will be one of the most complex tasks in public administration in the near future.

What will happen to counties next?

The next few years in local administration are unlikely to bring any abrupt changes. Participants will be busy with occupying the newly created functional space as well as creating and launching new structures. For the next four years, some of the usual procedures will still function, out of inertia. Thereafter, however, many fundamental choices need to be made.

The first of these concerns counties as statistical units as well as units for resource allocation. National administration has distanced, or is distancing, itself from the county-based functioning logic. The possibility of establishing cross-border associations was carefully phrased when determining the cooperation regions of local authorities. When drafting the administrative reform concept, it was repeatedly stated that county borders must not prevent merger or cooperation. Against this background, the requirement for drawing up a county development strategy, which has now received legal power for the first time, seems to come too late.

Should we switch from collecting county statistics to collecting statistics based on new municipalities?

The same question concerns the allocation of resources. Various resources – from national funds for the development of cultural cooperation to European Union funds to increase regional competitiveness – have been allocated on a county basis. Should resources be allocated

directly to municipalities, so that they could choose their partners as well as areas and directions of cooperation?

The other fundamental decision concerns territorial planning as a strong power instrument. Will county spatial planning remain? Will it be national or county-based? Or will the state still wish to express its interests by the so-called planning regions, which number fewer than 15?

Territorial planning without the components of strategic and budget planning is just empty bureaucracy. However, strategic planning requires cross-sectoral access to both information and resources. Does this mean that there will be new regions of universal responsibility after all?

It is also possible that the state will assign intra-municipal, or second-level, spatial planning to local authorities as a function to be carried out jointly. This would also lead to a situation where the state and local authorities could genuinely start a proper dialogue, because for the first time, the state should request a planning solution from the lower tier (i.e. the local authorities) to protect the interests of the higher tier. In that case, disputes about spatial planning would differ from annual budget negotiations – the parties would have to reach a common agreement.

Relying on special plans may not always be justified. Rather, agreement should be sought. This would be a new opportunity to build up public administration with a balanced governance logic.

In any case, during the next election periods we will need to determine finally whether Estonia needs counties as administrative units at all, and what kind of administration will be organised there: local or national. Then, we must begin to elaborate the Territory of Estonia Administrative Division Act and describe the territorial-administrative division of the state in the way that really works.

Alteration of county borders, change in population and the number of municipalities in the counties after mergers during the administrative reform

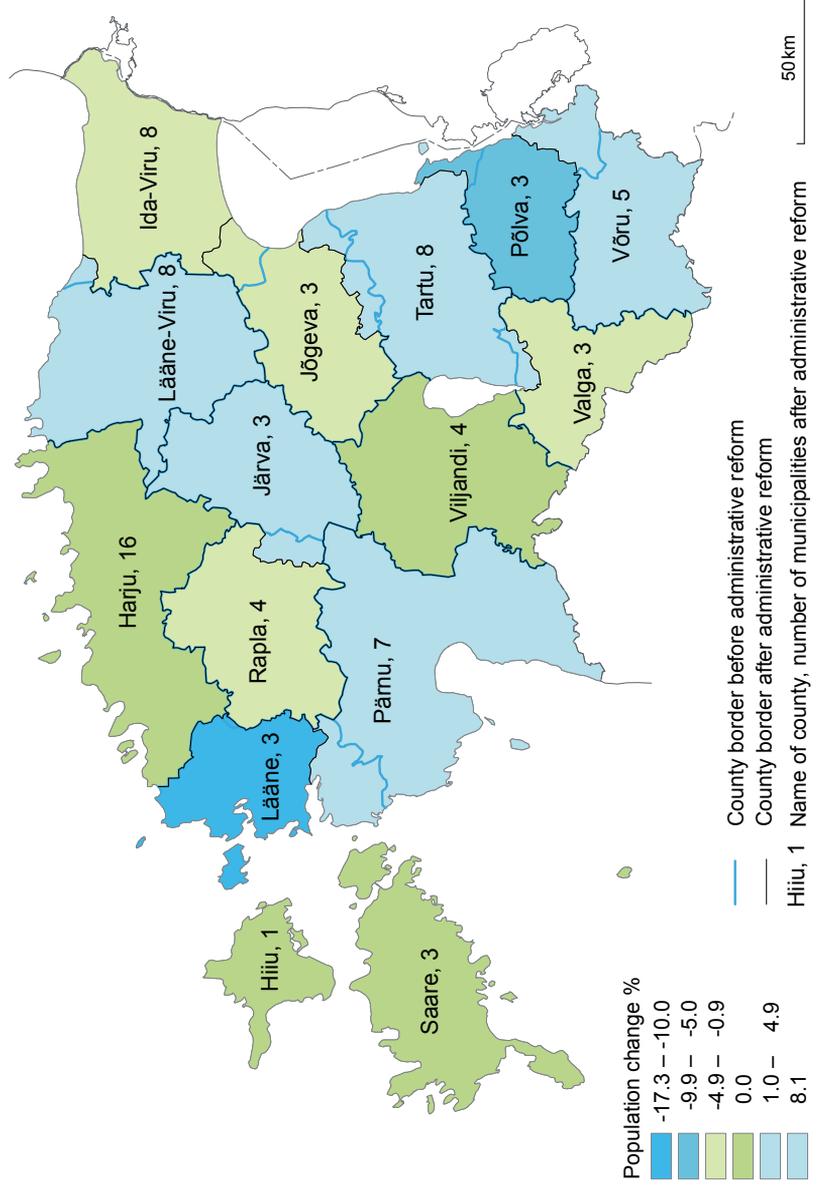
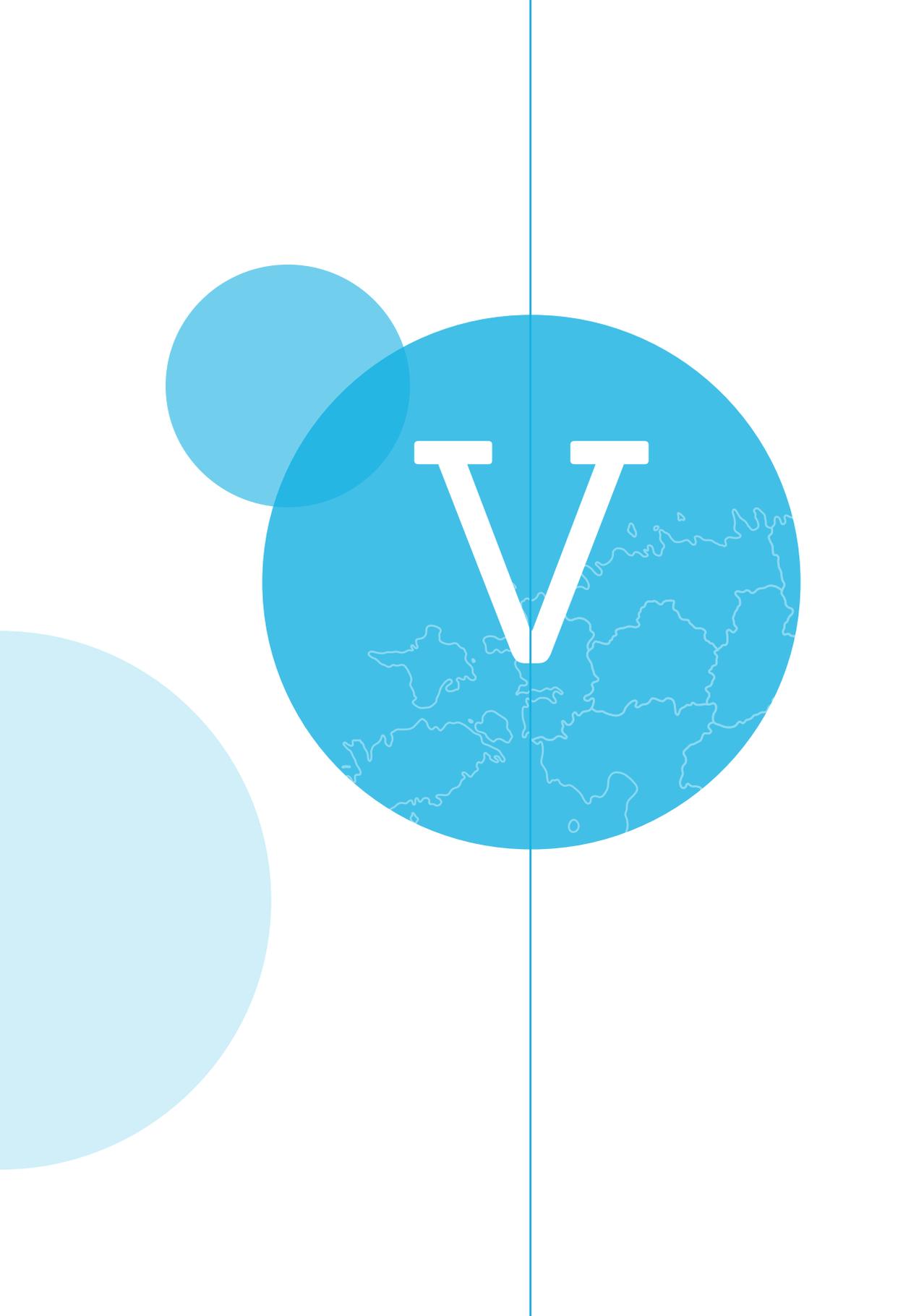
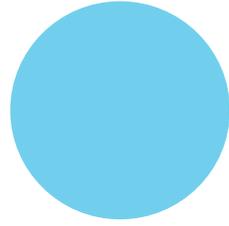


Figure 1.





Preliminary
conclusions and
future prospects

The New Territorial Pattern in Estonia

VEIKO SEPP

Factors that affected the new administrative-territorial organisation of municipalities

The new map of Estonian municipalities emerged from the cumulative effect of various factors. At the most general level, these can be grouped into national and local factors.

As far the national factors are concerned, the Administrative Reform Act and the criteria for the minimum and recommended population size of a municipality stipulated in the Act definitely stand out as the most important, as these and the geographical distribution of the population shaped the general territorial layout of the new municipalities.

With some new municipalities, the decisive factor may also have been their compatibility with the exemption conditions stipulated by law. To begin with, the Act allowed for creating a municipality with a population size falling below the minimum criterion in sparsely populated regions with a total area of at least 900 square kilometres, provided that it had at least 3,500 residents (Article 9(3)1)). This exemption was used very little during the voluntary merger stage – only the merger of Alutaguse and Saarde rural municipalities during the voluntary stage corresponds to this exemption, although the government later initiated merger proceedings also for these rural municipalities.

The effect of the so-called Setomaa exemption (Article 9(3)2) of the Administrative Reform Act) on the new administrative division is more complex, as the rural municipalities concerned did not use the option described in the Act to form the Setomaa rural municipality during the voluntary merger stage. Nevertheless, a rural municipality that meets the exemption requirements was later formed by a decision of the Government of the Republic, and this was based on the spirit of the law, inquiries made by the local residents, recommendations made by the regional committee, and opinion polls. Third, the Act provided for the option of maintaining local government in island rural municipalities, which was used to the full extent. All four existing marine island rural municipalities decided to continue as independent local authorities.

From the perspective of the regional pattern that emerged as a result of the 2017 reform, the most important aspect was what was not included in the Act. Although the Act indicates that the '[p]rovisions of the Territory of Estonia Administrative Division Act and the Promotion of Local Government Merger Act, considering the specifications arising from this Act, shall be applied to the alteration of administrative-territorial organisation and of borders, and changes to the names of municipalities provided for in this Act' (Article 1(4)), **the descriptions of the purpose, criteria and actions of the reform are neutral with regard to the territoriality of municipalities.** According to the Act, the purpose

of the reform is to support the increase of the capacity of local authorities through increased scope (Article 1(2)) and nothing more.

At the same time, the Act did not force the central government to automatically merge all municipalities that did not meet the minimum criterion. As the Supreme Court stated in its judgement, and as the lawyers defending local authorities pointed out, the Government of the Republic also had to take other circumstances into consideration when making decisions (Article 9(9)1) of the Act), including territorial circumstances (see the article by Veiko Sepp and Rivo Noorkõiv).

In other words, the Government gave the previously much-criticised task of map drawing first to local authorities, instead of attempting to tackle it on their own as before. For example, in the strategy document 'Administrative reform in local government'¹ in 2001, the criteria for territorial integrity were also defined, in addition to the criteria for the number of residents:

4. A municipality must be a cohesive entity with one or several closely linked centres.

5. If the connections between the various parts of a municipality of any size are closer to their neighbouring municipalities than to each other, these parts will be merged with the corresponding neighbouring municipalities.

Based on these principles and criteria, and as a result of negotiations, the Government of the Republic also defined a specific proposal for the alteration of the administrative-territorial organisation of municipalities in a draft order (see more in Madis Kaldmäe's article).

However, based on Article 5 ('Right of local authorities to merge') of the Promotion of Local Government Merger Act passed by the *Riigikogu*

¹ 'Haldusreform kohaliku omavalitsuse valdkonnas', Ministry of the Interior, January 2001; https://haldusreform.fin.ee/static/sites/3/2012/09/2001_haldusreform-kov-valdkon-nas-strateegia.pdf.

(Estonian Parliament) on 28 June 2004, **the Government of the Republic established 65 merger areas**, with grants paid only for mergers within those regions. This restriction was in force until 2013.

The above approach was slightly changed in the draft Local Government Organisation Reform Act in 2013, and **instead of merger areas, 63 local commuting centres were defined** (Article 2(2) and (3)):

- (2) *A municipality formed as a result of the merging of rural municipalities and cities is an area which covers the majority of its residents' local activity space and is comprised of at least one local commuting centre as defined in Article 2(4) of this Act, the settlements functionally connected to it, and the localities in their hinterland, and which generally have at least 5,000 residents.*
- (3) *A local commuting centre in the context of this Act is a densely populated settlement central to its local activity space, which is up to a 30-minute car ride away for the residents of the area and the main destination where people go to consume daily and periodical services, and for work and education.*

The topics of territorial integrity and cohesion were actually also important discussion points during the preparation of the 2017 administrative reform. Therefore, the expert committee reached the shared viewpoint at their first meeting on 29 May 2015 that

flexibility and customisation must be possible during the decision-making process with regard to the territorial aspect of the reform. In addition to the classic centre-hinterland type rural municipality, future rural municipal models could also include network-based (multicentric) rural municipalities. This can be the case particularly in regions without a strong or dominant centre, or if some regions are too far from the centre [distance criterion – e.g. x minutes' driven by car]. When planning the reform, it is important not to become stuck in the existing county boundaries.

As a result of the expert committee's discussion held on 14 July 2015, the principle of territorial integrity became a part of the concept of the administrative reform – to be more specific, it became one of the four goals that should be achieved as a result of the administrative reform:

A municipality is a logical territorial whole which considers regional differences and adheres to the settlement system.

However, the application of the concept document for the administrative reform to the solutions provided in the Administrative Reform Act was nevertheless optional (see Ave Viks' article), and the requirement of territorial integrity was not defined as a criterion with the force of law. Meanwhile, the main methodological reason was that the concept of territorial integrity is difficult to operationalise into an unambiguously measurable criterion – excluding the simple and insufficient criterion of the continuity of a territory (the absence of separated land), which could be used to assess territorial integrity in accordance with the settlement system. For example, in the case of the most classic model of territorial integrity, which presumes a connection between the centre and the hinterland, issues arise immediately regarding the objectivity of the criterion for defining the borders of the hinterland; that is, among others, which indicators and data can be used to decide whether a municipality or a part thereof can be included in the centre's hinterland; which is the right threshold for distinguishing between the hinterland and non-hinterland belonging to a centre; how can situations be solved where an area is connected to several centres which can function on different levels of the settlement system.

The underlying political reasons for not defining the criterion based on the centre-hinterland model were also important – the lack of readiness to deal with the topic of the metropolitan region, and the desire to avoid the risks caused by the merger of the larger cities and peripheries in Ida-Virumaa.

Due to all of these and other arguments, and also due to the pace of the reform process, the expert committee was unable to propose the 'objective and unambiguous criterion' required in the national government's action programme suitable for inclusion in the Administrative Reform Act. The Act did, however, contain relevant guidelines for regional committees regarding their opinions and assessments (Article 5(2)2 and 3)):

*2) to local authorities of the region and the Ministry of Finance **regarding the consideration of the effects and circumstances** of a municipality formed as a result of the alteration of the administrative-territorial organisation **specified in Article 7(5) of the Territory of Estonia Administrative Division Act;***

*3) to local authorities of the region and the Ministry of Finance regarding the consideration of **the specification of the region, compatibility of the settlement system and territorial integrity in the case of the establishment** of a municipality.*

This legal requirement was supported by the structure of the forms used for submitting the expert opinions, which served as the basis for developing a viewpoint in regional committees, where in addition to evaluating adherence to the criteria, another task was to assess the **effect on territorial integrity in terms of the circumstances listed in Article 7(5) of the Territory of Estonia Administrative Division Act**, which are: (1) historical reasons; (2) effect on residents' living conditions; (3) sense of cohesion for the residents; (4) effect on the quality of public services; (5) effect on administrative capacity; (6) effect on the demographic situation; (7) effect on the organisation of transport and communications; (8) effect on the business environment; (9) effect on education; and 10) the organisational functioning of the municipality as a common service area.

Based on the expert assessments, the opinions and decisions of the regional committees always included a conclusion as to whether the planned merger is in accordance with to the principle of territorial

integrity or not. In its final discretionary decisions regarding the territories of rural municipalities and cities, the Government of the Republic also had to consider the circumstances of territorial integrity as listed in the Territory of Estonia Administrative Division Act (Article 9(9) of the Administrative Reform Act).

The range of **local factors** shaping the administrative-territorial map of Estonia was also diverse. Achieving territorial integrity in accordance with the criterion of the number of residents worked best in cases based on **the logic of the everyday functioning of the settlement system** and how the residents and local politicians sensed this. In several regions in Estonia, these had already been defined as cooperative regions, which were reflected in the county plans and county development plans, for example. Good examples here are Valgamaa's division into three regions, or Põltsamaa's collaboration area, where previous collaborative experience made it considerably easier to come to an agreement during the voluntary merger stage.

