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Problems of Estonian Local Government in 2013 and Co-operation as an Instrument of Their Resolution

In 1928, Estonian lawyer E. Maddison wrote on the expanding load of a local government's (LG's) tasks: "The way out would be through joining forces and working together with some other local government."¹ Eighty-four years later, the document titled 'Survey of the Trends and Problems of Estonian Local Government Organisation and Proposals Made by Different Parties' states that, while there exist some examples of co-operation among LGs, this opportunity is, in fact, not very widely exercised.² Because of the real-world nature of the problems seen today, the authors of the present article have focused on the issues of LG co-operation law. Also, there is a relative scarcity in Estonia of relevant legal writings on this particular subject.³ The format for this article determines certain decisions as to the subject matter: themes related to potential models for a metropolitan area remain beyond the scope of study.

The authors search for and attempt to formulate answers to the following questions:

- 1) What main problems are characteristic of the current Estonian LG system?
- 2) What can/should be done in LG law, particularly in co-operation law, to solve these problems?

Although this article focuses on the themes of voluntary co-operation, its opposite pole – mandatory co-operation—cannot fully be overlooked. As a matter of fact, in the Estonian legal system voluntary co-operation among LGs is synonymous with their co-operation as a whole: unlike many countries (Finland, Denmark, Latvia, etc.), Estonia has no regulations in its legislation addressing obligatory co-operation among LGs.

¹ Sihtühisuste probleem meie omavalitsuste elus ['The problem of joint ventures in the life of our local governments']. – *Maaomavalitsus*. Eesti Maaomavalitsuste Liidu häälekandja 1928/12, p. 181 (in Estonian).

² Ülevaade Eesti omavalitsuskorraldust puudutavatest tendidest, probleemidest ja eri osapoolte ettepanekutest ['Overview of the Trends, Problems and Proposals from Various Parties']. Tallinn 2012, p. 21. Available at https://www.siseministerium.ee/public/Lisa_2_Ulevaade_KOV_trendidest_probleemid..pdf (most recently accessed on 3.3.2013) (in Estonian).

³ One could mention as an exception the commented edition of the Constitution of the Republic of Estonia, wherein certain aspects of co-operation among LGs are dealt with under §159 (*Eesti Vabariigi põhiseadus. Kommenteeritud väljaanne. Kolmas, täiendatud väljaanne* ['Constitution of the Republic of Estonia, Commented Edition. Third, Revised Edition']. Tallinn: Juura 2012, pp. 878–881 (in Estonian)), and the final report from the study of legal and managerial solutions for co-operation models of metropolitan areas compiled by the Tallinn University of Technology by order of the Union of Harju County Municipalities (*Projekti „Pealinnaregiooni omavalitsusüksuste koostöö- ja haldusvõimekuse tõstmine” raames pealinnapiirkonna koostöömudelite õiguslike ja juhtimisalaste lahenduste väljatöötamine. Lõpparuanne*. Tallinn 2011. Available at http://43939.edicypages.com/files/Tallinna_Tehnikaülikooli_lõpparuanne_15_02_2011.pdf (most recently accessed on 2.3.2013) (in Estonian)).

1. The Estonian local government system in 2013: Essential characteristics and problems

1.1. Voluntary co-operation and mergers thus far: Results still to be achieved

In the 22 years since Estonia regained its independence, a sufficient level of administrative capability has not yet been reached through voluntary co-operation (including mergers) of LGs. As of 1 March 2013, there are 226 LG units in Estonia: 193 rural municipalities and 33 cities.^{*4} In Europe, methods for both unification of LGs and their voluntary co-operation are used to provide public services with appropriate quality and access. The slowness of the process of voluntary merger is conditioned by the dissent related to reduction in the number of LG public servants, anxiety of the local community over the potential for being relegated to the periphery, current LG leaders' fears about their political and economic future, etc. Since the entry into force of the Promotion of Local Government Merger Act^{*5} (PLGM) in 2004, the number of LGs has decreased only by 19—from 245 to 226.^{*6} The regulations promoting voluntary co-operation of LGs have no clear object, schedule, and sanctions, and the mechanisms promoting mergers are relatively weak.^{*7} Paying attention to these problems, the OECD^{*8} has noted, *inter alia*, that the question may not be one of co-operating sufficiently so much as a question of co-operating effectively.^{*9}

1.2. Globalisation of public tasks along with depopulation of local government—fundamental reasons for insufficient administrative capability

The territory of Estonia (45,227 km²) is divided among LGs in such a way that the average territory of an LG unit is 221.31 km² (cities: 19.49 km²; rural municipalities: 233.57 km²).^{*10} The population of the country (1,286,540 people by 1 January 2013 reckoning)^{*11} is distributed such that there are fewer than 1,800 persons residing in over half of the LG units and under 1,000 people in 40 of the LG units. Estonian rural municipalities and cities are very different also in their population density, which varies by a factor of more than 1,000 (Illuka has 1.72 people per square kilometre, while the city of Tartu has 2,683.22 people per square kilometre).^{*12} However, pendulum migration of the population links cities and their hinterlands in the form of integrated socio-economic units, which go beyond existing administrative borders.

⁴ Vabariigi Valitsuse 03.04.1995. a määrus nr 59 „Eesti territooriumi haldusüksuste nimistu kinnitamine” [‘Decree of the Government of the Republic from 03.04. 1995 No. 59 ‘Approval of the List of Administrative Units’]. – RT I 1995, 49, 567; 2009, 32, 204 (in Estonian).

⁵ Kohaliku omavalitsuse üksuste ühinemise soodustamise seadus [‘Promotion of Local Government Merger Act’]. – RT I 2004, 56, 399; RT 19.3.2013, 1 (in Estonian).

⁶ OECD Public Governance Reviews: Estonia: Towards a single government approach (2011), p. 50. Available at http://www.keepeek.com/Digital-Asset-Management/oecd/governance/oecd-public-governance-reviews-estonia-2011_9789264104860-en (most recently accessed on 3.3.2013).

⁷ Subsection 6 (1) of the PLGM provides merger grants to be allocated from the state budget to the LGs formed as the result of a merger. A merger grant of €50 per resident of a merged LG is calculated separately for each merged LG; the size of said grant shall be not less than €150,000 and not more than €400,000 per LG. Upon transfer of a territorial area to an LG formed as the result of a merger, a grant of €50 for each resident of the transferred territorial area shall be allocated from the state budget to the merged LG. For payment upon merger of a grant to an LG formed as the result of a merger, the merger grants separately calculated for each merged LG or transferred territorial area shall be totalled.

⁸ OECD Public Governance Reviews: Estonia: Towards a single government approach (see Note 6), pp. 49–50.

⁹ *Ibid.*, p. 51.

¹⁰ In territorial terms, the largest LG unit is the Märjamaa rural municipality in Rapla County (872 km²), and the smallest is Tootsi, a rural municipality in Pärnu County (1.8 km²). See Kohalik omavalitsus Eestis [‘Local government in Estonia’], p. 11. Available at http://siseministeerium.ee/public/Kohalik_omavalitsus_Eestis_2008.pdf (most recently accessed on 6.3.2013) (in Estonian). The largest city by territory is Tallinn (158.27 km²); the smallest are Kallaste and Võhma (each 1.93 km²). The average territorial size of LG units in Estonia—199 km²—is mentioned in the following work: EU sub-national governments: Key figures. 2009/2010 Edition, p. 4. Available at http://www.ccre.org/docs/nuancier_2009_en.pdf (most recently accessed on 3.3.2013).

¹¹ Statistikaamet: mullu rändas Eestist välja 10 000 inimest [‘Statistics Estonia: Last year, 10,000 people emigrated from Estonia’], p. 9. Available at <http://www.delfi.ee/news.paevauudised/est/statistikaamet-mullu-randas-eestist-valja-10-000-inimest.d?id=65548200> (most recently accessed on 1.4.2013) (in Estonian).

¹² Omavalitsusreformi eesmärk, võimalikud mudelid ja ajakava [‘Object, potential models, and schedule of the local government Reform’], p. 9. Available at https://www.siseministeerium.ee/public/Lisa_1_KOV_reformi_eesmark_mudelid_ja_aja.pdf (most recently accessed on 1.3.2013) (in Estonian).