The regional logic of adhering to the criterion of the minimum number of residents was opposed by a view that had evolved on the basis of the existing administrative-territorial division, whereby the heads of local authorities saw the existing rural municipalities and cities, regardless of size, as natural local worlds, with their own identity, a functional community as well as sufficient administrative capacity (for a more detailed account of the justifications submitted to the Government of the Republic, see Kaie Küngas' article). Those opposing a merger with an urban centre emphasised the value of rural living as such, pointing out the threat of marginalisation and decreased say in the larger municipality. However, cities adhering to the criterion and wishing to continue operating independently (e.g. the city of Keila), or municipalities with suburb-type settlement (e.g. the rural municipality of Ülenurme) did not see why their well-oiled machinery should be changed. There were some special cases regarding those local authorities and their leaders who were not opposed to the merger as such, but who only

agreed to administrative-territorial changes if the centre of the new rural municipality were to remain within their territory. The most characteristic example here is Koeru rural municipality, which abandoned the merger negotiations after the rural municipalities that were planning to merge voted in favour of Järva-Jaani becoming the centre of the new Järva rural municipality.²

The logic and justifications behind all of these various local territorial issues are naturally positioned in the complicated context of the personal relationships, attitudes and opinions of the heads of local authorities, communities and residents, within the scope of which everyone individually or in the form of local authorities made a decision in favour of one or another solution. At the same time, the personal preferences of residents also formed one input for the collective decisions.

Signatures were collected at the initiative of the local community in several rural municipalities and smaller regions to influence the decisions of the municipal council or the Government of the Republic. In accordance with the requirements of Article 6 of the Administrative Reform Act, and the Territory of Estonia Administrative Division Act, surveys were carried out in the municipalities, and the parts thereof that were involved in the merger process, to determine the opinion of the residents. Due to the informative nature of the survey results, their influence in the development of the regional pattern nevertheless remained modest (see Sulev Valner, 'Fifty-One Shades of Public Engagement'). To be specific, using the results of the opinion polls in making and justifying decisions was optional for the decision-makers (the municipal councils and the Government of the Republic).

In conclusion, the state did not regulate the regional pattern that would be developing as a result of the administrative reform. The criterion of the minimum number of residents in a municipality together with

² Koeru municipal council decision No 55 of 16 December 2016.

possible exemptions set the boundaries within which municipalities had the right to a voluntary agreement to shape their territory. Although certain guiding principles, which included softer guidelines for good territorial solutions, were given to the municipalities by the regional committees and the merger consultants during the process, in the end, considerations of territorial integrity remained secondary in the decisions made by municipal councils and the Government of the Republic, compared to the legally stipulated criteria and national or local political considerations.

Types of territorial pattern that emerged

As a result of the lack of criteria describing territorial integrity and using the model of voluntary mergers, the territorial pattern that emerged after the 2017 administrative reform in Estonia was highly variegated.

Based first on the definition in the Territory of Estonia Administrative Division Act, according to which the territory of Estonia is divided into counties, rural municipalities and cities (Article 2(1)), secondly on the distinction between urban (cities and towns) and rural (small towns and villages) settlements, and thirdly on the classical logic of the territorial integrity of a centre and the hinterland, at least 11 types of municipalities can be distinguished in the new administrative-territorial division.

1. County-based rural municipalities (2). Rural municipalities that span the entire county were formed in two island counties – Saaremaa and Hiiumaa. However, neither of these new municipalities is an ideal representative of this type.

The territory of Saaremaa rural municipality does not include Muhu and Ruhnu rural municipalities in the county of Saaremaa, as the former both decided to use the exemption granted to small islands and continue independently. While Hiiumaa rural municipality territorially joins the entire county, considerable authority has been given to rural municipal districts – previous rural municipalities and the city of Kärdla – which is why this is only a formal territorial merger at least for now.

- 2. Cities comprised of one urban settlement (10).** The following will continue as independent cities: the capital, Tallinn; the larger towns in Ida-Virumaa – Narva, Kohtla-Järve and Sillamäe, three historic county cities – Rakvere, Viljandi and Võru, and three cities in Harjumaa – Maardu, Keila and Loksas. At the same time, as a result of the reform, the city of Kohtla-Järve lost one of its previous six separate territories – the city district of Viivikonna, which was merged with the city of Narva-Jõesuu.
- 3. Cities comprised of an urban centre settlement and rural settlements of the city's hinterland (5).** This group is not homogeneous insofar as the connection between the city and the hinterland has been achieved to a varying degree in the new municipalities. The group is comprised of cities whose immediate hinterland belongs to the territory of the new city either in its entirety (the city of Haapsalu), almost entirely (the city of Paide), largely (the city of Pärnu) or only slightly (the city of Tartu). At the same time, the city of Pärnu includes not only the immediate hinterland but also some of the rural settlements in the more distant hinterland (the previous Tõstamaa rural municipality, villages in the eastern part of Paikuse rural municipality). Meanwhile, the city of Narva-Jõesuu consists of one small city and a hinterland of larger cities (Narva, Sillamäe).
- 4. Rural municipalities with a centre and hinterland, which connect one urban centre and the rural settlements of its hinterland (21).** In this group, it is also possible to distinguish subgroups: two, to be precise. In the first subgroup, there are centre-hinterland rural municipalities that remained or were formed within the boundaries of a previously existing county: Anija, Antsla, Jõgeva, Jõhvi, Kohila, Lüganduse, Märjamaa, Otepää, Põltsamaa, Põlva, Rapla, Saarde, Saue, Tõrva and Valga. The other subgroup is comprised of rural municipalities, in which case connecting the centre and the hinterland also required some changes to be made to the county boundaries. Such rural municipalities are Elva, Lääneranna, Mustvee, Rääpina, Türi and Viru-Nigula.

A map of municipalities formed as a result of the administrative reform

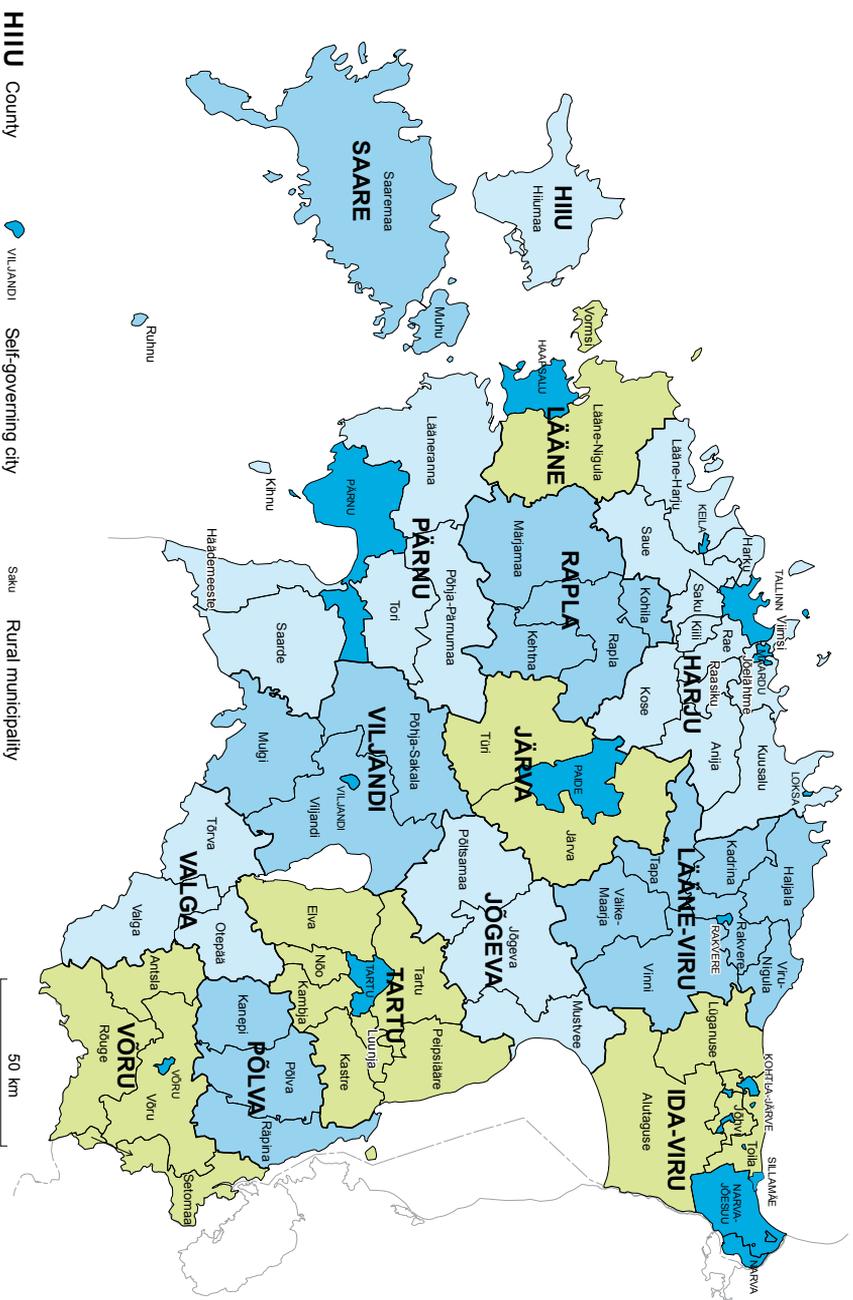


Figure 1.

5. **Rural municipalities with several urban centres (4).** Two urban settlements and the rural settlements of their hinterland are connected in Põhja-Sakala (the cities of Suure-Jaani and Võhma), Tapa (in addition to the city of Tamsalu), and Põhja-Pärnumaa (the towns of Vändra and Pärnu-Jaagupi) rural municipalities; while Mulgi rural municipality includes three urban settlements (the cities of Abja-Paluoja, Karksi-Nuia and Mõisaküla).
6. **Rural municipalities comprised of an urban settlement and rural settlements, whose urban settlement is not the main functional centre for a considerable part of the rural municipality (4):** Kehtna, Lääne-Harju, Peipsiääre and Tori rural municipalities. The reason could be the relatively small size of the urban settlement (the city of Kallaste in Peipsiääre rural municipality), its peripheral position (the town of Järvakandi in Kehtna rural municipality, the city of Paldiski in Lääne-Harju rural municipality) and/or the proximity of larger centres (the city of Pärnu for the Sauga region in Tori rural municipality compared to the city of Sindi). In the case of Peipsiääre rural municipality, merging the (rural) centre (Alatskivi) and the hinterland also resulted in a change to the county boundaries (see group 4).
7. **Ring-shaped peri-urban rural municipalities without an urban centre (4).** This group has clearly distinguishable subgroups: (1) classic ring-shaped peri-urban rural municipalities of Võru and Viljandi, which after the mergers also include not only the immediate hinterland of the cities of Võru and Viljandi but also a significant part of the more distant hinterland (Kolga-Jaani and Mustla districts in Viljandi rural municipality; Orava and Vastseliina districts in Võru rural municipality); and (2) peri-urban rural municipalities that do not form a full circle around their urban centres. The second subgroup includes Rakvere and Toila rural municipalities.
8. **Rural municipalities in the immediate hinterland of an urban centre characterised by suburban settlement to a considerable extent, but whose centre is at least formally a rural settlement, generally a small town (9).** The majority of such rural

municipalities are situated near Tallinn; the territory of these municipalities did not change as a result of the administrative reform: Viimsi, Jõelähtme, Raasiku, Rae, Kiili, Saku and Harku rural municipalities. This group also includes rural municipalities adjacent to the city of Tartu – Luunja rural municipality as well as the new Kambja rural municipality, whose larger suburban section (Ülenurme district) was merged with its smaller rural section (Kambja district).

- 9. Remote rural municipalities i.e. rural municipalities characterised by rural settlement (14).** Within this group, in turn, it is possible to distinguish between rural municipalities with one strong rural centre (Kadrina, Kose, Nõo, Kanepi, Vinni, Väike-Maarja), rural municipalities with two centres (Häädemeeste and Haljala), rural municipalities with one stronger centre and several weaker centres (Alutaguse and Rõuge), and network-like rural municipalities where there are no territorial prerequisites for the development of one or two centres (Lääne-Nigula, Kastre, Järva). In the context of the settlement system, Kuusalu rural municipality is a special case with the hinterland associated with the city of Loksa also included within its territory.
- 10. Rural municipalities with detached territory (2).** This group firstly includes Setomaa rural municipality, which was formed on the basis of a cultural specification, including Luhamaa nulk which is separated from the rest of the rural municipality by Võru rural municipality. Another rural municipality with detached territory is Tartu rural municipality, with which Piirissaar merged (an island located 27 km from the rural municipality's inland territory). Without this island part, Tartu rural municipality would be in the group of rural municipalities comprised of an urban centre and its immediate hinterland, although it also includes settlements in the more distant hinterland of the city of Tartu.
- 11. Island rural municipalities, which were exempted (4).** These are Muhu, Vormsi, Kihnu and Ruhnu.

The territorial integrity of the new municipalities

While assessing the territorial integrity of the municipalities formed on the basis of classical central place theory³ and its logic of centres-hinterland (the 1938 rural municipality reform of Estonia was based on this,⁴ but also for example the consolidation of municipalities in Sweden in the 1950s–60s⁵ and Norway's 1992 plan for an administrative reform⁶), it must be concluded that the regional pattern that emerged as a result of the administrative reform only partially adheres to the principle of territorial integrity.

Most obviously, territorial integrity was not achieved in the urban areas of large cities (in the Estonian context). The most successful attempt to connect an urban centre and a hinterland area was made in Pärnu, but even there the solution was incomplete. In the case of the city of Tartu, the merger of Tähtvere rural municipality can first and foremost be considered an experiment in spatial politics, the results of which may either encourage or discourage other rural municipalities with suburban settlements in the vicinity of Tartu to merge with the city. Tallinn, and the larger cities in Ida-Virumaa will also continue to be separated from their hinterland after the administrative reform.

Several larger county cities (Viljandi, Võru, Rakvere) will also continue separately from their hinterland, while smaller county cities were

³ W. Christaller, *Central Places in Southern Germany* [1933]. Prentice-Hall, 1966. G. G. F. Mulligan, M. D. Partridge, J. I. Carruthers, 'Central place theory and its reemergence in regional science' – *The Annals of Regional Science* 48, 2012, pp. 405–431.

⁴ E. Krepp, 'Valdade territoriaalne reform' – *Üld-, majandus- ja kultuurpoliitiline ajakiri* No 6, 1938, pp. 239–249.

T. Teder, 'Vallapiiride reformist' – *Maaomavalitsus* No 10, 1938, pp. 148–150.

T. Pae, E. Tammiksaar, 'See on ülesanne, mis mõtleivate inimeste üle jõu on käinud. Valdade liitmise reformid Eestis' – *Tuna* No 4, 2015, pp. 14–32.

⁵ A. Lidström, 'The Swedish Model under Stress: The Waning of the Egalitarian, Unitary State?' – H. H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*. Palgrave Macmillan, 2010.

⁶ H. Baldersheim, L. E. Rose (eds.), *Territorial Choice. The Politics of Boundaries and Borders*. Palgrave Macmillan, 2010.

either already merged with their adjacent hinterland (Põlva, Rapla, Jõhvi), or this happened as a result of the reform (Paide, Haapsalu, Valga, Kärdla, Jõgeva). The county of Saaremaa stands out among others: Kuressaare, a relatively large county city, merged not only with its adjacent hinterland, but with all of its rural hinterland.

The implementation of the centre-hinterland model was generally successful around small cities. The direct reason for this was the suitability of the minimum population size criterion with the level of that settlement system. Due to the small number of residents in such cities and their hinterland, they were not left many options for fulfilling the criterion other than to merge. The problematic aspect of this became more evident due to the fact that population decline over the past two decades has created a situation where the number of residents in several mergers of a centre and a hinterland that adhered to the logic of the settlement system resulted in the total resident count being just under 5,000. Generally, these cases were solved in favour of the centre-hinterland logic in the discretionary decisions of the Government of the Republic, granting justified exemptions based on the population size criterion (e.g. Saarde and Antsla rural municipalities).

The hierarchy of the settlement system and the centre-hinterland logic have been specifically addressed in Estonia in the county plans laid down in 2017–2018. According to a study of service centres⁷ these distinguish between rural and regional centres (altogether 60 such centres), around which it could have and would have been possible for new municipalities to develop, with regard to the nature of the settlement system in Estonia. Upon comparing the concept of the hierarchy of centres in the county plans to the territorial result of the administrative reform, it becomes evident that in 42 cases (70 per cent) such a municipality connecting the centre and the hinterland has, in fact, been formed.

⁷ 'Uuring era- ja avalike teenuste ruumilise paiknemise ja kättesaadavuse tagamisest ja teenuste käsitlemisest maakonnaplaneeringutes'. Centre for Applied Social Sciences, University of Tartu, 2015.

Seven regional centres defined in the county plans have been connected with their hinterland in such a way that some other settlement is the new municipal centre. Generally, these are, indeed, exceptional centres with regard to the study of service centres, the definition of which as regional centres has occurred due to the excessive distance to the other higher-level centres (the role of Orissaare in eastern Saaremaa due to its distance to the city of Kuressaare) or, in turn, their proximity, which means that it is pragmatic to develop a 'dual centre' (e.g. Karksi-Nuia, which shares the role of the service centre for the region along with Abja-Paluoja). In other cases, as opposed to the study of service centres, these regional centres have been defined as additional centres (Järvakandi, Riisipere, Tõstamaa) in the county plans due to local characteristics and notwithstanding scale. Furthermore, there are 18 local centres that are the administrative centres of new municipalities, around which relative territorial integrity has been ensured at a lower hierarchical level of the settlement system.

A clear lack of territorial integrity is evident in 14 municipalities (18 per cent of the municipalities of Estonia). The majority (11) of these are cases where a county or regional centre has not been merged with a significant part of its immediate hinterland. These are supplemented by three cases where the centre of a municipality is not even located on the same territory as the municipality itself.

Challenges arising from the inevitable imperfection of the regional pattern

The regional pattern that developed as a result of the administrative reform could be evaluated in many ways. If we assess the situation on the basis of the centre-hinterland logic, the result is satisfactory, especially considering the fact that the rural municipalities and cities themselves had to develop solutions within the scope of different political interests and options during a relatively short period. However, the administrative separation of larger cities and their hinterland nevertheless means

The concordance of municipalities formed as a result of the administrative reform with the network of county plan centres

County	County centre or regional centre that is the centre of a municipality formed as a result of the administrative reform	County centre or regional centre as a municipality without a significant part of its hinterland merged to it as a result of the administrative reform	County centre or regional centre that is not the centre of a municipality formed as a result of the administrative reform	Local centre that is the centre of a municipality formed as a result of the administrative reform	Municipal centre located outside the municipality's territory
Harju	Jüri, Saku, Saue, Tabasalu, Haabneeme, Loo, Kose, Paldiski, Kuusalu, Kehra	Tallinn, Keila, Maardu, Loksa	Riisipere	Aruküla	
Hiiu	Kärdla				
Ida-Viru	Kiviõli, Narva-Jõesuu	Narva, Kohtla-Järve, Sillamäe		Iisaku, Toila	
Jõgeva	Jõgeva, Põltsamaa, Mustvee			Järva-Jaani	
Järva	Paide, Türi			Taëbla, Hullo	
Lääne	Haapsalu, Lihula			Vinni, Haljala	
Lääne-Viru	Tapa, Kunda, Väike-Maarja, Kadriina	Rakvere	Tamsalu		Rakvere vald
Põlva	Põlva, Rõpina			Kanepi	
Pärnu	Pärnu, Väandra, Kilingi-Nõmme, Häädemeeste		Tõstamaa, Pärnu-Jaaguپی	Sindi, Linaküla	
Rapla	Rapla, Märjamaa, Kohila		Järvakandi	Kehтна	
Saare	Kuressaare		Orissaare	Liiva, Ruhnu	
Tartu	Elva, Alatskivi	Tartu		Kurepalu, Kõrvaküla	
Valga	Valga, Otepää, Tõrva				
Viljandi	Suure-Jaani, Abja-Paluoja	Viljandi	Karksi-Nuia		Viljandi vald
Võru	Antsla	Võru		Rõuge, Värtska	Võru vald

Table 1.

that there will be continued difficulties regarding comprehensive spatial planning in conurbations. When people's places of employment and residence are located in different municipalities, further coordination is required for the development, provision and funding of transport, education, recreational and social welfare services. Unhealthy competition over registered residents and their tax revenue also remains.

For rural municipalities with a large(r) territory, the main challenge is to manage the risk of regional marginalisation, and the management of complex networks of service centres in such a way that both service availability as well as a reasonable level of cost-efficiency is guaranteed. Municipalities located in remote regions (e.g. Peipsiääre, Alutaguse) need custom solutions: based on the availability arguments, it would be reasonable to develop all local government services within the area itself. This requires difficult choices to be made regarding the concentration of resources in the new centre, including partially at the expense of other settlements, but most likely also exceptions in the state support schemes.

In rural municipalities with several centres, the primary task is to change centres that have previously been competing with each other into centres that collaborate, including a division of functions and ensuring transport connections that enable dual or multi-centres to operate. For network-based municipalities without larger urban centres on their territory and without existing settlements with potential to develop into higher-level centres and where this is not desired anyway (e.g. Rõuge and Lääne-Nigula rural municipalities, but also all ring-shaped peri-urban rural municipalities), important solutions lie in close administrative cooperation with the nearest urban centre.

However, the most fundamental issue with regard to the resulting territorial pattern is the suitability of the pattern's scale for exercising local government in Estonia. The main question asked during the reform preparations and also after the reform (see e.g. Garri Raagmaa's article) is whether the Estonian local government system continues to be too fragmented even after the administrative reform, and whether

municipalities functioning within county boundaries would have been a better solution instead.

It is clear that with regard to tasks that are essentially related to local government (e.g. public transport, secondary and vocational education, waste management), many of the new municipalities are still not large enough; and also, that as the territorial subjects of economic development, Estonian municipalities should be larger to ensure better international competitiveness.

At the same time, it is not as if the county solution does not have its own issues. For example, we should then ask to what extent the principle of subsidiarity should be adhered to in that case, because a large part of the current tasks of local authorities are completely feasible for municipalities with about 5,000 residents (see Veiko Sepp and Rivo Noorkõiv, 'The Central Criteria for the Administrative Reform'). Likewise, a county-based solution would pose a considerable threat to the vitality of small cities, which play an important balancing role in the Estonian settlement system.

As an extrapolation, it must nevertheless be admitted that no administrative-territorial map – not the previous one with small rural municipalities, not the existing one with regions, and not even a possible county-based map – can provide an ideal territorial division for the exercise of local government because the territorial logics suitable for different fields of government operate on a different scale and on different levels. Even the previously much-discussed two-level system of local government could not take the complex territoriality of the tasks of a local authority sufficiently completely into consideration.

That is why it would be sensible to move towards a multi-level or multi-layer model of governance⁸ in the territorial administration of

⁸ See e.g. L. Hooghe, G. Marks, *Multi-Level Governance and European Integration*. Rowman & Littlefield Publishers, 2001; L. Hooghe, G. Marks, 'Unraveling the Central State, but How? Types of Multi-level Governance' – *American Political Science Review*, Vol. 97, 2003.

Estonia, where public tasks need not be within the exclusive competence of a single territorial level or specific authority. Instead, the best administrative-territorial solutions should be sought through the mutual (regional) collaboration of municipalities, creating additional territorial management structures within municipalities, the involvement of citizens' associations in the organisation of local life at the grassroots level, but also through regional-level cooperation between the local authorities and the state.

In the context of introducing such a governance model, the new territorial pattern that emerged as a result of the administrative reform would simply mean moving the legitimacy of local democratic power 'upwards' in the territorial sense to municipalities of a greater scope than before. However, the management and organisation of different areas of local life should take place on the most suitable territorial level, as determined by the principle of subsidiarity. The corresponding solutions must be developed by the new municipalities themselves.

The inevitable imperfection of the regional pattern after the administrative reform should not be a significant obstacle to good local government. A suitable model for local government can be moulded for almost every territory. The administrative reform's main contribution to this lies in the hope and faith that the Estonian municipalities formed as a result of the reform should, on average, have better capacity for developing and constantly improving models for exercising local government that are most suitable for their residents.

The Need to Reform the Estonian Local Government System from an Outside Perspective

JÜRI VÕIGEMAST

Planning and implementing large reforms inevitably raises the question of whether the reformers are able to see the process as a whole, including all important aspects that need reorganisation.

It is always appropriate to ask whether the reasons why the reform is undertaken – the answer to the question ‘Why are we doing this?’ – are well thought through.

If they are, then there is hope that the reform process, either as a whole or in its logical stages, will succeed. In terms of the logic of the process, reform is very similar to construction, where the desired outcome in every aspect is achieved by doing all the work throughout the different stages of the project with the final objective in mind.

To be sure, social processes and their drivers are much more complex. Otherwise the preparations for administrative reform, which in Estonia lasted almost a generation, would not have taken so long.

We have a wealth of material at our disposal to answer the above questions. The entire planning and implementation process of the administrative reform is well documented.

In addition to the sources referred to in the other articles in this collection, I will try to highlight the aspects that have received less attention but nevertheless seem important to me. Naturally, I will start with the goals of the administrative reform, as the goals we set for any project determine the outcome that we are going to pursue. Stocktaking also requires a comparison of the goals set and the situation that we have now reached.

What is local government – what are we reforming?

According to the European Charter of Local Self-Government, local self-government means the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

This right is to be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage.¹ Additionally, the Explanatory Report to the Charter states that the intention of the Charter is that local authorities should have a broad range of responsibilities that can be carried out at the local level.²

Acknowledging the importance of the experiences of older democracies, which served as a basis for the Charter and the agreements concluded in the framework of the activities of the Council of Europe, the Local Government Organisation Act of Estonia (Article 2) also provides

¹ European Charter of Local Self-Government. RT II 1994, 26, 95.

² Explanatory Report to the European Charter of Local Self-Government.

a definition of local government, affirming that it is the right, ability and duty of the democratically formed municipal authorities to independently organise and manage local issues.

The definition goes on to say that local government is to be exercised by democratically formed representative and executive bodies and, with regard to local issues, by means of opinion polls or public initiative. Naturally, the activities of local authorities are to be carried out pursuant to law.³

In short, when defining the scope of local government, both the Charter and the Local Government Organisation Act highlight the unity of the three important aspects – the right, ability and duty – to ensure that the democratically formed municipal authorities are able to organise and manage local issues independently.

It is added in the Explanatory Report to the Charter that local democracy and local autonomy have meaning only if local authorities enjoy the actual rights, obligations and financial resources to carry out independent management processes. Conversely, local democracy and local autonomy have no substance if local authorities are deprived of the rights, obligations and financial resources to decide on and manage local issues.

The primary purpose of administrative reform is to add more substance to local democracy and local autonomy. However, a reform that focuses on territorial changes, i.e. municipal borders, and whose primary purpose is to define changes to the territorial scope of the authority of a concrete municipality, should be regarded first and foremost as an administrative-territorial reform.

The goals of the administrative reform

It is stated in the concept document of the administrative reform that the central government's action programme (2015–2019) defines a general objective where the goal of the administrative reform is to ensure local authorities who are able to:

³ Local Government Organisation Act. Passed on 2 June 1993.

- provide people with better public services,
- ensure increased regional competitiveness, and
- perform independently the functions prescribed to them by law.⁴

Consequently, we can conclude that in its action programme, the government defined the goal of the local administration reform primarily as a need to achieve better capacity of local authorities, which is a prerequisite for improving living conditions in various regions in Estonia.

In addition to the above, it is stated in the chapter on the goal of the reform in the concept document of the administrative reform that, according to the administrative reform expert committee, the most important results to be achieved are the following:

1. a larger role of local authorities in the organisation of social life – the capacity, decision-making powers and obligation to organise local issues independently and efficiently; greater financial autonomy and proportion of budget funds; enhanced strategic management and capacity to use the prerequisites for local development and the balancing of regional development in the country; the capacity to participate in globalised competition and processes of cooperation;
2. increased competence and capacity of local authorities to guarantee the residents quality public services, their space-time accessibility and economically efficient organisation;
3. stronger local representative and participatory democracy, better possibilities for participating in the exercise of local government;
4. a municipality is a logical territorial whole that considers regional differences and adheres to the settlement system.⁵

⁴ Action Programme of the Government of the Republic 2015–2019; <https://www.riigiteataja.ee/aktikisa/3030/6201/5006/231klisa.pdf>

⁵ Concept document for the administrative reform; https://www.rahandusministeerium.ee/sites/default/files/document_files/kov/151218_haldusreformi_kontseptsioon.pdf

Referring directly to the above, important aspects of the organisation of the required resources are highlighted in the context of an increased role, i.e. the area of responsibility, of local authorities – greater financial autonomy and proportion of budget funds.

Apart from the ability to manage the functioning of daily life, the need to have a more strategic view and a stronger role in the balancing of regional development is emphasised.

About the goals, it should be noted that, in addition to the quality of services, their space-time accessibility and the economic efficiency in the organisation of services have also been emphasised. Another important goal is striving for the functioning of stronger representative and participatory democracy.

In the concept document's chapter on the goals of the reform, it was considered important to state that the administrative reform is aimed at the harmonisation of regional development in Estonia. The intent is to rein in peripheralisation and adjust the provision of public services in order to ensure the sustainability of the provision and organisation of services in the context of ongoing population decline and urbanisation, while recognising the need to cut costs in public administration and increasing the efficiency of local authorities.

Reflections and an external perspective on the need to change the Estonian local government system

The Congress of Local and Regional Authorities of the Council of Europe (CLRAE) is an institution of the Council of Europe that represents local and regional government bodies. The main purpose of CLRAE is to protect and increase the political, administrative and financial autonomy of local and regional government bodies in Europe, by encouraging central governments to develop local democracy and apply the principle of support.

One way to do this is to monitor the application of the European Charter of Local Self-Government and prepare relevant reports on the member states. In these reports, CLRAE provides an assessment on

how the states have fulfilled the principles agreed on in the Charter.⁶ CLRAE has prepared three reports on Estonia – in 2000, 2010 and 2017.⁷

In the context of the preparations for the administrative reform, it was possible to look at the 2010 report and recommendations of the Congress. As the latest report was prepared by the Congress in March 2017, when decisions regarding the approaches to the process of the administrative reform had been adopted and were being implemented, the recommendations of that report can also be seen in the context of the ongoing reform or as possible input in planning the next stages of the reform.

In the 2010 report, the Congress suggested that the Committee of Ministers make to the Estonian authorities a recommendation consisting of eight points:

- to grant the city of Tallinn special status, on the basis of Congress Recommendation 219 (2007), to take account of the particular situation of the capital compared with other municipalities;
- to clarify the legislation concerning the mandatory tasks and functions of local government;
- to change the domestic legislation urgently to allocate a greater share of financial resources for local authorities in order to make them commensurate with the responsibilities provided for by the Estonian constitution and national law, and allow local authorities to raise revenues from local taxes. This change in the legislation was already urged in Recommendation 81 (2000);
- to take measures to ensure that local authorities receive adequate revenues from shared state taxes, and that these are allocated in a transparent way;

⁶ The Congress of Local and Regional Authorities of the Council of Europe (CLRAE); <http://portaal.ell.ee/1173>

⁷ CLRAE reports on local democracy in Estonia; <http://portaal.ell.ee/1579>

- to set up a support fund for local authorities particularly affected by the economic crisis so that they are able to continue delivering certain social services;
- to start wide-ranging consultations with local authorities on the planned financial reform;
- to clarify the procedure of consultation with local authorities and national associations of local authorities in order to make discussion possible prior to the final decision, particularly when a planned reform concerns local authorities or implies financial consequences for them;
- to encourage the Estonian authorities to ratify the Additional Protocol of the European Charter on Local Self-Government on the right to participate in the affairs of a local authority (CETS No 2017) as soon as possible.⁸

Time has passed since the preparation of the 2010 report, and when we look at the issues raised, we can see that several points in it refer to the need to solve the same issues that were also relevant, indeed of the utmost urgency, at the time of the actual launch of the administrative reform. A subject of intense debate was the question of distinguishing between the functions of the state and local government, and the sources of the funds required for the local authorities to perform their obligations.

It is important to note that the situation when the report was prepared was all the more stressful due to a large decline in budgetary revenue, which resulted from the economic recession and was further exacerbated by a cut in the local authorities' revenue base during the 2009 economic crisis.

⁸ The Congress of Local and Regional Authorities of the Council of Europe (CLRAE, Strasbourg, 26–28 October 2010), Recommendation 294 (2010) 'Local Democracy in Estonia'; http://f.e.l.l.ee/failid/CLRAE/raportid_Eesti_kohta/2010/2010_soovitus_REC-294-2010-Estonia_ET_toim.pdf

At the same time, the economic crisis and the cut in the revenue base not only aggravated the local authorities' budgetary tensions and forced them to narrow the range of services and compromise on their quality; they also made them acknowledge the need to seek out and find solutions.

The problems related to the topics referred to in the report of the Congress were particularly evident in the activities of the smaller municipalities, but not only there. There were issues in the whole system that urgently needed solutions, and when planning the administrative reform, the need to ensure the development capacity of the whole system had to be kept in mind.

In January 2012, Estonia responded to the report by submitting to the Congress the required overview. It stated that there was only one recommendation with regard to which the government had planned no action, and that was the recommendation concerning a special status of the capital city. According to the response, the recommendations relating to the local authorities' revenue base were being acted upon and had been agreed in the action programme of the government. As regards the rest of the recommendations, the government considered these as having been fulfilled.⁹ In fact, however, it has taken years to unfreeze the revenue base.

In the report adopted in March 2017, the Congress suggested that the Committee of Ministers make the Estonian authorities a recommendation consisting of six points:

- clarify the legislation concerning the distribution of mandatory tasks and functions between local government and the state and transfer a maximum of competences together with concomitant finances to the local level. Such measures could complete the government's approach to strengthening local democracy through merged greater territorial units;

⁹ Overview of the Implementation of the 2010 Report in Estonia as of January 2012; http://f.ell.ee/failid/CLRAE/harta/2010_EE_monitooring/2012-01_CLRAE_ettepanekute_taitmine.pdf

- combine as far as possible the state functions with the financial means for their implementation and refrain from using the state reform on an agency level as a hidden transfer of responsibilities to local authorities;
- change the domestic legislation in line with the accomplishment of the territorial reform in order to give local authorities more financial autonomy and diversify the financial system of sources of their revenue by improving the local tax system and increasing the local share in state taxes;
- ensure in practice reasonable deadlines and regular consultations with local authorities on matters directly concerning them in the sense of Article 4.6 of the Charter. The practice of consultation should be adapted to the need of local authorities to closely follow deliberations, especially in the field of reform process and local finance matters;
- increase the size of the equalisation fund, review the criteria of its distribution and develop new vertical and horizontal instruments to improve the Estonian fiscal equalisation system and strengthen local fiscal autonomy.
- The Congress invites the Committee of Ministers of the Council of Europe to take into consideration the present recommendation on local democracy in Estonia, as well as the explanatory memorandum, in its activities related to this member state.¹⁰

A comparison of the CLRAE 2017 report and 2010 report reveals that the recommendations made in the 2010 report were more directed at alleviating and solving the crisis. The 2017 report refers to municipalities as greater territorial units, but also more to the need to increase the share of local authorities, i.e. the substance of local government, which would support the strengthening of local democracy. In

¹⁰ CPL32(2017)04 final 2/40 'Local democracy in Estonia'. Recommendation 401 (2017) (29–30 March 2017); <http://portaal.ell.ee/18711>

addition, the recommendations emphasise the need for local authorities' financial autonomy, i.e. greater budgetary independence, and highlight the topics of the diversification and strengthening of their sources of revenue.

We can see that the goals set out in the concept document of the 2017 administrative reform and the process of the development of the corresponding legal framework are significantly more aligned with the recommendations of the report than earlier reform programmes.

Recommendations of the Council of the European Union 2012–2017

In this section, I will look at the materials of the recommendations of the Council of the European Union that were given to Estonia over the years 2012–2017, i.e. in the period when the need for administrative reform became more and more clear.

In my view, the annual materials of the Council undoubtedly reflect, in addition to the observations that had been made by the departments of the European Commission, our own attitude to the need for solving issues related to the administrative organisation. This means that the input for the feedback on the problems and issues that need solutions came from Estonia itself.

It is certainly important to note that the preparation and finalisation of the OECD governance review¹¹ and its discussion in society also took place at the beginning of the period under review. Likewise, the same period is marked by the general assembly of local authorities that took place on 31 March 2012 and the proposals adopted there¹² with regard to both the administrative reform as well as the budgeting of the structural

¹¹ 'Estonia: Towards a Single Government Approach' – *OECD Public Governance Reviews*. OECD Publishing, 2011; https://www.riigikantselei.ee/sites/default/files/content-editors/Failed/oecd_public_governance_review_estonia_full_report.pdf

¹² General Assembly of Estonian Cities and Rural Municipalities. Materials of Working Groups; http://f.ell.ee/failed/ELL_volikogu/2012/2012-03-31_Eestimaa_Linnad_ja_Vallad/Trykis.pdf

funds of the European Union for the period 2014–2020. In conclusion, both of these materials certainly served as a basis for the development of the concept of the administrative reform and the political decisions for the preparation and launch of the reform.