In the years since restoration of independence, the population of Estonia has decreased, and this tendency, along with ageing, only continues: it has been estimated that the country will see a 7% decrease in its population by 2050^{*13}, while, according to one scenario, in the most extreme cases LG units' population will decrease by 30% and the proportion of the elderly will rise to 28% by 2030.^{*14} Concentration of the population in areas with larger cities, particularly the more urban areas of Tallinn and Tartu, is taking place.^{*15}

At the same time, several of the problems to be resolved (related to planning needs, the environment, traffic growth, education, mobility of residents, etc.) have transcended their formerly local character. A considerable proportion of Estonian LGs are—whether in the sense of population figures or territorially—too small for carrying out all of the many tasks currently assigned to them.^{*16} This, in turn, imposes strong limits on their capability to employ top-standard local officials. As an example, the capability of LGs to perform tasks of state supervision can be mentioned here. In a situation wherein 23 individual legislative acts have endowed LGs with a broad variety of supervision powers or with competence of extra-judicial handling of misdemeanours^{*17}, performance of the associated tasks in practice has turned out to be largely insufficient and irregular.^{*18} Particularly acute are problems of this kind in smaller and more remote LGs.^{*19} It should also be pointed out that insufficient administrative capabilities among LGs has been cited as a fundamental problem by the President of the Republic^{*20}, the Chancellor of Justice^{*21}, the Auditor General^{*22},

¹³ *Ibid.*, pp. 7–8.

¹⁴ Geomedia (2012): *Rahvastiku võimalikud arengutrendid 2012–2030* ['Potential development trends of population'], pp. 20, 27. Available at https://www.siseministeerium.ee/public/KOV-indeks_2011_rahvastiku_aruanne.pdf (most recently accessed on 1.4.2013) (in Estonian). See also *Eesti Inimvara Raport (IVAR): võtmeprobleemid ja lahendused (2010)*. Säästva arengu komisjon. Raportöör Eesti Koostöö Kogu ['Report on Estonian human assets (IVAR): Key problems and solutions (2010), Committee on Sustainable Development, Rapporteur Estonian Cooperation Assembly'], pp. 22–24. Available at http://www.kogu.ee/public/Eesti_Inimvara_Raport_IVAR.pdf (most recently accessed on 1.3.2013) (in Estonian). From 2000 to 2010, populations have grown in only 41 LG units, with only 10 LG units showing growth each year over that period. See also OECD Public Governance Reviews: Estonia: Towards a single government approach (Note 6), p. 245.

¹⁵ See *Regionaalse arengu suundumised Eestis (aastatel 2005–2011)*. ['Trends of regional development in Estonia (in the years 2005–2011)']. Tallinn: Siseministeerium 2011, pp. 1–7. Available at <https://www.siseministeerium.ee/uuringud-ja-analuusid> (most recently accessed on 19.2.2013) (in Estonian).

¹⁶ See, for example, *Ülevaade Eesti omavalitsuskorraldust puudutavatest trendidest, probleemidest ja eri osapoolte ettepanekutest* (Note 2), pp. 8–10.

¹⁷ See M. Ranne. *Valla- või linnavalitsuse korrakaitseüksuse tegevuse õiguslikud alused ja seadusest tulenevad kitsaskohad tegutsemisel* ['Legal foundations of the activity of law-enforcement units of the rural municipality or city government and legislative bottlenecks'], p. 2. Available at http://f.ell.ee/failid/LVP/2012/11/09_b_MET_tegevuse_probleemid_ja_oiguslikud_kitsaskohad.pdf (most recently accessed on 1.4.2013) (in Estonian).

¹⁸ See Riigikontroll (20.1.2009). *Audit. Seadusest tulenevate järelevalvefunktsioonide täitmine valdades ja linnades* ['National Audit Office (20.1.2009) audit: Performance of the supervision functions arising from law in rural municipalities and cities']. Available at <http://www.riigikontroll.ee/tabid/215/Audit/2077/WorkerTab/Audit/WorkerId/71/language/et-EE/Default.aspx> (most recently accessed on 1.3.2013) (in Estonian). A summary of the overview's results is available in English at <http://www.riigikontroll.ee/tabid/206/Audit/2077/OtherArea/1/language/en-US/Default.aspx> (most recently accessed on 6.4.2013).