In all these materials there are questions whose resolution was considered important. After some time has passed, we can ask ourselves what is still ongoing, what has been partially solved and what will have to be done in the next stages.

Recommendation 2012. The explanatory memorandum to the European Commission’s country-specific recommendations for Estonia in 2012 (Commission staff working document) states, among other things, that ‘[l]ocal governments appear to be too small to meet the obligations placed on them by law. However, there is no political support in Estonia for an overall reform that would reduce the number of local governments, but which could allow more efficient provision of services.’

The same document emphasises that ‘there is also a longer-term need to pursue the reform of local government to ensure better provision of public services and make optimum use of the relatively fragmented resources’. It adds that ‘assessments conclude that most of the local governments are finding it difficult to deliver to everyone the social, health and education services they need.’¹³

The Council of the European Union did not take the opportunity not to make a direct reference to the lack of political support, which should be an important prerequisite for implementing meaningful changes, including local government reform.

The Council made five recommendations to Estonia in 2012, one of which addressed the issues related to local government as follows: ‘Enhance fiscal sustainability of municipalities while improving efficiency

¹³ Commission staff working document SWD(2012) 311 final ‘Assessment of the 2012 national reform programme and stability programme for ESTONIA’. Brussels, 30.5.2012.

of local governments and ensure effective service provision, notably through stronger incentives for merger or increased cooperation of municipalities. Relevant reform proposals should be put in place within a reasonable timeframe.¹⁴

Recommendation 2013. It is stated in the factual part of the recommendations prepared by the European Commission for Estonia in 2013 that 'at local level, the mismatch between fiscal capacity and devolved responsibilities places great pressure on public service provision by local governments.' It is stated further that 'provision of the services that local government is legally obliged to furnish is in most sectors ineffective, notably in long-term care, family-support services, health care, education and transport.' It is added that 'this is due to the low administrative capacity of local governments and the mismatch between local government revenue and devolved responsibilities. No viable plan for improving the local administration has yet been established.'¹⁵

The Council of the European Union also gave Estonia five recommendations in 2013, one of which dealt with local government issues. This time it was recommended to better balance local government revenue against devolved responsibilities; improve the efficiency of local governments and ensure quality provision of local public services.¹⁶

We can see that in the 2013 recommendations, the range of problematic public services has been expanded in addition to the quality problems of the previously mentioned social, health care and education services. The mismatch between the revenue and devolved

¹⁴ Recommendation COM(2012) 311 final for a Council Recommendation on Estonia's 2012 national reform programme and delivering a Council Opinion on Estonia's stability programme for 2012–2015.

¹⁵ Commission staff working document SWD(2013) 356 final 'Assessment of the 2013 national reform programme and stability programme for ESTONIA'. Brussels, 29.5.2013.

¹⁶ Recommendation COM(2012) 356 final for a Council Recommendation on Estonia's 2013 national reform programme and delivering a Council Opinion on Estonia's stability programme for 2012–2017.

responsibilities of local authorities is highlighted once again. Reference is made to the lack of a viable reform plan.

Recommendation 2014. It is stated in the recitals of the 2014 recommendations of the European Commission that ‘widening regional differences combined with negative demographic trends, inefficiencies and lack of cooperation among local governments hamper Estonia’s development potential. This partly reflects the persistent mismatch between fiscal capacity and devolved responsibilities in small municipalities ...’ It is mentioned that ‘a more efficient and accessible delivery of quality public services at local level, based on service areas and minimum service standards, especially in transport, long-term care, early childhood education and social services, is a prerequisite for activation and labour market measures to be effective.’¹⁷

As in previous years, the Council made five recommendations to Estonia in 2014. Traditionally, one of them addressed local government: ‘Better balance local government revenue against devolved responsibilities. Improve the efficiency of local governments and ensure the provision of quality public services at local level, especially social services complementing activation measures.’¹⁸

Recommendation 2015. The text of the recommendation is in large part similar to the text of the 2014 recommendation, but it emphasises that there is a significant correlation between the level of the provision of additional social services and activation policies of local authorities.

¹⁷ Commission staff working document SWD(2014) 407 final ‘Assessment of the 2014 national reform programme and stability programme for ESTONIA. Accompanying the document Recommendation for a Council recommendation on Estonia’s 2014 national reform programme and delivering a Council opinion on Estonia’s 2014 stability programme {COM(2014) 407 final}’. Brussels, 2.6.2014.

¹⁸ Recommendation COM(2012) 407 final for a Council recommendation on Estonia’s 2014 national reform programme and delivering a Council opinion on Estonia’s 2014 stability programme. Brussels, 2.6.2014.

The recitals of the recommendation emphasise once again that widening regional differences, demographic trends and inefficiencies are decreasing Estonia's overall development potential.¹⁹

Recommendation 2016. It is emphasised repeatedly in the recitals of the country-specific recommendations for Estonia in 2016 that 'in Estonia, access to public services is not guaranteed in all municipalities, and the local provision of quality services in areas such as transport, education, long-term care for the elderly and other social services at local level remains a challenge.'

It is also stated that Estonia is preparing administrative reform, the purpose of which is briefly said to be 'to offer accessible and quality services and to ensure more efficient and competent governance.'²⁰

The fact that the country-specific recommendations of the Council of the European Union contain only two points, one of which addresses local government issues and the other research and development, is unique. Therefore, I cite both of them, assuming that the two issues that Estonia is faced with are indeed the most important ones from the EU perspective and that solving them would contribute significantly to the country's increased development capacity:

1. Ensure the provision and accessibility of high-quality public services, especially social services, at local level, inter alia by adopting and implementing the proposed local government reform. Adopt and implement measures to narrow the gender pay gap, including those foreseen in the Welfare Plan.

¹⁹ Recommendation COM(2015) 257 final for a Council recommendation on the 2015 National Reform Programme of Estonia and delivering a Council opinion on the 2015 Stability Programme of Estonia. Brussels, 13.5.2015.

²⁰ Recommendation COM(2016) 327 final for a Council recommendation on the 2016 national reform programme of Estonia and delivering a Council opinion on the 2016 stability programme of Estonia. Brussels, 18.5.2016.

2. Promote private investment in research, development and innovation, including by strengthening cooperation between academia and businesses.

Recommendation 2017. It is stated in the recitals that Estonia has adopted the Administrative Reform Act with a view to creating viable local municipalities that can finance their own activities, plan development and growth, and offer quality services.

At the same time, it is also said that ‘some key steps to complete the local government reform have not yet been taken’ and that ‘the revision of the financing scheme for municipalities is still pending.’ The recommendation then goes on to state that ‘further legislative acts on the responsibilities and division of tasks between municipalities and central government are still in preparation.’ Finally, it is added that ‘adopting these proposals is critical to ensuring the provision of quality public services in areas such as education, youth work, health promotion and transport.’²¹

Based on the materials related to the country-specific recommendations of the Council of the European Union for 2012–2017 as an external perspective on the one hand and an internal perspective that reflects the central-local relations in Estonian and the need for reorganisations on the other hand, the following conclusions can be made.

Apart from other important issues in the economic, fiscal and social area, problems related to the local level of governance continue to be in focus. The capacity of local authorities and the capability, level, effectiveness, efficiency and quality of the organisation of areas of life and of the provision of public services at the local level are of great importance for the development capacity of Estonia as a whole.

²¹ Recommendation COM(2017) 506 final for a Council recommendation on the 2017 National Reform Programme of Estonia and delivering a Council opinion on the 2017 Stability Programme of Estonia. Brussels, 22.5.2017.

In the country-specific recommendations, consistent references are made to the insufficient size of municipalities, as well as to the need to create a better balance between local-level responsibilities and the resources required for their fulfilment.

Slow progress in finding solutions means that the problems widen and are exacerbated. The maturing of solutions, preparations for and implementation of the reform have required achieving broad political support, and the absence of this has meant that solutions have been delayed. Carrying out all steps of the reform, both the current and the next ones, requires the existence and continuation of political will. Adopting the necessary legislation to solve the substantive issues of the reform is of critical importance.

Next steps: remaining issues

When trying to answer the question of what remained unsolved in the course of the administrative reform and what important issues still need to be addressed, we could certainly draw up a fairly detailed list of the items on the waiting list for solutions.

However, let us first conclude that one stage of the administrative reform process is over and possibilities for the next steps are still open. The newly elected municipal councils and governments of new larger municipalities are discussing the organisation of local life and prospects for strategic development in new municipalities that are considerably larger than the previous ones. Among other things, this means increased responsibility, and it is likely that local authorities can perceive this clearly.

The amendments to the Income Tax Act, the 2018–2021 state budget strategy and the 2018 state budget reflect important and long-awaited political decisions on the restoration of the revenue base of local authorities and some newly devolved responsibilities.

Some new tasks were also added to local authorities' set of obligations due to the termination of the operation of county governments.

Among these, the most important qualitatively are the issues where finding a workable solution requires cooperation: regional public transport, planning the development of a county, and tasks related to public health and culture.

Despite what has been said above, finding solutions for the issues related to the substance of the administrative reform, the responsibilities, revenue base and financial autonomy of local authorities, i.e. actualising the overall objective of the reform to increase the share of local authorities, is still in its early stages.

In order to increase local authorities' financial autonomy, it is being discussed, among other things, that the targeted subsidies allocated from the support fund for local tasks could be changed into general subsidies, which could be allocated, for example, to equalise the share of income tax and revenues, as in the Nordic countries. The volume of these funds in the 2017 state budget was approximately 380 million euros.

Increasing the share of local authorities in the public sector is also the subject of discussions and analyses in connection with the possible assignment to local authorities of certain tasks currently performed by the state in the social and educational area.

It is a well-known fact that it is practically impossible for local authorities to establish meaningful local taxes (1.5 per cent of their revenue base). Therefore, it is understandable that local authorities are interested in expanding the list of local taxes, including changing the land tax into a local tax and carrying out a periodic valuation of lands for the purposes of taxation (the last periodic valuation was carried out in 2001).

The share of municipalities in the Estonian government sector is 24.2 per cent, while in Finland it is 40 per cent and in Sweden 48 per cent. Although these levels cannot be compared directly, the divergence reflects a fundamental difference in the approach.

The share of local authorities is a fundamental question of social organisation, i.e. how strong civil society is. It is a question of whether

we prefer social life to be decided and organised centrally by offices of the central government of our country, or instead by local communities in localities. This is a practical question of the application of the principle of subsidiarity, whose interpretation in the Estonian context is worth in-depth analysis.

To sum up, I will once again touch on the goals of the administrative reform and their meaning. When setting the goals of a reform, we consider the principles that will guide our actions, define the object to be reformed more clearly than in everyday discussions, and weigh the choice of the fundamental approach to be taken in the process. Therefore, when planning follow-up actions to the reform, the general principles based on the European Charter of Local Self-Government that are included, among other things, in the action plan of associations of local authorities are still relevant:

- strengthening civil society, increasing the share, decision-making powers and responsibilities of local authorities in the management and organisation of social life as opposed to the centralisation of resources and decision-making powers;
- improving the accessibility and quality of public services provided by local authorities. The financial resources of local authorities must match the tasks performed by them;
- increasing local authorities' financial autonomy, including the extension of the right to establish local taxes, allocating part of state business taxes to local budgets, and changing the personal income tax and land tax into real local taxes as an alternative to the lack of rights and responsibilities of local communities in the development of budgetary revenues.²²

²² Action plan of the Association of Estonian Cities and Rural Municipalities 2018–2021; http://f.ell.ee/failid/ELL_volikogu/2018/2018-02-27_YK/03_Uldkoosolek_Uleriigilise_KOV_liidu_tegevussuunad_2018-2021_E1_12.09.2017.pdf

Administrative Reform as Part of State Reform

KÜLLI TARO

Introduction

Administrative reform and state reform in government action plans

Following the restoration of the independence of the Republic of Estonia, governance reform was an everyday occurrence. Plans for the development of public administration and improvements in efficiency, including local administration reform, were drawn up as recently as the early 2000s. Following that, public attention turned mainly to the administrative reform, which also ended up in the policy papers of several governments.

State reform (which has also been referred to as governance reform, governing reform etc.) returned more seriously to the agenda again prior to the 2015 parliamentary elections. The main driving force behind this was pressure from civil society. The need to review governance and to make updates to meet modern requirements was a constant talking point, but in 2015, it became a separate chapter in the coalition agreement.

A falling, ageing population, a smaller labour force and reduced sources of income, coupled with increased expectations regarding efficiency in public sector activities and better public services highlighted the critical need to review how the state works. There was talk regarding the objectives about making governance more efficient, to reduce or at least not increase expenditure. At the same time, the goal was to improve the quality of public service providers and the competitiveness of rural areas. In the context of state reform, there was also great emphasis on the importance of strengthening democracy and further developing inclusive politics.

The debate that took place in Estonia was not unusual. Other developed countries with declining and ageing populations deal with the same problems. Keeping the number of public sector employees and public expenditure in check is inescapable there as well.

Additionally, rapid changes in the environment mean that governments need to react quickly. More and more innovative governance models are sought for this purpose. The manner in which states create value for society by their actions and services is redefined.¹

Countries all over the world compete to create an affordable, convenient and trustworthy environment for business and living. The smooth operation of the state and local government becomes increasingly more important in that competition. Both the internal needs of development

¹ See e.g. *Government at a Glance*. OECD, 2017, 2015, 2013.

and the challenges arising from external trend, require Estonia as a whole to act in a more impactful and efficient manner.²

This article analyses the concordance between the objectives of the administrative and state reforms: how the state reform served as the impetus behind the administrative reform and vice versa, i.e. how the local government reform helped with the implementation of the state reform. As it is still too early to evaluate whether the objectives of the administrative reform have been met, we can only assume whether, according to current information, it is even potentially possible to meet these goals. It is possible to assess how the administrative reform has been implemented thus far.

The analysis includes reform plans dating back to the 2015 parliamentary elections, when the current concept of state reform appeared in government policy papers. The sources include official documents, speeches and newspaper articles, academic literature and other studies, correspondence with merger consultants and heads of local authorities, and the government's financial reports.

State and administrative reform goals

The state and administrative reform goals were formulated in the government action plans for 2015–2019 and 2016–2019. Prime Minister Taavi Rõivas also set out his government's (2015–2016) objectives in his speech on governance reform delivered on 14 April 2016 to the *Riigikogu* (Estonian Parliament). At a cabinet meeting on 11 May 2017, Jüri Ratas' government (in office since late 2016) approved the state reform plan in a separate document ('Government of the Republic state reform plan for the period from January 2017 to March 2019').

The legislature approved the administrative reform objectives with the Administrative Reform Act, which was passed in June 2016. In

² Estonian Development Fund, 'Väliskeskkond 2020: olulised trendid ja nende tähendus Ees- tile.' – *Eesti fookuses* 10/2012.

addition, on 14 February 2017, the *Riigikogu* Study Committee to Draw Up the Development Objectives for the State Reform was established. At the time of writing this article, this committee had not concluded its work or provided its own definition of the reforms.

The above sources justify administrative reform and state reform, and allocate functions in essentially the same way. At times, different wording and emphasis is used to convey a similar message. The objectives and actions are sometimes placed in slightly different contexts; the differences are in small details.

For example, some documents refer to a reduction in the number of positions in the public sector in accordance with the decline in the working-age population. In others, it is stated that the proportion of public-sector employees must not increase. In essence, these goals are the same.

The action plan for the government formed after the 2015 *Riigikogu* elections included local government reform as part of the state reform. That was the case both on paper and in political communication. In addition, objectives for slowing down peripheralisation were set for both reforms. Initiatives put forth by Taavi Rõivas' government placed great emphasis on improving the efficiency of the public sector, reducing the state sector and reining in the administrative load.

After the government coalition changed in 2016, the Ratas government's action plan dedicated a separate chapter to local authorities and regional policy distinct from state reform activities. Governance was included in topics related to democracy and civil society. In 2015, there was talk about administrative reform more within the wider context of the state reform.

From the end of 2016, the focus shifted more to regional policy and local administration topics, while improving the efficacy of governance was no longer prioritised as much. Indeed, a considerable part of the state reform action plan passed in 2017 is dedicated to administrative reform.

All of the above does not mean that one or the other government coalition somehow attributed more or less importance to the administrative

reform, but it does reflect the context in which local government reform was seen. Generally speaking, Jüri Ratas' government, which assumed office at the end of 2016, largely continued the work of its predecessor, Taavi Rõivas' government. However, the main focus shifted from the efficiency of public administration to regional policy goals.

Governmental action plans and other documents or official statements are good sources for analysing the objectives of the reforms, but their structure and exact wording should nevertheless not be overemphasised. It is not impossible that the exact wording and structure are accidental. The interpretation of the writings must take into consideration the actual activities and wider political communication that followed.

Table 1 provides an overview of the objectives of the administrative and state reform, with references to specific source documents. The focus is on the reorganisations in public and local administration. Adjacent activities related to e-government, competitiveness, regional policy, democracy or improving involvement have been excluded.

There have been attempts to separate the objectives from the activities, although all source documents have described these in an intermingled manner. As is appropriate for political strategies, the goals have occasionally been phrased in a rather slogan-like manner, that is, in such broad terms that it is difficult to understand their precise meaning. Ideas with similar content have been grouped together, so that it is possible to get a more comprehensive overview. However, the various goals are closely interconnected. For example, reducing bureaucracy and the administrative load should lead to reductions in expenditure, but should also help to create public services that are more convenient to use.

Both the administrative and state reforms have two large common goals: better public services and increased competitiveness in the different regions. The main content of the administrative reform has been the voluntary or government-initiated merging of local authorities into larger municipalities in order to create local authorities everywhere with sufficient capacity to fulfil their statutory functions.