¹⁹ See Riigikontroll (31.1.2012). *Audit. Avalike teenuste pakkimise eeldused väikestes ja keskustes eemal asuvates omavalitsustes* ['National Audit Office (31.1.2012) audit: Assumptions for provision of public services within small and remote local authorities']. Available at <http://www.riigikontroll.ee/tabid/215/Audit/2210/Worker/Tab/Audit/WorkerId/76/language/et-EE/Default.aspx> (most recently accessed on 1.3.2013) (in Estonian). A summary of the overview's results is available in English at <http://www.riigikontroll.ee/tabid/206/Audit/2210/OtherArea/1/language/en-US/Default.aspx> (most recently accessed on 6.4.2013).

²⁰ *Greetings from the President of the Republic of Estonia on Cities and Rural Municipalities Day*, Viru Hotel Conference Centre, 16 February 2011. Available at <http://www.president.ee/en/official-duties/speeches/5666-greetings-from-the-president-of-the-republic-of-estonia-on-cities-and-rural-municipalities-day-16-february-2011-viru-hotel-conference-centre/index.html> (most recently accessed on 6.4.2013).

²¹ *Õiguskantsler: suur osa omavalitsusi ei suuda piisavalt tagada isikute põhiõigusi* ['Chancellor of Justice: A large proportion of local governments cannot sufficiently guarantee the fundamental rights']. Available at <http://oiguskantsler.ee/et/oiguskantsler/suhted-avalikkusega/uudised/oiguskantsler-suur-osa-omavalitsusi-ei-suuda-piisavalt> (most recently accessed on 29.1.2013) (in Estonian).

²² For example, *Riigikontrolör Mihkel Oviiri ettekanne Riigikogus 7. novembril 2012 riigi majanduse ja haldamisega seotud probleemide kohta* ['Report of Auditor General Mihkel Oviir to the Riigikogu on 7 November 2012 on problems related to the state's economy and administration']. Available at <http://www.riigikontroll.ee/Suhtedavalikkusega/Pressiteated/tabid/168/557/GetPage/1/557Year/-1/ItemId/655/amid/557/language/et-EE/Default.aspx> (most recently accessed on 29.1.2013) (in Estonian).

various ministries^{*23}, the OECD^{*24}, the European Commission^{*25}, several scholars, public figures, and others.^{*26}

1.3. Tiny rural municipalities and the capital city performing the same tasks

The competence of rural municipalities and of cities are not differentiated in the Constitution of the Republic of Estonia, or CRE (according to §154 (1) of the CRE, all local issues shall be resolved and managed by LGs, which, pursuant to the law, shall operate independently; according to §154 (2), duties may be imposed on an LG only pursuant to the law or by agreement with the LG, and expenditure related to duties of the state imposed by law on an LG shall be funded from the state budget), but in cases involving clear and substantiated criteria, the legislator may do this: it cannot be expected that, for example, the rural municipality of the small island Piirissaare (with around 100 local inhabitants)^{*27} perform the same tasks to the same level of quality as its urban neighbour Tartu with its population of more than 95,000. It should be pointed out that CRE does not exclude regulation by means of a special law of the status of a capital city as a special form of LG unit. Generally, however, current legislation does not differentiate between the competencies of rural municipalities and cities. This unified approach is applied amidst a situation of unbalanced regional development. The actual capability of LGs to provide public services, in fact, varies greatly. As a rule, major problems appear, with LGs being unable to employ the necessary officials. The country's economic activity is predominantly concentrated in Tallinn and in Harju County generally.

1.4. Incompleteness or lack of requirements pertaining to public services

For evaluation of the successfulness of an LG unit in a certain sphere of activity, the minimal level required for the relevant service should be determined.

At present, there are no such requirements for public services or they exist only to the extent of formal requirements for LGs to deal with certain issues or to prepare a procedure that regulates a specific area. Until the state establishes at least some requirements as to the quality of the services provided by LGs and imposes obligations also on the officials who provide them, it is not possible to perform an objective assessment of whether or not LGs are able to perform their tasks. Also, it is difficult to make justified changes in the administrative arrangements, which act is obviously necessary for improvement in service quality, before the relevant analysis has been carried out.^{*28} It has been stated at the ministerial level that, for the most part, Estonian LGs are not able on their own to provide sufficiently high-quality, accessible, and sustainable services, whether those services be social services; primary, basic, or vocational education; waste management territorial plans; related to road and communication infrastructure; or other services.^{*29}

It is essential to point out that a general legal obligation for rural municipalities and cities to provide a particular service does not in itself say much about how that service should be rendered in practice. Rather, it depends on certain characteristics mentioned above (i.e., on administrative standards).