Comparison of the objectives of the administrative and state reform

ADMINISTRATIVE REFORM	STATE REFORM
<ul style="list-style-type: none"> • better / higher-quality / more available public services^{1,2,5} • local authorities can independently fulfil statutory functions^{1,5} 	<ul style="list-style-type: none"> • higher-quality / more available / user-friendlier public services^{1,2,3,4}
<ul style="list-style-type: none"> • increased competitiveness of different regions, a more even regional development^{1,5} 	<ul style="list-style-type: none"> • increased competitiveness of rural areas^{1,2,4} removing [autonomously operating] state authorities from the capital city^{1,2,3} • public offices available outside of the capital⁴
<ul style="list-style-type: none"> • cost savings⁵ 	<ul style="list-style-type: none"> • improved efficiency and flexibility in the public sector^{2,4} • reducing governance costs (not increasing the proportion of government-sector expenditure in GDP), sustainability^{1,2,3,4,5} • reducing the volume of governance in the public sector^{1,2} • no increase in the proportion of government-sector employees within the working-age population^{1,2,3,4} • decreasing bureaucracy / administrative load^{2,3,4} • reducing duplicating activities^{1,2,3,4} • avoiding overregulation and excess legislation;^{1,2} reducing the volume of legislative drafting^{3,4} • consolidating support services, as well as public services where possible^{1,4} • increased cooperation between constitutional institutions and government authorities^{1,2} • improving strategic planning, management and monitoring of public sector activities^{1,2,4}
<ul style="list-style-type: none"> • increased decision-making power and responsibility for local authorities regarding management and organisation of community life / local life^{3,4,5} • greater financial autonomy for local authorities and more functions^{3,4} 	<ul style="list-style-type: none"> • transparency^{3,4} • increasing the transparency of the state budget^{1,2,4}

Sources: author's classification

¹ Government action plan for 2015–2019 (approved by Government of the Republic Order No 231 of 29 May 2015).

² The prime minister's speech to the Riigikogu on governance reform, held on 14 April 2016.

³ Government action plan for 2016–2019 (approved by Government of the Republic Order No 439 of 28 December 2016).

⁴ Government of the Republic' state reform plan for the period from January 2017 to March 2019' (approved at a cabinet meeting on 11 May 2017).

⁵ Administrative Reform Act (passed on 7 June 2016, in force from 1 January 2017).

Table 1.

Both the administrative and state reforms seek more even development and at least the availability of public sector services all around Estonia. Every reform plan also emphasises the need to improve the use of local prerequisites for development, in order to ensure more even development throughout Estonia. These objectives have been worded similarly in government action plans compiled in 2015 and 2016.

The initiative for taking public offices out of the capital is also related to increased regional competitiveness as a wider objective in regional politics. There has been more talk about the availability of public offices outside Tallinn during the term of Jüri Ratas' government, but taking autonomously operating state authorities outside of the capital city was also planned in the previous government's action plan.

The main objective for initiating a state reform was to increase the efficiency and flexibility of the public sector. There are direct mentions of reductions in governance costs as well as decreases in governance volumes, bureaucracy, duplicated activities and regulation. Several objectives have been worded as maintaining the current situation: not to increase the proportion of public-sector expenditure compared to GDP or the number of public sector employees within the working-age population. To a greater extent, the entire state sector should be reined in and managed better, and the administrative load should be reduced within the state system as well as for residents and entrepreneurs.

No cost savings have been directly pursued by the administrative reform. The majority of documents make no mention of the need to reduce expenses. Only in Article 1(2) of the Administrative Reform Act is it stated that the '[a]dministrative reform shall also be implemented according to the purposes of state governance reform for the organisation of public administration, which includes ensuring the quality and availability of public services and cost savings.'

Although the merging of municipalities in Estonia and elsewhere has been motivated by the hope that resources can be used more

efficiently through economies of scale,³ more specific reform plans no longer emphasise that particular aspect. However, the prevalent idea in the public discourse is that the objective of the administrative reform is economic savings, and that larger municipalities can use funds more efficiently while maintaining at least the same level of services.⁴

Strengthening the role of local authorities and increasing the decision-making power and responsibility for management of local matters was one of the other key slogans used to justify the importance of an administrative reform. What this actually means is not entirely clear. Meanwhile, the main emphasis regarding this aspect has been on the reviewing of local authorities' functions and funding.

However, the political rhetoric has not always been consistent in explaining whether this means additional functions for the local authorities, and if so, then which functions. In the government action plan approved in 2015, it was carefully worded as follows: local authorities that meet the criteria would be allowed to provide government-funded state functions in addition to municipal functions.

At the time of Taavi Rõivas' government, statements were still written in a rather general manner – those functions of county governments that are essentially municipal would be handed over to the corresponding local authorities if possible. The initial action plan devised by Jüri Ratas' government was more specific. There was no longer talk about just enabling the transfer of state functions, but actual statements that some state functions with their designated funding would be handed over to local authorities.

³ W. F. Fox, T. Gurley, 'Will Consolidation Improve Sub-National Governments?', World Bank Working Paper 3913, 2006.

Y. Reingewertz, 'Do municipal amalgamations work? Evidence from municipalities in Israel' – *Journal of Urban Economics* 72 (2-3), 2012, pp. 240–251.

⁴ See e.g. T. Rõhu, 'Haldusreform ja Tõstamaa – võrrand tundmatutega' – *Tõstamaa Tuuled*, 1.6.2016.

R. Uukkivi, 'Haldusreform, kas poliitiline t****pikendus?' – *Sõnumitooja*, 24.8.2016.

However, a close reading shows that the state reform plan approved in 2017 is somewhat more modest. It promises to hand over functions related to local government and functions enabling local decision-making, together with the necessary and sufficient resources. It remains unclear as to whether this definitely means more functions allocated to local authorities, because it is also possible to reach the conclusion that the current situation already largely corresponds to the set goal.

One of the goals of the state reform is increased transparency. More specifically, there is talk about the transparency of the state budget. Transparency is not addressed in the fundamental principles of the administrative reform.

Although the administrative and state reforms are closely interconnected, and their objectives largely coincide, they are nevertheless different types of reform. The administrative reform is intended to be more of a one-off, large-scale reform. Municipalities merge and there are changes to the functions and the funding system. Positive changes should result from these significant, one-off (at least for the time being) decisions.

The state reform also includes one-time activities, but the main advantage should result from changing the way work is done in the public sector. With regard to the state reform, it is more difficult to say when it will be ready, as it requires constant monitoring of the activity and its adaptation to the goal.

The estimated achievement of objectives

This article looks at the 2017 administrative reform as involving two components. First, an administrative-territorial reform, which consisted in the voluntary and government-initiated mergers of local government entities into larger municipalities. This was based on the Administrative Reform Act. Second, two pieces of legislation were passed on 14 June 2017 as part of the reform, regulating the functions and organisation of local authorities: the Act Amending the Local Government Organisation

Act and Other Acts Related to the Implementation of the Administrative Reform, and the Act Amending the Government of the Republic Act and Other Acts Relating to the Abolishment of County Governments. Both of these entered into force on 1 January 2018.

One of the most fundamental changes in the Acts passed in summer 2017 was the creation of a legal basis for establishing joint authorities and agencies for municipalities and the transfer of functions to them. These changes may turn out to be significant and result in fundamental updates in the work of Estonian municipalities, if this opportunity is used in practice. The Government of the Republic has promised to implement supporting measures (counselling, guidance material etc.).⁵ Establishing joint authorities and agencies is a tool that could help to achieve the key objectives of the administrative and state reforms alike: collaboration, improved services and at the same time cost savings.

It is also significant that many functions that had previously been the responsibility of county governments have been jointly given to local authorities.

It is likely that the biggest changes will occur in the organisation of public transport. Municipalities will also join forces for culture, health promotion and safety. Transferring the planning of a county's development activities to local authorities (including the drafting of the county's development strategy) carries important symbolic significance. However, the actual content as well as the effect of this step will only become evident in practice at a later time.

For example, county governments also transferred the following to local authorities: functions related to underage offenders, holding elections, and arranging foster care. The local authorities in county centres will also be involved with population registry functions.

⁵ Explanatory memorandum to the 2018 draft state budget.

These steps have at least created a better foundation for local authorities to manage the fulfilment of the functions stipulated by law. Larger municipalities and cooperation models could provide an opportunity to use resources more efficiently and to provide a better service for local residents. However, as the increase in the functions of local authorities was minimal compared to the situation before the reform, there were no considerable legal changes in the local decision-making rights with regard to the management of community life starting with the amendments that entered into force in 2018.

Some changes were made to the 2018 state budget regarding the funding of local authorities. These changes are aligned with the objectives of the administrative reform. The aim is to create opportunities for providing better and more accessible services and to increase the local authorities' financial autonomy. An agreement was made regarding the incremental growth in the share of income tax paid to local authorities, and the restoration of the revenue base with regard to the equalisation fund. Although a large part of the funds allocated to local authorities from the state budget are still earmarked and tied to specific conditions, the goal is to integrate the funds with the local authorities' revenue base, which is not distributed for specific purposes but instead through tax revenue and the equalisation fund. This increases the flexibility and responsibility of local authorities for the provision of public services. Lifting specific conditions from allocated funds is also indirectly connected to the state reform's objective of avoiding over-regulation.⁶

A hinterland coefficient was added to the equalisation fund that takes into consideration the impact of the location of school-age residents on expenditure requirements. The hinterland coefficient could help reach the objective of increased regional competitiveness. The functions and funding of local authorities will also be reviewed between 2018 and

⁶ The 2018 draft state budget and explanatory memorandum.

2020. Alongside changes to the funding principles, local authorities will receive an estimated total of 65 million euros between 2017 and 2019 as one-off merger grants.⁷

The extent of local decision-making rights is also reflected in the investment capacity of local authorities. Previous mergers of Estonian municipalities have, in general, increased their investment capacity.⁸ However, in an analysis of mergers that occurred in the 1990s, it was discovered that the volume of investments made by rural municipalities decreased considerably. Income per capita also decreased, as the proportion of government support decreased and the state did not fulfil its promises regarding the compensation of merger costs.⁹ In other words, the future progress and outcome of the administrative reform will greatly depend on decisions related to the state budget.

The state budget is approved for a year at a time. Any agreements extending to the future are not definitively binding. Based on legitimate expectations, local authorities can ultimately only rely on the payment of merger grants in the long-term.

Changing the accounting principles of the equalisation fund is related to the objectives of the administrative and state reforms: to enable a more even regional development. Regional competitiveness is addressed also in the plan to take state authorities out of the capital city, approved as a part of the state reform. Improving the availability of public offices outside of Tallinn has been a key state reform topic of the Ratas government; it has also been discussed the most and is somewhat distinguishable from the previous government's focal point.

⁷ Ibid.

Official record of the 2018 state budget negotiations between the government committee and a delegation of the cooperation assembly of the associations of local authorities.

⁸ Raideberg OÜ, 'Põlva linna ja valla ühinemise teostatavus- ja tasuvusanalüüs', 2012.

G. Sootla, K. Kattai and A. Viks, 'Kohalike omavalitsuste 2005. a ühinemiste ja selle tagajärgede analüüs'. School of Governance, Law and Society, Tallinn University, 2008.

⁹ Geomedia OÜ, 'Omavalitsuste ühinemise mõju valla haldussuutlikkusele [kuue aastatel 1996–1999 ühinenud omavalitsuse näitel]', 2001.

Taking state authorities out of Tallinn is a measure clearly rooted in regional politics, which at the same time counteracts the idea of the state reform making the public sector function more efficiently and to reducing the volume of governance. If organisational decisions are made by the government rather than by the heads of state authorities, the latter will no longer have access to important decision-making tools. Furthermore, heads of state authorities can no longer be held responsible for the organisation's expenses and operations, because all decisions would be made elsewhere, without their input. It will also become more difficult to reduce the number of state-employed workers, as the regional location of the employee or job must be taken into account, instead of considering what would be an efficient decision from the organisation's perspective and for the state as a whole. One-time removal costs must also be added. Due to the reorganisation of work, the quality and accessibility of a public service could be subject to temporary interruptions.

However, it is expected that the administrative-territorial reform as well as the reorganisation of county governments' activities should meet the central objective of the state reform – to improve the efficiency of the public sector. The impact of the merger of municipalities on their efficiency has been extensively researched in the literature of the field, focusing on the practical experiences in other countries. In most cases, the idea behind local government reforms globally is an attempt to take advantage of economies of scale in order to obtain better public services without increasing expenditure.¹⁰ It is estimated that the cost of providing a service per resident is reduced, but the income per resident might not decrease¹¹. Of course, the latter depends on the funding system.

¹⁰ W. F. Fox, T. Gurley, 'Will Consolidation Improve Sub-National Governments?', World Bank Working Paper 3913, 2006.

¹¹ Y. Reingewertz, 'Do municipal amalgamations work? Evidence from municipalities in Israel' – *Journal of Urban Economics* 72 (2–3), 2012, pp. 240–251.

When analysing foreign experiences, researchers have generally reached the conclusion that the scale effect is applicable when municipalities merge.¹² However, many authors think that the impact is related to the size of the merged municipalities. Up to a certain size, there is a scale effect, but the new municipality needs to be sufficiently large. If a municipality becomes too large, a negative effect appears.¹³ There are also studies that have not shown any link between the comparative expenditure and size of municipalities.¹⁴ The scale effect seems to work well particularly in densely populated larger municipalities, and less so in scarcely populated peripheries.¹⁵

The results of studies comparing voluntary and government-initiated mergers are also debatable. Some draw the conclusion that mergers by the government reduce administrative costs, while voluntary mergers have no effect on expenditure.¹⁶ Others think that voluntary mergers specifically have been more successful.¹⁷

In addition to possible reductions in expenditure, the following are highlighted as the positive impact of mergers: increased strategic, administrative and technical capacity, as well as smaller regulation

¹² Ibid.

¹³ See e.g. N. Hanes, 'Amalgamation Impacts on Local Public Expenditures in Sweden' – *Local Government Studies* 41(1), 2015, pp. 63-77.

A. Sole-Olle, N. Bosch, 'On the Relationship between Authority Size and the Costs of Providing Local Services: Lessons for the Design of Intergovernmental Transfers in Spain' – *Public Finance Review* 33 (3), 2005, pp. 343-384.

¹⁴ W. Derksen, 'Municipal amalgamation and the doubtful relation between size and performance' – *Local Government Studies* 14, 1988, pp. 31-47.

¹⁵ C. Aulich, M. Gibbs, A. Gooding, P. McKinlay, S. Pillora, G. Sansom, *Consolidation in Local Government: A Fresh Look. Volume 1: Report*. Australian Centre of Excellence for Local Government, 2011.

¹⁶ S. Blesse, T. Baskaran, 'Do municipal mergers reduce costs? Evidence from a German federal state' – *Regional Science and Urban Economics* 59, 2016, pp. 54-74.

¹⁷ N. Hanes, M. Wikström, 'Amalgamation Impacts on Local Growth: Are Voluntary Municipal Amalgamations More Efficient than Compulsory Amalgamations?' – *Canadian Journal of Regional Science* 33 (1), 2010, pp. 57-70.

expenses of the central government.¹⁸ In summary, experiences with administrative-territorial reforms abroad have varied in different countries and at different times. The success of the merger depends on the timing of the economic cycle, the political situation and the administrative implementation of the reform.

However, almost every study emphasises that mergers do not guarantee automatic cost efficiency. Any positive impact could be ruined by inadequate implementation.¹⁹ Therefore, based on the academic literature, it can be concluded that the administrative-territorial reform has created the prerequisites in Estonia for more efficient governance, but the actual result will depend on the actual implementation.

Estonia's own previous experience also shows that it is possible for the proportion of administrative costs in the budgets of merged municipalities to decrease compared to before. In the analyses done so far, increased cost efficiency has been highlighted as the most apparent positive post-merger tendency. It has also been found that as a long-term result of earlier mergers, the number of local government jobs decreased (mainly the number of part-time positions), employees became more specialised and the work quality of the administrative apparatus improved.

¹⁸ B. Dollery, J. Byrnes and L. Crase, 'Is Bigger Better? Local Government Amalgamation and the South Australian Rising to the Challenge Inquiry' – *Economic Analysis & Policy* 37 (1), 2007, pp. 1–14.

W. F. Fox, T. Gurley, 'Will Consolidation Improve Sub-National Governments?', World Bank Working Paper 3913, 2006.

¹⁹ C. Aulich, M. Gibbs, A. Gooding, P. McKinlay, S. Pillora, G. Sansom, *Consolidation in Local Government: A Fresh Look. Volume 1: Report*. Australian Centre of Excellence for Local Government, 2011.

The quality of the services provided by municipalities became harmonised. With regard to well-standardised services and particularly due to larger service providers (e.g. education and libraries), the scale effect worked, helping to keep unit costs down.²⁰

Merger contracts do not provide much hope for cost cutting; instead, many of them focus more on maintaining the status quo. But previous experience has also shown that if the initial plan is simply to enmesh structures and maintain subdivisions, later practice nevertheless seeks to achieve efficiency.²¹

It seems that the administrative-territorial changes made in Estonia so far did not help reduce bureaucracy or increase flexibility regarding the fulfilment of objectives. Popular opinion is that the merger of municipalities reduced the connection between municipal officials and target groups, officials became distanced from local problems, there was less time for interaction with people and there was increased bureaucracy.²²

The municipal mergers that have occurred so far have also been a salient warning of increased peripheralisation and have not helped in achieving a more even development of regions. In larger municipalities, the problems and needs of the periphery remain relatively overshadowed by the centre. The issues in the centre are amplified, as it is important for the majority of the residents. Increased peripheralisation has been noted mainly in areas where the local community has not been organised or where there are no local initiators.²³

²⁰ Raideberg OÜ, 'Põlva linna ja valla ühinemise teostatavus- ja tasuvusanalüüs', 2012.
G. Sootla, K. Kattai, A. Viks, 'Kohalike omavalitsuste 2005. a ühinemiste ja selle tagajärgede analüüs'. School of Governance, Law and Society, Tallinn University, 2008.
Geomeedia OÜ, 'Omavalitsuste ühinemise mõju valla haldussuutlikkusele (kuue aastatel 1996–1999 ühinenud omavalitsuse näitel)', 2001.

²¹ Ibid.

²² Ibid.

²³ Raideberg OÜ, 'Põlva linna ja valla ühinemise teostatavus- ja tasuvusanalüüs', 2012.
G. Sootla, K. Kattai, A. Viks, 'Kohalike omavalitsuste 2005. a ühinemiste ja selle tagajärgede analüüs'. School of Governance, Law and Society, Tallinn University, 2008.
Geomeedia OÜ, 'Omavalitsuste ühinemise mõju valla haldussuutlikkusele (kuue aastatel 1996–1999 ühinenud omavalitsuse näitel)', 2001.

The actual impact of all of the described changes will become evident in later practice, but the opportunity to move towards several objectives has been established. Earlier experiences from the merger of municipalities might not repeat themselves, but they do offer lessons to avoid.

It is likely, however, that the decisions made during the administrative reform thus far do not match expectations. The changes adhere to what has been set out in official documents, but earlier political rhetoric seemingly gave reason to expect greater changes in the role of local authorities in the management and organisation of local life as well as in their financial autonomy.

The implementation of the administrative reform according to the objectives of the state reform

As the administrative reform has been seen as part of a state reform, there should be a determination of whether it was carried out in the spirit of state reform – efficiently, economically, flexibly, with a small administrative load and avoiding overregulation.

Any reform involving changes to administrative structure is costly. A large reform is very expensive. It is still early to evaluate what the full administrative reform-related costs are. The merger grants and compensations paid to former heads of local authorities have been the largest in the history of Estonia. Large merger grants and social guarantees were undoubtedly an important motivation for those in charge of implementing the reform. The majority of mergers occurred during the voluntary stage at least partially because of these motivating factors. The financial compensation definitely proved to be one of the success factors behind the successful implementation of a national administrative reform this time around.

It is likely that many unpredictable expenses will be added to the direct expenses related to mergers – for example, activities related to changing the name and status of a municipality. The National Audit Office has noted that at least during the transition period, there will be additional expenses arising from the organisation of services and

benefits, while several parallel systems have to be administered simultaneously. The longer this period of service harmonisation lasts, the higher the risk of costs related to legal disputes. More fees will probably also need to be paid when changing service providers' contracts. That, in turn, will incur a risk of interruption to essential services. Postponing planned tenders could translate to an inefficient use of funds.²⁴

Not all expenses paid by the merger grant can be considered expenditure in the wider perspective either – for example, if the funds are used for making necessary investments outlined in the development plan or set out in the merger agreement. When evaluating specific investments, it must be established whether something is a one-off investment that will bring long-term income, or whether it is an expense, where the future costs will exceed any future income.

In all, the preparation period for such an extensive reform was extremely short (less than two years). Due to this kind of time pressure, it is probably impossible to talk about an excessive administrative load or overregulation related to the reform process.

There is no conclusive information about the hindrances that such efficiency achieved over time can bring about at a later date. The National Audit Office has issued warnings about some risks. In a rush, changes are not considered carefully. Some information will be lost during the transfer of databases and archives. There is no time to harmonise accounting principles, which will lead to transaction failures and imprecise financial data. An insufficient overview of assets and liabilities can result in assets being lost, and involvement in disadvantageous transactions.²⁵

It has been emphasised in academic literature that particularly during the transition period of the reform, local authorities are most

²⁴ National Audit Office letter No 2-1.9/17/50095/3 'Riigikontrolli tähelepanekud haldusreformi läbiviimise riskide kohta' of 30 June 2017.

²⁵ Ibid.

prone to making unreasonable and wasteful decisions. Local authorities are counting on spending funds in one municipality while the costs are incurred in another, future municipality.²⁶ It has been previously noted in Estonia as well that immediately before a merger, several local authorities made investments that were not based on the interests of the region as a whole.²⁷

A major part of the merger grants is spent as investments, with the generous merger grants providing considerable opportunities for it. Often, decisions are made in such a way that each merging municipality would receive something. However, that is not reasonable from the perspective of the new local authority as a whole, and it does not take into consideration what would be beneficial in the long term.²⁸

In the context of the administrative reform, there has been a great deal of talk about the compensation, bonuses and redundancy payments paid to the heads of local authorities.²⁹ Merger contracts often stipulate social guarantees for officials that are even larger than permitted by law.³⁰ There is news of unprecedentedly large payments coming from new, larger municipalities.³¹ There have been warnings in the literature that salaries are inflated during the period before a reform to guarantee better income at the new municipality or to obtain larger redundancy payments at a later time.

²⁶ J. Blom-Hansen, 'Municipal Amalgamations and Common Pool Problems: The Danish Local Government Reform in 2007' – *Scandinavian Political Studies* 33 (1), 2010, pp. 51–73.

²⁷ Geomedia OÜ, 'Omavalitsuste ühinemise mõju valla haldussuutlikkusele (kuue aastatel 1996–1999 ühinenud omavalitsuse näitel)', 2001.

²⁸ National Audit Office letter No 2-1.9/17/50095/3 'Riigikontrolli tähelepanekud haldusreformi läbiviimise riskide kohta', 30.6.2017

²⁹ See e.g. 'Ametis edasi või ametist ilma – haldusreform täidab vallavanemate kukrut' – Estonian Public Broadcasting, 8.11.2017.

³⁰ National Audit Office letter No 2-1.9/17/50095/3 'Riigikontrolli tähelepanekud haldusreformi läbiviimise riskide kohta', 30.6.2017

³¹ 'Volikogu juht teenib nelja saarlase kuupalga' – *Postimees*, 7.11.2017.

Based on the accounting information³² published by the time of writing this analysis, there does not seem to have been an unprecedented general increase in salaries in 2016 or 2017. A considerable increase in the proportion of irregular payments is clearly distinguishable only in 2017.

During a period 10 months in 2017, there was a 27 per cent increase in irregular payments compared to the previous year. In 2016 and 2015, the increase compared to the previous period was 10 per cent and 9 per cent, correspondingly. A random preliminary analysis also indicates that salary statistics for merged municipalities are not significantly different from the national average.³³ A more precise analysis is definitely required, once all the information for 2017 has been received.

The examples of lavish decisions and unprecedentedly large payments and compensations might not have a significant effect in the large scale, but they do impact the reputation of the reform in the public eye.³⁴ This kind of behaviour gives the public the impression that there are increased costs related to the administrative reform. The wallets of existing municipalities are emptied in time for the mergers.³⁵ People begin to lose trust in the local authority as well as the state in general. Disappointment in decisions made by public authorities endangers the success of reforms.

Conclusion

There is a more thorough analysis in other sections of this collection of articles on why the administrative(-territorial) reform was successful

³² By the time of publication of this analysis, local authorities' accounting information from 10 months in 2017 had been published, and this information can be compared to information covering the same period in previous years.

³³ State financial records information system, Ministry of Finance.

³⁴ See e.g. 'Seda oligi arvata: pärast haldusreformi omavalitsuste kulud suurenevad' – *Lõuna-eestlane*, 20.11.2017.

³⁵ See e.g. 'Endise Väätsa valla kontol ei jagu raha arvete tasumiseks' – *BNS*, 4.12.2017.

this time. One of the reasons was certainly the existence of greater impetus, in the form of a state reform. The administrative reform has been referred to as one of the engines of the governance reform.³⁶ Or perhaps the state reform was like a booster rocket that helped get the administrative reform done. By the 2015 *Riigikogu* elections, it was clear that changes in governance were inevitable.³⁷ As it is always easier to reform other organisations instead of one's own, the reason behind the central government's greater eagerness to start with local authorities in particular is understandable.

The recorded objectives of the administrative reform largely coincide with the objectives of the state reform. Different documents are sometimes simply worded slightly differently. The two governments that have been in power during the administrative and state reform so far have emphasised different objectives. The initial rhetoric of efficiency was later increasingly replaced with increased autonomy for local authorities as well as issues in regional politics.

It is still too early to assess if and how the administrative reform will help with meeting the objectives of the state reform. Neither is this an evaluation of any specific merger; instead, the focus is on the fundamental principles of the administrative reform and the relevant legislative decisions. In theory, the reform should set the groundwork for growing efficiency, increased local decision-making power and more harmonised services across Estonia. The administrative reform could also help to reduce employee numbers, in accordance with the objectives of the state reform.

However, previous merger experience in Estonia does not guarantee that an administrative reform could reduce bureaucracy or stop peripheralisation. Decisions related to the administrative reform

³⁶ The prime minister's speech to the *Riigikogu* on governance reform, given on 14 April 2016.

³⁷ See also the Estonian Cooperation Assembly's good governance programme, <https://www.kogu.ee/riigipidamise-kava/>.

regarding the functions and funding of local authorities meet the set objectives. However, it seems that all of the changes made so far do not meet the public's very high expectations for the reform.

In all, the result of the reform depends on its implementation, further steps made by the central government and actions of the local authorities. The way in which good ideas are implemented is important. Any positive impact could be ruined by incompetent implementation. If the only result is a change of boundaries and names, if there is no actual increased efficiency or improved public service, a great deal of time, money and effort will have been wasted. Disappointment in local and state governments is a threat to the success of any reform and undermines democratic governance.

However, it is good that we will no longer have to have endless discussions about the implementation of the administrative reform. Concluding all of the unfinished processes and business also supports the state reform's attempts. Until now, an unfinished administrative reform has been something of a good justification and even a pretext for why something cannot be done. At least for the time being, local authorities can work in peace. But no reform is made to last forever, and further municipal changes will still be necessary in the future.

Lessons from the 2017 Administrative Reform

AIRI MIKLI

The 2017 administrative reform will go down in history as one of the events that has most influenced life in Estonia, although euphoria over Estonia's successful Presidency of the Council of the European Union was much more prominent at the end of the year. Then again, it would probably be bizarre to expect euphoria as a result of a successful administrative reform. Many people and even institutions still have to adapt to the new situation and to find the potential created through the reform for improving life.

Although the 2017 administrative reform cannot be considered the reaching of the final destination, the changes in the number of municipalities alone – most of which were voluntary – must be considered a success. More generally, we can now tick off the administrative reform as done, but we can view it as a success only when the new potential can be made to work for the purpose of the reform.

Nevertheless, the time has come for an interim summary, and to highlight some aspects that deserve praise or criticism, which should be taken into consideration when moving forward with the administrative reform.

A lesson for politicians: have courage to make decisions and rise above the temptation to engage in party politics

Although during the whole process there has been criticism regarding the reform from its proponents as well as from those against it on principle, these two sides share a general opinion, or really a sense of astonishment, that the reform was successfully implemented. Due to the failed attempts over the course of many years, the more prevalent attitude was that an administrative reform would never succeed. Such an attitude curbed the proponents' optimism as well as the decision-makers' motivation to take the reins of this doomed undertaking.

Hence, to start a reform, the first question for the politicians is whether they can make brave decisions and then have the determination and backbone to adhere to these decisions.

Aborted reform attempts had tested the public's patience, and the readiness for change, which was reflected in opinion polls, definitely influenced the politicians' courage to make decisions. The emphasis on voluntary merging seemed like governmental indecisiveness and burying one's head in the sand to escape obvious problems. However, a reform that affects the entire country cannot be treated like a grassroots-level people's initiative, because local government organisation is not the sum of local wishes. The decision to proceed with the administrative reform had to be taken by government-level politicians.

Long-term growth can probably be considered the reason for the success of the administrative reform. The main idea of the administrative reform was handed over from one party to another, from one government to the next, like a baton, without much giving in to the temptation of discarding the ideas of political competitors. Instead, ideas grew and developed over time, and tested the limits of public acceptability.

As we evaluate the performance of the politicians involved in the 2017 administrative reform, the governments and the parties deserve praise as well as criticism.

We must praise the Reform Party, which dared to rekindle the embers kept by the Pro Patria and Res Publica Union and to take the risk of failure, and the Centre Party, which completed what was started by their political rival. When the administrative reform plans were still being prepared, the wider public became used to the idea that it would no longer be possible to continue with very small municipalities.

One discouraging fact cannot be overlooked: everything got bogged down as soon as the political interests of the decision-makers took precedence over their objectivity.

The case of Harjumaa remains a fly in the ointment. It is a county where, given the population density and level of traffic, it would have been justified to create municipalities with a higher-than-average number of residents. Thus, when municipalities in Harjumaa were exempted from the merger for unconvincing reasons, it damaged people's hopes that the reform could be implemented despite the temptations of party politics. This moment of weakness was probably the reason why some other decision aligned with the objective of the reform was not taken, and which is why work has to begin from scratch in some places. Nevertheless, this success showed that constant dripping wears away a stone.

The emotional background must not be underestimated

Why should we pay attention to emotions when drawing conclusions about the administrative reform? After all, a reform is something very clear-cut – plans, systems, resources, money. But there are also many fears tied to an administrative reform, on a societal, institutional and individual level.

The fear of failure of implementing the reform is only one of them. There is also the fear of change, the fear of losing power, voters, or the face of the party or the election coalition, the fear of losing influence, of being swallowed up or remaining an unimportant periphery, the fear of losing a job and position.

After previous failed reform attempts, it was stated that quite a few fear-based problems had been underestimated. Now the lesson has been learned: fear is not a good helper for implementing change. Unfortunately, not even with the 2017 administrative reform, not all fears were addressed to an equal extent, and there was not enough help to overcome all justified fears. In the case of some fears, it was pragmatically decided that there would be no time to address everything.

The focus was primarily on the fears of those who were responsible for making local decisions. As expected, this caused criticism that the heads of local authorities who were facing an uncertain future were being paid off with taxpayers' money. Indeed, very sizeable compensation packages were provided for the heads of local government leaving or changing office.

How should we assess that? Should these monetary payoffs be considered cold calculations, or a pragmatic recognition of the price of the reform's success? In any case, no one denies that the money worked.

The fears faced by the 'weaker municipalities' (smaller municipalities that were merged with larger ones), peripheries, communities and villages were addressed on a far less convincing scale and therefore with less impact.

Still, it cannot be said that those fears were overlooked. The stakeholders were given information (sharing a previous positive merger experience definitely had a big impact) and supported with advice; studies were compiled with results that were rather encouraging. Nevertheless, these stakeholders themselves largely had to make an effort in order to protect their interests in the merger contract (which can also be amended by the majority).

Nor was there an early or sufficiently clear solution for the funding of peripheries that would help them catch up with the richer municipalities. True, the municipalities in general will get considerably more money in their wallets, but it will be distributed based on another principle and is not primarily concerned with the smaller municipalities

whose boundaries were changed by the administrative reform. While peripheries receive more funding, they are still light years behind the opportunities available for wealthier municipalities.

Hence the content of the administrative reform can be difficult to associate with the declared goal of making all municipalities self-sufficient.

In some cases, it was clear that the fears could well turn out to be true, but regardless of whether the administrative reform took place. For example, it is obvious that no matter what kind of administrative reform is planned, it cannot reverse demographic processes.

Another lesson is that a reform should not be presented as a cure-all for every issue related to inequality, jobs, or regional and rural life. Such an impression should not even be allowed to emerge. Otherwise, when the fantasy fails to come true, the disappointment will be even greater.

What would be the best way to proceed from now on, so that justified or unjustified fears do not impede change? The emotional aspects should not be underestimated when planning any changes. More effort should be made to identify fears at the beginning of the process and to discuss these openly and patiently with everyone.

It would be fair and just to offer efficient relief for the worries of different stakeholders. The bulk of the relief should be measured not in money, but rather in the extent of the consensus reached.

Distrustful relationships with partners make reform more difficult to implement

In 2015, when Arto Aas (a Minister of Public Administration from a party renowned for opposing the administrative reform) unexpectedly asked me, as an expert, to discuss administrative reform with him, I listened to his overview of the current situation with great scepticism. The overview itself was completely pertinent, but I kept waiting for him to reach the point: why it would not be possible to implement an administrative

reform. However, he never reached that point. Instead, he was trying to figure out which options were feasible.

At first, I thought this was devious behaviour. But it quickly became evident that the minister actually wished to launch the administrative reform. With this personal reflection, I want to illustrate the point that if there is mistrust, achieving meaningful collaboration can be a challenge.

The central government and local authorities had thus far created a major barrier in their relationships. Although the annual tradition of negotiating the state budget between the government and representatives of local authorities has lasted for decades, the participants have been unable to use this to build good relations between equal partners. Negotiations would have required a dialogue, but in practice it was often a monologue held by one or the other side, and when it came time to make decisions, the preferences of the stronger side – the state – were favoured.

At the same time, the local authorities barricaded themselves into defensive positions, as was usually demonstrated by their demanding extra money for every little thing. None of this fostered open or understanding relations between the involved parties.

In the context of the administrative reform, the local authorities' mistrust of the state was also increased by the attempted reform that took place at the turn of the century, when the government decreed who could merge with whom. Such coercively drawn lines had become a motif of the administrative reform – a symbol of a state that bulldozed over the municipalities' interests.

That is why a great deal of time and energy was spent on the planning of the 2017 administrative reform to create trust in local authorities, enabling them to give up their defensive positions and engage in open dialogue during the discussions.

Nevertheless, the preparations of the 2017 administrative reform did not see an absolute improvement in relations. Uncertainty was caused by the state's mixed messages regarding which functions

municipalities should take on, and what kind of a financing system would be balanced with these functions. During the discussions, it remained unclear how the minimum population size for municipalities could be established before knowing what kind of a role local authorities were expected to play. Local authorities had no other choice but to accept the explanation that, as soon as it was established how to change the municipal boundaries, the government would start dealing with the fundamental issues of the reform. In the end, however, Minister Arto Aas had to admit pragmatically that the time between elections was too short to have an in-depth discussion about this if the goal was actually to finish the reform.

A future lesson from this confusion is that whoever is leading the process should first figure out what they want and how much they can take on, and explain this to their partners with total honesty.

Another lesson from this is the fact that good relations between partners are a useful asset, and building such relations during a reform is admittedly more difficult than steadily working on them over a longer period of time.

The task of the Minister of Public Administration was not made any easier by other ministers who continued with parallel reforms within their area of government, which also affected local authorities. Focusing only on their own goals, they could not be bothered to consider how their ministry's actions (such as creating health centres and deciding the location of state secondary schools) would affect the big picture. For example, decisions on the location of state secondary schools in Harjumaa were made without waiting for the merger of the city of Saue and Saue municipality, although the merger requests of the local authorities were already known. The state allowed Saue municipality (before the merger) to establish the Laagri state secondary school on the condition that there could not be a municipal secondary school in the municipality. With the 2017 administrative reform, the boundaries of Saue municipality changed so that the municipality now includes the

municipal secondary school located in the city of Saue, and there is a section in the merger contract of the municipalities stipulating that the municipal secondary school will remain in place. But the construction of the state secondary school has stalled. The situation is a mess.¹

The result of the administrative reform is determined by a criterion

Implementing an administrative reform was not a goal in itself. The reform was meant to solve a problem that many institutions had highlighted over a long period of time. This problem was that a number of local authorities were not capable enough – that is, they did not have enough administrative capacity to fulfil their designated functions well.

Over the years, public opinion had also become increasingly convinced of the need for administrative reform.

To solve the problem, the government did not go down the path of task simplification (something the author of this article would also have opposed). On the contrary, local authorities had to be shaped so that they could handle the functions assigned to them. Furthermore, each individual local authority was meant to become capable.