²³ Ülevaade Eesti omavalitsuskorraldust puudutavatest trendidest, probleemidest ja eri osapoolte ettepanekutest (see Note 2).

²⁴ OECD Public Governance Reviews: Estonia: Towards a single government approach (see Note 6).

²⁵ See Recommendation for a Council recommendation on Estonia's 2012 national reform programme and delivering a Council Opinion on Estonia's stability programme for 2012–2015. Available at http://ec.europa.eu/europe2020/pdf/nd/csr2012_estonia_en.pdf (most recently accessed on 6.4.2013).

²⁶ See also Kohaliku omavalitsuse võimekuse indeks ['Index of local government units' capacity']. Available at http://www.siseministerium.ee/public/KOV-indeks_2011_luhikokkuvote.pdf (most recently accessed on 29.1.2013) (in Estonian).

²⁷ See Omavalitsusüksuste võrdlus ['Comparison of local government units']. Available at <http://www.stat.ee/ppe-46953> (most recently accessed on 6.4.2013) (in Estonian).

²⁸ Assumptions for provision of public services in small and remote local authorities (see Note 19), p. 2.

²⁹ Overview of the Trends, Problems and Proposals from Various Parties (see Note 2), pp. 12–18.

1.5. (Un)equilibrium of the revenue base and tasks

LGs are under pressure that is influenced by non-conformance between the public tasks delegated to them and the—insufficient—resources assigned for their performance.^{*30} In the estimation of the OECD, Estonia's sub-national finance system, while being sound, could be strengthened in several areas. Regardless of this soundness, the level of financing provided through the current system does not match the level of the competencies or requirements associated with municipal tasks, thereby calling into question municipal finances' sustainability.^{*31}

An LG's taxing power is limited (revenue received from local taxes accounts for approximately 1% of the volume of local budgets, and this level cannot be raised through current local taxes). Over-centralised taxing power impairs LGs' financial autonomy (referred to in the CRE's §§154 (1) and 157 (2) and in the European Charter of Local Self-Government^{*32} (ECLSG), Art. 9).

Reductions in the income basis for LGs (lowering of the rate of income tax paid by resident natural persons to be received by local budgets from 11.93% to 11.4%) during the recent economic crisis, in combined effect with unemployment, creates a setback to the capability of LGs to guarantee fundamental rights and freedoms (CRE^{*33}, §14)^{*34}, to their administrative capability in a larger sense, and with respect to their incomes.^{*35}

The persistence of an unconstitutional situation in the Estonian legal system with respect to financing of LGs should be taken into consideration. In its decision 3-4-1-8-09, on 16 March 2010, the Supreme Court declared unconstitutional the failure to adopt such legislation of general application as would distinguish the funds allocated to LGs for deciding on and organising handling of local issues from the funds allocated for performance of national obligations and provide for funding of the national obligations imposed on LGs by law out of the state budget.^{*36}

1.6. The problem of the legal status of the county association of local governments

Problems appear also with regard to the legal status of county associations of LGs, as well as their tasks and financing. To create an appropriate broader background, one must, by necessity, determine the legal status of a regional administrative level and correct the management model applied therein. This issue is, in turn, related to the potential national administrative-territorial reform. For the time being, Estonia's 15 counties are administrative units, wherein state administration is carried out by the county governors and government agencies pursuant to the law.^{*37} At the same time, county associations operate in all counties (only six LGs are non-members at the moment).^{*38} The right of LGs to form associations is provided for

³⁰ See Recommendation 294 (2010), Local democracy in Estonia. Available at <https://wed.coe.int/ViewDoc.jsp?id=1689329&Site=Congress> (most recently accessed on 9.4.2013); see also OECD Public Governance Reviews: Estonia: Towards a single government approach (Note 6), pp. 231–242.

³¹ OECD Public Governance Reviews: Estonia: Towards a single government approach (see Note 6), p. 231.

³² Available at <http://conventions.coe.int/Treaty/en/Treaties/Html/122.htm> (most recently accessed on 6.4.2013).

³³ Available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X000K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%F5hiseadus> (most recently accessed on 6.4.2013).

³⁴ See also Supreme Court en banc decision of 16.3.2010 3-4-1-8-09. English text available at <http://www.nc.ee/?id=1122> (most recently accessed on 6.4.2013).

³⁵ So it appears from the spring 2011 audit by the National Audit Office that from 2009 to 2010 the number of employees was reduced in half of the rural municipalities and cities, the employees' salary has been cut in more than half of the LGs, and reduction in staffing costs has decreased the availability of services in almost a third of LGs. See Tulude vähenemise mõjud valdade ja linnade tegevusele perioodil 2009–2010. Ülevaade [‘Impacts of the decrease in revenue on the activities of municipalities and cities 2009–2010: An overview’]. Tallinn 2011, p. 3. Available at <http://www.riigikontroll.ee/tabid/206/Audit/2174/OtherArea/1/language/et-EE/Default.aspx> (most recently accessed on 6.4.2013) (in Estonian). A summary of the survey's results is available in English at <http://www.riigikontroll.ee/tabid/206/Audit/2174/OtherArea/1/language/en-US/Default.aspx> (most recently accessed on 3.4.2013).

³⁶ Supreme Court en banc decision of 16.3.2010 3-4-1-8-09 (see Note 34).

³⁷ Eesti territooriumi haldusjaotuse seadus [‘Territory of Estonia Administrative Division Act’], §2 (2). – RT I 1995, 29, 356; 1996, 42, 808 (in Estonian).

³⁸ The following reasons typically lie behind non-membership: various associations duplicate each other's activities; remaining outside this form of co-operation makes it possible to save resources; the value for money generated is insufficient; the

in the CRE (§159), ECLSG (Art. 10), Local Government Associations Act³⁹ (LGAA) and Local Government Organisation Act⁴⁰ (LGOA) (§62 (1) 3)).

While the CRE leaves the legal status of the association of LGs open (i.e., legal person in public law or in private law), the LGAA (§1 (2)) has defined it as being a not-for-profit association (therefore, a voluntary legal person in private law), to which the Non-profit Associations Act⁴¹ applies, taking account of the specifications prescribed in the LGAA. Financing of associations takes place mostly from the budgets of the rural municipalities and cities belonging to them, and revenues have thus far been relatively low (around 21 million euros was received, from various sources, from 2008 to 2010 for all associations together).⁴²

Not-for-profit association cannot be considered to be an appropriate legal form for drawing together LGs for common execution of public tasks. As a level of application of state functions, county associations, acting in the form of not-for-profit associations, have not proved to be legal subjects to whom a state would extensively delegate state functions with larger scale than that of the current administrative borders of LGs.⁴³ Presumably, the reasons for this are 1) that LGs have a right to secede from an association whenever they consider this to be necessary and 2) insufficient administrative capabilities of associations. According to the law, an association performs state functions that have been assigned to it by law or on the basis thereof, including formation of contracts under public law, in which consensus among the members of an association is needed—no member of the association may be against the act in question.⁴⁴ Certainty is lacking also with respect to LG functions performed by an association: for example, in the case of a change in leadership, its priorities may change and, therefore, some long-time common project fail. Because the Supreme Court has stated that the delegation of proceedings addressing offences and the related penal power of the state to a legal person in private law is in conflict with the provisions of §§3, 10, and 14 of the CRE in their conjunction⁴⁵, provision of certain public services (e.g., waste management and public transport) through an association of LGs has become problematic.

1.7. The problem with establishment of joint administrative agencies

In a situation of insufficient administrative capability and lack of specialists, LGs have made efforts to resolve this problem by employment in service of so-called joint officials (e.g., in the county Ida-Viru, a law-enforcement unit was established by a certain rural municipality government and two law-enforcement officials were employed by five rural municipalities on a part-time basis).⁴⁶ It is not, however, permitted

association cannot protect enough interests of its members, with it being unable to aid against, for example, forceful state activities with regard to LGs; having an equal number of representatives in the association is unfair for a large LG unit; and the dissemination of information is insufficient.

³⁹ Kohaliku omavalitsuse üksuste liitude seadus [‘Local Government Associations Act’]. – RT I 2002, 96, 565; 2009, 54, 363 (in Estonian).

⁴⁰ Available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X2009K8&keel=en&pg=1&ptyyp=RT&tyyp=X&query=kohaliku+omavalitsuse> (most recently accessed on 7.4.2013).