The possibility that not all local authorities should fulfil the same municipal functions (an arrangement that would, in principle, be possible in Estonia) was not discussed on a political or specialist level. There was talk about giving extra functions to particularly capable municipalities or to county centres, for example, but that concerned national-level obligations in particular. The option of having local authorities obliged to fulfil a much larger share of functions in collaboration with others was also discussed. By the end of the reform, the list of tasks with obligatory collaboration became quite short.

To implement the reform, it was therefore necessary to find a criterion by which to identify a capable municipality: what constitutes

¹ M. Tooming, 'Kahe riigikooli tulevik ikka tume' – *Harju Elu*, 19.12.2017; <http://www.harjuelu.ee/2017/12/14973/kahe-riigikooli-tulevik-ikka-tume>.

sufficient competence and what level of resources it needs to fulfil its functions well.

Although the act also stipulated cost savings as an objective of the administrative reform, referring to a more uniform regional development and the objectives of the state reform, this objective was not under direct scrutiny when choosing a criterion.

How was the selection to be made? Initially, attempts were made to find a complex criterion to determine the capability of a local authority, but to no avail. In the end, the chosen criterion was simple, and tried and tested elsewhere in the world – population size. This choice can also be justified by the fact that local authorities decide how to fulfil functions themselves, and that is why their capability cannot be easily quantified. Individually evaluating each municipality's function fulfilment quality would have been unreasonably extensive work, and the results could have been disputed as necessarily subjective.

In short, the attempt to determine quality on a scale of numerical indicators contains the dilemma between the local authorities' decision-making freedom and the quality standard imposed from above. Nevertheless, that dilemma did not become part of the discussion during the search for a criterion – not only due to the time pressure, but also because in the end, there simply was no better alternative to using the number of residents.

On the one hand, it was logical. Studies and analyses had shown that about 5,000 residents is the size at which a municipality generally generates enough revenue to maintain a reasonable number of specialists and achieve at least a minimal investment capability. But there is no such thing as an average municipality.

In addition to the simplicity of the criterion, we should also address the specific size: 5,000 residents was the middle of three choices discussed when planning the reform. (Based on the studies, municipalities would need a minimum of 3,500 residents to function properly, while the largest choice was based on the number of residents considered optimal for operating a secondary school.)

During the discussions, it was stated that the studies were based on assessing the capability of the local authorities in the context of existing functions, and indeed could not take into consideration a situation in which the functions were significantly extended. It was also found that for many local authorities that just barely met the criterion, the ongoing demographic trends were not considered, and the number of residents could drop below the recommended minimum after only a few years.

Using the number of residents as the criterion of the administrative reform had its strengths and its weaknesses. It was strong because it was understandable, measurable and objective, and could be applied to all municipalities across the board. The weakness of the criterion lay in the fact that it is often not possible to paint similar-sized municipalities with the same brush, as their demographic, regional or economic situation is so different. Municipalities with an equal number of residents could be in an unequal position, for example due to the age distribution of the population, the size of the territory or the regional location.

In addition, problems with registering people's place of residence in the population register are widely known in Estonia. People often do not live in the municipality that is their official place of residence according to the population register and whose services they actually use. The simplicity of the criterion was something of a disappointment, both for the proponents of the reform with their high expectations and for the sceptics. Ridiculing this criterion, sceptics eagerly used the opportunity to depict the whole administrative reform as hopeless. For example, the simplicity of the criterion made it possible to ask the rhetorical question: how is it possible for a rural municipality of 4,999 residents, i.e. an administratively incapable municipality, to become an administratively capable municipality with the addition of two residents?

As the limit of 5,000 residents was included in the Act as the formal required minimum, it started to have a direct impact on the size of municipalities created as a result of the administrative reform. What was called the optimal size of a municipality, 11,000 residents, was added

to the draft Act during the final stage of discussions as a soft recommendation, and the only means for attaining this was the extra bonus added to merger grants to motivate local authorities.

At the same time, it is clear that there is no one optimal municipality size for all regions. In sparsely populated areas, forming municipalities with 11,000 residents would have been unreasonable.

Nor did the government wish to have more discretionary authority for decision-making, realising that it could result in gruelling disputes. And so it happened that instead of moving towards municipalities with at least 11,000 residents in more densely populated areas, the government had to explain whether municipalities that were just under the bar, i.e. with fewer than 5,000 residents, could hope to maintain the status quo. The government decided that it would not forcibly create administrative units with artificial boundaries just for the sake of fulfilling the criteria. Quite a few municipalities were encouraged by this: they could be deemed fit even if they did not have the minimum number of residents.

Just to be on the safe side, some municipalities focused their efforts not on trying to find some common ground with their neighbours, but instead on getting 5,000 residents as per the population register, thus avoiding the merger requirement. They came up with all kinds of schemes to achieve that goal.

To maintain the status quo, municipalities encouraged people to register as residents, even putting up a four-wheel-drive vehicle as a lottery prize, or made other extra conspicuous efforts. For example, Raasiku municipality hired a campaign director and disseminated a poster ordering people to 'register as residents quickly' to 'keep our own culture'. It also stated that 'every person is unique' (something the administrative reform had not disputed at all).²

² A. Tohver, 'Raasiku sai 5000 elanikku täis' – *Harju Elu*, 22.12.2016; <http://www.harjuelu.ee/2016/12/8410/raasiku-sai-5000-elanikku-tais/>.

Although Raasiku municipality exceeded the limit of 5,000 residents and was not compelled to merge, it is a tiny municipality compared to its neighbours in Harjumaa county. The head of another local authority even admitted during a similar recruitment campaign that they would not reject people who become residents of their municipality even on fictitious grounds.³

The result of the administrative reform obviously could have been different if something other than minimum population size had been set as the main criterion (in many cases, it was impossible to meet). The principle of optimal size, combined with the government's greater right of discretion, could have given a better result that would have better matched the particular regional conditions.

But now the reform tended to produce exactly what was measured. Because a minimum criterion was used as the measure, the result was minimally capable local authorities, rather than simply capable ones.

Well-advised and unambiguous legislation would reduce tensions and disputes

The draft Administrative Reform Act was compiled in a hurry. A great rush was evident in the entire process. Everyone understood that the deadlines the government set both for itself and for the local authorities did not reflect the complexity of the decisions nor the need for developing and considering alternatives, not to mention the many stakeholders that had to be involved or the time necessary for disputes.

This put unreasonable pressure on politicians and officials, as well as on the people whose lives were most affected by the changes.

For example, at the beginning of 2017, within a period of about six weeks, the government essentially had to be engaged with nearly

³ S. Mihhailov, 'Loositav maastur ei toonud Narva-Jõesuu ja Vaivara vallale ühinemiseks vajalikku elanike arvu kokku' – *Põhjarannik*, 8.12.2016; <https://www.err.ee/580039/loositav-maastur-ei-toonud-narva-joesuu-ja-vaivara-vallale-uhinemiseks-vajalikku-elanike-arvu-kokku>.

200 municipalities: to confirm all voluntary mergers and their conditions (among other things, to argue over poor naming decisions with merging municipalities); to analyse the justification of the applications for receiving an exemption, and to screen out where the government should initiate a merger to meet the objective of the reform; to find a suitable partner for such municipalities; and finally, to formalise it all as reasoned decisions.

Understandably, the haste with which these decisions were made worked against the people involved. Despite several questionable decisions made during the preparation stage, the result clearly could have been worse: we could well have ended up with a bunch of perfect decisions but without a completed administrative reform. Of course, this does not mean that, when it comes to large reforms that significantly affect society and the people, we should agree to breaking many eggs to make an omelette.

The Administrative Reform Act turned out to be quite short and not too detailed. There was confusion around how to understand and interpret the letter of the law, both among experts and the involved parties. They were thus forced to be (but also given the opportunity to be) creative in matters nobody had even conceived of at first. The case was more difficult regarding issues that were knowingly under-planned and unregulated in the Act (e.g. the principles for disputing the implementation of the administrative reform). Looking back, we can say that contestations were inevitable, but there was an unfair number of loose ends for local authorities, which is why they had to waste time and money to defend their rights.

The Ministry of Finance could have used support from the Ministry of Justice, as well as additional resources for legislative drafting and its technical aspects. Experts on local government highlighted this need, but with little effect. In conclusion, this demonstrates that the government should work together towards a common goal and not allow the ministries to act as silos.

Whenever any kind of rule is implemented, the question arises as to whether allowing exemptions is justified. Exemptions were provided for the administrative reform criterion, some of which had existed from the very start as political decisions. Without analysing them one by one, we can generalise that every more or less justified exemption possibility diverted the end results away from the overall objective. Moreover, at the end of the reform, the people involved in its implementation were not completely satisfied with the result either.⁴

Better consideration would also have been necessary in situations where local authorities that had done a great deal of work towards a voluntary merger could not be certain for several months whether their negotiated, deliberated and government-confirmed contract could be implemented as is, or whether the government would coercively add another municipality to the merger.

It also definitely decreased the motivation to prepare the post-merger steps that the new municipal council needed to quickly take in the new municipality. Uncertainty affected not only those who could not meet the minimum population size criterion despite the voluntary merger, but also those with more than 5,000 residents.

However, the proposal of a coercive merger did not always result in a completely new situation, because in some cases, coercive mergers were implemented with municipalities that had discussed a merger during the voluntary stage but, for various reasons, did not complete it.

During the preparation of the reform, it was not comprehensively analysed whether a municipality (e.g. the city of Tartu) that was being joined by a smaller municipality should go through the process in the same way as municipalities merging to form a completely new municipality.

⁴ 'Head of the Ministry of Finance regional administration department Väino Tõemets admits that the remaining 15 small municipalities do cause him some unease.' O. Eylandt, 'Aas taaskäivitas, Korb soperdas, Aab viis lõpule. Omavalitsused said lõpuks liidetud' – *EestiPäevaleht*, 29.12.2017; <http://epl.delfi.ee/news/eesti/aas-taaskaivitas-korb-soperdas-aab-viis-lopule-omavalitsused-said-lopuks-liidetud?id=80634287>.

Practice showed that trust was not always justified. The most disappointing outcome was when some of the municipalities that had chosen a voluntary merger took on a loan or other obligations without the others knowing about it, and left these for the new municipality to deal with, or simply spent everything in the bank account and began the merger with a stack of unpaid bills.

It is not possible or reasonable for the government to regulate partners' relationships down to the last detail, but these examples should serve as valuable lessons for the government and local authorities alike. The government should consider making the local authorities' activities and use of funds more transparent – and not only during an administrative reform. Moreover, local authorities should make partner agreements more thorough and controllable.

One of the positive principles of the administrative reform was that the law gave local authorities greater freedom to decide what kind of a municipality they saw themselves as. An actual step back was taken, so that a municipality that had once held the status of *linn* (city) and then changed its status to *vald* (rural municipality) during a previous merger could again apply for city status.

Although there is no advantage of the one municipal status over the other, and some cities had already become used to the idea of changing their municipal status to *vald* (e.g. in Saaremaa), giving the permission to do so could disarm potential critics. However, looking at the overall picture resulting from such freedom is quite baffling. The division of Estonian local government entities into rural municipalities and cities has become fuzzy, and it is not clear whether it is even necessary to make such distinctions in the 21st century.

There can never be too much open communication, sincere interest and explanations aimed at everyone

This applies to the popular topic of public engagement, but also to communication and awareness raising in a wider sense. To the people behind the reform, it was clear from the beginning that meetings had to be arranged to alleviate the antagonism of local authorities, and that a positive attitude had to be spread locally with the people involved. A lot of time and effort was put into strategic communication, although the existence of a long-term general plan was not evident to a bystander.

However, what was noticeable and even positively surprising was how Minister Arto Aas emphasised the seriousness of the reform initiative. Not only did he promise to show up at discussions, but he also participated in them and did not leave immediately after the festive introduction and greetings. This contrasted with another minister, who promised to come but then did not, and sent other officials to explain things in a city that was extremely critical of the administrative reform. There may well have been an objective reason for this, but it caused an acrimonious reaction.⁵

Generally, however, it must be said that none of the Ministers of Public Administration who were involved with the 2017 administrative reform implemented the reform from behind their office desks. They were constantly 'in the field'.

But this kind of communication poses the more general risk of dealing primarily only with those that have a loud voice and a critical attitude. This could mean that not enough attention is given to those whose position is weaker, on whom not much depends, and who could get caught in the process –for example, villages that had a different idea of the merger than the heads of rural municipalities did.

One of the positive highlights of the administrative reform process was the state's advice and help. For merger negotiations and entering

⁵ A. Viivik, 'Minister Korb jättis Keilasse tulemata' – Harju Elu, 20.4.2017; <http://www.harjuelu.ee/2017/04/9629/minister-korb-jattis-keilasse-tulemata/>.

into contracts, local authorities were given free advice by consultants. Their help as impartial process leaders and, where necessary, tension relievers was definitely valuable. We can only regret that the government has not provided such advisors to local authorities in need of advice with other areas and at other times.

A lesson to be learned from this is that the Ministry of Finance could harmonise the consultants' viewpoints and coordinate their actions. Based on what happened, it seemed that some merger-related choices that the consultants recommended to the local authorities were based on personal preferences. In the future, a wider range of advice could be offered – so far, it has depended on the preparation and experience of the specific consultant. Rather, several consultants should be employed in each municipality if necessary, so that all the key questions could be covered (e.g. there could have been more focus on legal issues). Issues that arise after a formal merger should also be addressed separately.

The three regional committees, which included experts as well as state officials (county governors and officials from the Ministry of Finance), could also be considered advisors. These committees were created primarily to make proposals to the government in the stage of government-initiated mergers.

It was good that during the preparation of the draft Administrative Reform Act, the role of regional committees was expanded, and in the voluntary merger stage, they were given the task of explaining the Act and pointing out the municipalities' problems before any decisions were made.

As far as regional committees are concerned, it is worth noting that they focused on territories the size of several counties and their recommendations were based on the bigger picture instead of being confined within the county borders. The work of regional committees was definitely not painless, as county governors were used to protecting their own county's interests. Thus their occasional self-serving acts (e.g. in Läänemaa or Põlvamaa) were apparent to the public as well.

Given that the Estonian population is so small and there is only a limited number of experts in each field, the issue of a role conflict could

have arisen. There was at least the potential for a conflict of interest when the same person acted as a merger consultant for a local authority and also made a merger proposal to the government as a member of the relevant regional committee.

In some cases, the same people had a say regarding the fundamental choices of the draft Administrative Reform Act in the expert committee appointed by the Minister of Public Administration. Namely, Minister Arto Aas convened an expert committee in 2015 whose task was to help the minister prepare the administrative reform. The committee consisted of representatives from local and state authorities, scientists, and other specialists in the field. Despite a change in government, the committee continued working when Mihhail Korb became the Minister of Public Administration.

Actually, such involvement of experts had been even more consistent – many committee members had already been meeting over the course of several years, at the invitation of Siim Kiisler, Minister for Regional Affairs. That meant that when preparation for the 2017 administrative reform began, many of the specialists involved knew each other and each other's positions, and in 2015 their collaboration got off to a great start.

What else could have been done to make the administrative reform better?

In conclusion, the 2017 administrative reform has generated ambivalent feelings. Importantly, decades-long political irreconcilability was overcome, and the reform was implemented to an extent many people did not think possible. At the same time, demographic processes had advanced at their own pace by that time. We must accept the irreversible: the administrative reform has not actually equalised the capabilities of municipalities, which remain uneven in this country.

Could the government have achieved a greater proportion of voluntary mergers through better awareness raising and consultation work, so that there would have been fewer painful merger decisions? Perhaps.

The other side of the coin is that, in order to encourage voluntary mergers, the government did not take the opportunity to stop the emergence of unreasonable local government formations and sacrificed some things. It was too soft to protect the continuity of historically justified names. It is also possible that some voluntary mergers did not happen because the local authorities did not know precisely which role changes the state would consider necessary in the long term. To be more accurate: the state simply did not have such a viewpoint.

The state's hesitations, which were sometimes apparent, also had an impact on some of the local government politicians. Instead of negotiations, they adopted a noncommittal position, the motivation to find a compromise decreased, and the hope grew that yet another reform would dwindle. Had the government shown more decisiveness, at least some of the local authorities that discontinued negotiations would have been motivated to reach a result.

If the administrative reform had actually been prepared as a part of the state reform (as the government, albeit inconsistently, has declared), it would have been reasonable to analyse immediately the effect resulting from a considerable decrease in the number of municipalities as well as the abolishment of county governments. Decisions concerning county governments were made when the administrative reform decisions were already in full swing. At first, it was said that county governments would be abolished in mid-2018; but then it was decided that this deadline would be brought forward by six months, and that local authorities had to immediately fulfil the functions transferred from the county governments.

Although the abolishment of county governments need not affect the county-based administrative division, it should have been reviewed whether the division of Estonian territory into 15 counties was reasonable and did not require any corrections. This should have been done simply because the administrative reform was, in any case, planned to cross county boundaries, and the county affiliations of several municipalities changed.

The Local Government Organisation Act of 1993 also remained set in stone, although it is very outdated and has not kept pace with legal developments. But it will remain the foundation of local government organisation in the future.

Unfortunately, the government did not have enough stamina to tackle other issues as well. For example, the promotion of local democracy should have been addressed – the political forces in the minority on a municipality council have scant recourse if the majority simply bulldozes over them. Also important to address is the oft-mentioned conflict of interest – when a member of a municipal council is simultaneously the head of an institution employed by the municipality. The council members' ability to set their own salaries should also be reviewed.

Now we can only imagine what will happen next. In the future, the 2017 administrative reform will be evaluated not by politicians or respected international organisations but by the local people. If we want to be able to look back in 2027 and be able to say that a remarkable surge of development has taken place that gives people access to everything they need in their home town, then we must fill the reform with meaningful content and learn from the mistakes made thus far.

What Was Achieved with the Administrative Reform and What Remains to Be Done?

The ministers who were in office at the time and led the administrative reform look back on the process.

ARTO AAS

Minister of Public Administration 9.4.2015–23.11.2016

The administrative reform initiated in 2015 to increase the capacity of local authorities is undoubtedly among the changes with the greatest social impact of the past 15 years. What makes the completion of the reform even more astonishing is the fact that all previous attempts had failed and this had caused quite a bit of scepticism in many stakeholders. While the reform was formally completed with the 2017 local elections, its actual impact will be with us for decades to come.



Minister of Public Administration Arto Aas (right) and professor of civil law Paul Varul (left), a spokesperson for the municipalities that filed actions against the Administrative Reform Act, in a studio interview for the newspaper *Postimees*. Photograph: Erik Prozes / *Postimees*.

With a change as large and complex as this, it is not surprising that there were numerous opponents, acting on the basis of both political and personal motives. The municipal mergers really shook the well-established positions of power and forced many out of the habitual comfort zone. Despite that, the reform was realised, thanks to a very clear political will, social maturity and professional execution.

The opponents of the reform tried to stop the process both at the government level and in the *Riigikogu*, not to mention the complex court disputes that went all the way to the Supreme Court. Personally, I felt the most relieved and confident of the success of the reform at the moment when, in late 2016, the Supreme Court declared the Administrative Reform Act constitutional. That moment was probably even more important than the adoption of the Act by the *Riigikogu* six months earlier, which had been politically predictable despite the difficulties. In the Supreme Court, however, political predictions do not matter. Therefore, the approval of the Supreme Court justices was recognition of the work of numerous officials, experts and politicians who had long struggled with the content of the draft act and related problems in constitutional law.

We should certainly be pleased that the change of government at the end of 2016 did not slow down the administrative reform, and it continued according to previous plans. Discarding all the work done and repealing the Administrative Reform Act would again have pushed the long-awaited reform into the next decade. The municipalities and the credibility of the entire Estonian political system would have suffered as a result.

The sad part is that the new government did not maintain its resolve until the very end of the marathon. Making party-politically motivated exceptions for municipalities that failed to meet the criteria during the government-initiated mergers was definitely a step in the wrong direction. This behaviour caused great injustice to other municipalities and many unnecessary court disputes.

Of course, in order to promote the administrative and investment capacity of local authorities as well as the professionalism of the officials, it is necessary to improve the financing of municipalities and reconsider local government functions in addition to municipal mergers. The vision for the administrative reform was that strong and capable local authorities should have a larger role in Estonian public administration. Fortunately, this position was supported by the governments of both Taavi Rõivas and Jüri Ratas.

Several proposals that have strengthened local authorities have already been legislated, many are still under consideration. A key issue is finding a municipal financing model that would help alleviate, rather than exacerbate, problems related to regional disparities, low population density and urbanisation. It is clear, however, that without a forceful wave of municipal mergers, all of these changes would only be superficial. The municipal mergers formed the basis upon which to build these new layers.

How the next generation will assess the administrative reform will already largely depend on the new municipal leaders, rather than the government or the parliament. Seizing the new opportunities and shaping the identities of the local communities is in the hands of the municipal leaders elected in 2017 in particular. The future of local government in Estonia is in the hands of the Estonian people.

MIHHAIL KORB

Minister of Public Administration 23.11.2016–12.6.2017

When I took office as minister, the framework for the administrative reform was largely in place and a number of decisions had been taken by my predecessor. However, neither the local authorities nor the new government were really satisfied because, as we had said while in opposition, we still found that the reform should have more content than just changing the boundaries and population numbers.

I am happy that the new government was able to contribute to assigning new functions to the local authorities and allocating additional funding for performing these. We also increased the revenue base for the municipalities. As a result, the capacity of municipalities to provide public services and perform statutory functions was increased, and most importantly – regional development will be more stable. In addition to all this, county governments, whose role had diminished over the years, were abolished.



Minister Mihhail Korb on a visit in Viljandi presenting a symbolic name sign for the new merged municipality of Põhja-Sakala.
Photograph: Elmo Riig / *Sakala*.

What had been put on paper by several governments at Stenbock House and by the *Riigikogu* was finally put into action by local government leaders themselves. It is them that I wish to thank. No merger negotiations were easy. The wishes of the local population had to be accommodated and political consensus found both at the level of local authorities and between political parties. Immediately after the reform,

some voiced the opinion that counties should have become the new municipalities. I wish to compliment the county of Saaremaa for achieving this and the others who tried, but I believe that the way the boundaries are now drawn on the map was the only possible way to implement the reform.

The fact that we still see municipalities with a population of just under 5,000 is also important. It shows that the government listened and was open to compromise. The map of Estonia was changing and all the exemption requests made by the local authorities could not be taken into account, but in the case of larger municipalities, we did consider the logic of neighbourhoods as well as present and future capabilities. The exceptions and government-initiated mergers stirred up heated debate and emotions not only among the local population, but also in the government. Keila and Paldiski or Jõhvi and Alutaguse are just a few examples. We can now say that the final solution was suitable for most.

Personally, I consider the establishment of the historical region of Setomaa as one municipality to be my greatest joy and achievement. There was criticism on this subject, but supporting historical heritage, in my opinion, outweighed all counter-arguments. I hope that the locals are happy and the region can continue to develop. This reassures me that the right decision was made.

The administrative reform is completed. Hopefully, power is now even closer to the individual in all the municipalities, the future of the municipalities is more secure and their development will be faster and stronger. Did we achieve the ideal for Estonia? Probably not, but we did achieve what was best at that moment.

The current municipal map will remain with us for years and it will take decades for everything to settle into place. Big changes will be off the agenda for a long time. It will be up to the coming generations to assess this work, to which contributions were made by all the Estonian political parties, several ministers of public administration and municipal leaders.



Minister Jaak Aab in a meeting at the Tartu County Government in August 2017.
Photograph: Kristjan Teedema / *Tartu Postimees*.

JAAK AAB

Minister of Public Administration 12.6.2017–2.5.2018

The administrative-territorial reform has been completed. I emphasise the word 'territorial' because the administrative reform is in fact still ongoing. Looking at the bigger picture, the administrative reform consists of two stages. The first, implemented with the 2017 local elections, was the reform involving municipal mergers, which replaced 213

municipalities with 79. The second, substantive stage is still ongoing and the process is far from completed. The second stage cannot have a specific deadline, as it covers many fields and related negotiations.

Local authorities now have more money to provide better services

The substantive changes related to the local authorities' decision-making power and finances are still ongoing. Even so, that stage has also been completed to a certain extent. For example, we increased the municipal revenue base by almost 200 million euros over four years, without assigning additional tasks. The additional funds can be used to improve the performance of the existing tasks.

The overall approach is that the funds allocated to municipalities by the state are not earmarked for a specific purpose; they simply make up a revenue base whose use can be decided locally.

Of course, minimum requirements for services will remain in place, but the local authorities themselves know what and how much their people need.

After the reform, many state roads are now located entirely within one municipality, and the idea is to next give these roads to the municipalities, along with the accompanying funding, of course. Then the municipalities will be able to decide for themselves which roads need frequent maintenance and which do not, how the buses should move and so on.

We gave more decision-making power to the local level

More decision-making power can now be given because the administrative reform increased the size and capability of the municipalities – in terms of both human and financial resources. People are very important. The main thing that I have seen locally is that now good specialists can be hired for each particular field, unlike before, when one municipal official would be responsible for five different areas without having enough time for any of them.

We want good-quality municipal services across Estonia, but this requires sufficient resources and competent people. Unfortunately, there are not always enough competent people for very small municipalities. I am not saying that small municipalities are poorly managed. I can give an example where the head of a rural municipality who had been in office for 25 years, was using his own car to drive people with disabilities and schoolchildren – there was this community model at work. Perhaps these services were closer to and better for the people there, but some areas were still uncovered.

The second stage of the administrative reform, or the strengthening of local authorities, will certainly take a few more years; it is a work in progress. The world is changing so much that we do not even know exactly where the process will end up. Perhaps we will think of other functions that the state could transfer to the local authorities or functions that could be performed jointly – just as the task of ensuring the development of counties is now performed in a joint manner. We will also transfer several national financial measures, for joint decision-making.

Most of the assessment work should be done locally. We do not need to direct it from Tallinn, but we can verify that all requirements are met. The decisions must, however, be taken locally – it is there that the stakeholders can argue what the priorities are.

The reforming of county governments also gave additional decision-making power and funds to the local authorities. As the functions of county governments were gradually removed, it was no longer reasonable for the state to dictate through the county government what should happen in the county. The state should definitely express its strategic goals, but the way a county is to develop should be up to the local authorities.

Communities need to be heard

The rights of villages and peripheral areas should have been legislated more forcefully, at least for some time, but this was not done. Traveling around Estonia, I still always say to the municipal leaders that they

should look beyond their local centres because that is where the key to their development lies. If they fail to do so, people will be disappointed and leave, but instead of the local urban centre, they will head to Tallinn or Tartu, or Finland.

The whole community must feel that its voice reaches the council of the larger municipality. I very much hope that all the municipalities will use these opportunities. Admittedly, only very few formed municipal districts, but there are also community boards and village elders. Even if a municipal council does not have members from a particular village, it is still required to hear the village elder or administrative council to prevent small communities from being ignored and new peripheries created.

The state is also trying to help. We have adjusted the equalisation fund calculations so as to allocate more funds per capita to municipalities with a low population density. The state's regional policy should clearly be more supportive of business development. This is a broader topic, but it must go hand in hand with administrative reform, which also includes regional entrepreneurship. What is needed is creating favourable conditions, connections and a road network. All this helps to improve life in the different regions of Estonia.

Urbanisation has been too fast in Estonia

Urbanisation is a global trend, but here it is too fast. Finland has huge low-density areas, but it has taken measures to balance the situation. Otherwise everyone would have crowded around Helsinki a long time ago. The property prices in Helsinki are three times as high as in Lapland, while the difference between Tallinn and Valga is 10 to 15 times. This is not normal.

A lot remains to be done but increasing the revenue base of the municipalities would be the first major regional policy measure in this direction. With more resources, the local authorities can deal with the things that it has previously not been able to address. The state will provide support in terms of building the infrastructure needed for

entrepreneurship, as well as other development activities; for example, by developing the living environment, be it a park or a playground. Currently, the state sells land to municipalities, but really we are one country.

What was not achieved with the administrative reform?

The schedule for the reform was very tight and many were struggling. Had there been more time, then perhaps there would have been more voluntary mergers – everyone was moving in this direction, with the exception of some heads of municipal governments who were opposed to the reform and would not have merged under any conditions.

Then there were the criteria, which were ultimately reduced to an oversimple mechanical formula. Then again, maps have been drawn in Estonia for two decades without ever reaching a consensual solution. Due to its compactness and location alone, a municipality with 3,500 residents may have more administrative capacity than a municipality with 5,000 residents. It is very difficult to assess.

All told, we can be happy with the administrative-territorial reform in most areas. As a result of the reform, municipalities are on average four times larger in terms of population and three times larger in terms of territory. In fact, this is precisely the reason why several tasks could not be transferred to municipalities before the reform.

We could have done better, had there been more time. However, substantive work in cooperation with the municipalities and associations of local authorities continues.

A Timeline of the Key Events of the Administrative Reform 2015–2017

2015

- 8 April After the parliamentary elections, the Reform Party, the Social Democratic Party and the Pro Patria and Res Publica Union sign a coalition agreement that includes the implementation of administrative reform.
- 9 April Taavi Rõivas' (Reform Party) government takes office. Arto Aas (Reform Party) becomes the new Minister of Public Administration.
- 14 May A government committee for administrative reform is established.
- 29 May An expert committee established by the Minister of Public Administration holds its first meeting. In 2015, the committee meets on several occasions and, following their discussions, submits

	proposals that largely form the reference points for many decisions that are made on the administrative reform.
2 July	The cabinet approves the local government reform approach following explicit criteria and agrees to double merger grants.
25 August	The coalition agreement is amended, introducing the objectives of defining the merger criteria by 1 November and allowing for geographically or demographically justified exceptions.
September–October	Seminars on administrative reform are held in every county.
20 October	Märjamaa hosts a forum for all merged municipalities to share their experience of mergers.
19 November	The cabinet approves the reform criteria, exceptions and updated time frame, and formally acknowledges the administrative reform concept document.
18 December	The draft Administrative Reform Act is sent for review to the ministries and associations of local authorities.
2016	
10 March	The government approves the draft Administrative Reform Act and decides to send it to the <i>Riigikogu</i> (Estonian Parliament) for legislative proceedings.
6 April	The draft Administrative Reform Act passes its first reading in the <i>Riigikogu</i> .
11 April	By order of the Minister of Public Administration, three regional committees composed of county governors, experts and ministry representatives

are established to implement the administrative reform: the committee for northern Estonia covers the counties of Harjumaa, Järvamaa, Lääne-Virumaa and Ida-Virumaa; the committee for western Estonia covers Hiiumaa, Saaremaa, Läänemaa, Raplamaa and Pärnumaa; and the committee for southern Estonia covers Jõgevamaa, Tartumaa, Põlvamaa, Võrumaa, Valgamaa and Viljandimaa.

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| 11, 12, 17 and 18 May | The draft Administrative Reform Act passes its second reading in the <i>Riigikogu</i> . |
| 7 June | The <i>Riigikogu</i> adopts the Administrative Reform Act. |
| 13 June | The president proclaims the Administrative Reform Act. |
| 30 June | The regional committees for the implementation of the administrative reform are established by the government to guarantee greater independence for them. |
| 1 July | The Administrative Reform Act enters into force. |
| 21 July | The government approves the formation of the municipalities of Saue ¹ and Tõrva. |
| 4 and 24 August | Regional visits to merged municipalities are organised to share experiences. |
| 31 October | A draft Act Amending the Local Government Organisation Act and Other Acts Related to the Implementation of the Administrative Reform is circulated for approval. |

¹ Saue rural municipality is formed through the merging of the city of Saue and the rural municipalities of Kernu, Nissi and Saue. Tõrva rural municipality is formed through the merging of the city of Tõrva and the rural municipalities of Helme, Hummulu and Põdrala.

- 23 November Jüri Ratas' (Centre Party) government takes office. Mihhail Korb (Centre Party) becomes the Minister of Public Administration.
- 20 December The Supreme Court decision on the constitutionality of the Administrative Reform Act is handed down after 26 local authorities file applications contesting the Act's constitutionality between 30 June and 27 September. The Court rules the Administrative Reform Act constitutional and declares invalid only the maximum rate of compensation for government-initiated mergers.

2017

- 1 January The period for voluntary mergers initiated by municipal councils ends.
- January The government approves the formation of all the municipalities resulting from voluntary mergers.
- January The three regional committees hold discussions and submit recommendations to the government on ways to implement the government-initiated mergers under the Administrative Reform Act within the respective regions of the committees.
- 9 February The government decides to make proposals for government-initiated mergers and orders the Ministry of Finance to send out proposals to the municipal councils for their opinions.
- April–May The municipalities that received the government proposals conduct public opinion polls.
- 15 May Deadline for local authorities to respond to government proposals. Those local authorities that failed to respond are considered as having agreed with the proposal. The authorities of

	65 municipalities, or nearly two-thirds of those that received a proposal from the government, do not agree with the proposal; 25 municipalities agree and 14 do not respond.
25 May	The government approves the formation of the municipalities of Saaremaa and Otepää.
12 June	Jaak Aab (Centre Party) becomes the new Minister of Public Administration.
14 June	The Riigikogu adopts the Act Amending the Local Government Organisation Act and Other Acts Related to the Implementation of the Administrative Reform and an act regarding the abolition of county governments.
22 June	The government approves the formation of the municipalities of Hiiumaa, Alutaguse, Lüganuse, Järva and Väike-Maarja, Pärnu, Rapla, Peipsiääre, Kambja, Tartu and Võru, and the transfer of the city district of Viivikonna from Kohtla-Järve to Narva-Jõesuu.
10 July	The government approves the formation of Setomaa municipality.
13 July	The government approves the formation of Lääne-Harju municipality, the incorporation of Tähtvere rural municipality into the city of Tartu and the county placement of Setomaa rural municipality.
October	The Constitutional Review Chamber of the Supreme Court rules on the applications of 17 rural municipalities (in 11 merger areas) that were to be merged by the government but contested the merger regulations adopted by the government. All government regulations for municipal mergers remain in force.

15 October

Municipal council elections are held. Mergers enter into force as the election results in the new municipalities are announced between 20 October and 11 November.

2018

1 January 2018

New local authorities formed as a result of municipal mergers begin work.

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Garri Raagmaa graduated as an economic geographer from the University of Tartu in 1992. In 2000, he was awarded a PhD in human geography. He is an associate professor of regional planning in the Department of Geography at the University of Tartu. He has researched the effect of new entrepreneurship, regional identity, innovation, leadership, administrative structures and the effect of peripheralisation on regional development, and has published over 70 scientific articles in international publications.

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Neeme Suur has been a municipal leader in Läänemaa and the county governor of Läänemaa (2008–2011 and 2015–2017). He has been a member of the *Riigikogu* (Estonian Parliament), chairman of Legal Affairs Committee of the *Riigikogu* and member of the administrative reform expert group.

Olivia Taluste has been working as a legal adviser on regional affairs at the Ministry of the Interior and the Ministry of Finance since 2005. She was one of the principal authors of the Administrative Reform Act and other legislation connected to its implementation. Olivia also led the legislative procedure of the draft acts. For many years, Olivia has represented the ministry in the supervisory committee for local and regional authorities at the Council of Europe.²

Küllli Taro is one of the spokespersons for state reform and was head of the state governance programme at the Estonian Cooperation Assembly in 2013–2015. She is the head of the Law Enforcement Affairs Department at the Office of the Chancellor of Justice and has worked as an auditor and audit manager at the National Audit Office of Estonia. She is involved in the State Reform Radar initiative as an expert.

² This committee was established to develop local government, exchange experiences in policy-making between the member states (including the implementation of the European Charter of Local Self-Government) and monitor the democratic system of local government.

Sulev Valner has participated in organising the administrative reform process since 2013, first in the Ministry of Interior and later in the Ministry of Finance. Sulev has worked as a political journalist for various media outlets – the newspapers *Maaleht* and *Postimees*, as well as Estonian Public Broadcasting.

Ave Viks has worked at the Ministry of the Interior and the Ministry of Finance since 2007. She was one of the principal authors of the concept document for administrative reform, the Administrative Reform Act, and other legislation connected to the implementation of the Act. Since 2010, she has been a PhD candidate in political science at Tallinn University. She has contributed to two local government-related studies published by Tallinn University – on the 2005 municipal mergers and their outcome in Estonia (*Kohalike omavalitsuste 2005. aasta ühinemiste ja selle tagajärgede analüüs*) and on the 2009 local government reform in Latvia (*Läti 2009. aasta kohaliku omavalitsuse reformi analüüs*).

Jüri Võigemast has long worked in the area of local government, first as head of the county council of Raplamaa, then as chairman of the Raplamaa Association of Local Authorities, as a member of the *Riigikogu* and then as the managing director of the Association of Estonian Cities.