⁴¹ Available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1013K10&keel=en&pg=1&ptyyp=RT&tyyp=X&query=mittetulundus%C3%BCh> (most recently accessed on 7.4.2013).

⁴² Maakondlike omavalitsusliitude tegevus ja sisekontrollisüsteemi toimimine. Riigikontrolli aruanne Riigikogule [‘Activities of county associations of local governments and functionality of the internal control system: Report of the National Audit Office to the Riigikogu’]. Tallinn 2012, p. 1. Available at <http://www.riigikontroll.ee/tabid/206/Audit/2237/OtherArea/1/language/et-EE/Default.aspx> (18.2.2013) (in Estonian). A summary of the conclusions is available in English at <http://www.riigikontroll.ee/tabid/206/Audit/2237/OtherArea/1/language/en-US/Default.aspx> (most recently accessed on 7.4.2013).

⁴³ Pursuant to the applicable law, the following tasks have been assigned to county associations: participation in preparation of a national spatial plan and in its concertation (planeerimisseadus [‘Planning Act’], §§16 (1) 1) and 17 (1). – RT I 2002, 99, 579; RT 29.12.2011, 1 (in Estonian)); making proposals to the Minister of Education and Research on state-commissioned education (Universities Act, §50¹ (6) (available at <http://www.legaltext.ee/et/andmebaas/paraframe.asp?loc=text&dk=et&sk=en&dok=X60039K8.htm&query=%FClkooliseadus&tyyp=X&ptyyp=RT&fr=no&pg=1>) (most recently accessed on 7.4.2013)); issuing an opinion (non-binding) on a candidate presented by the Minister of Regional Affairs (Vabariigi Valitsuse seadus [‘Government of the Republic Act’], §86 (3). – RT I 1995, 94, 1628; RT 29.12.2011, 1 (in Estonian)); and organisation of county-level public transport (when assigned to this by relevant authorities) (ühistranspordiseadus [‘Public Transport Act’], §4. – RT I 2000, 10, 58; RT 28.6.2012, 3 (in Estonian)).

⁴⁴ LGAA, §10 (1)–(3).

⁴⁵ Supreme Court en banc decision 3-1-1-86-07, of 16.5.2008. English text available at <http://www.nc.ee/?id=908&print=1> (most recently accessed on 6.4.2013).

⁴⁶ Riigikontrolör Mihkel Oviiri ettekanne Riigikogus 7. novembril 2012 riigi majanduse ja haldamisega seotud probleemide kohta (see Note 22), pp. 8–9.

by the legislation now in force to establish a joint administrative agency endowed with powers of public authority.

Pursuant to §159 of the CRE, an LG has the right to establish joint agencies with other LGs. Both administrative agencies endowed with powers of public authority and agencies providing public services, along with not-for-profit associations, foundations, public limited companies, and private limited companies in which LGs have controlling influence, can be understood as falling under the category ‘joint agencies’. The competence of an LG unit as a territorial corporation is limited with respect to its administrative territory. To act authoritatively (*hoheitliche Verwaltung*) in cross-border capacity, an LG, also in the case of co-operation, must have a special legal foundation and—in the case of voluntary co-operation—consent of the other party/parties. Relevant legal foundations, however, have not been established yet. The issue of cross-border activities is particularly acute in the context of potential formation of catchment areas for a predetermined set of services, where the emphasis should be on common requirements set for services rather than on the effect of current administrative boundaries.

2. Some proposed legal solutions

Below, the authors elaborate on potential solution options that encroach less on the LG’s autonomy (CRE, §154 (1)), local democracy (CRE, §§ 1 (1); and 156), and local identity. After this, more radical variants are dealt with. Solutions by which LGs’ autonomy – a basic principle of the ECLSG—is spared more can also be assessed as being in better accordance with basic constitutional theory of LG. Nevertheless, the CRE does not exclude mandatory co-operation of LGs (including compulsory mergers), if certain formal and substantial criteria are met.

Horizontal co-operation of LGs is the primary mechanism for building of scale and, thereby, capacity, as well as to share good practices.⁴⁷ Also a possibility of achievement of more cost-effectiveness is essential (to overcome problems resulting from disadvantageous administrative boundaries, so as to achieve economies of scale (e.g., via shared waste management) and appropriate division of costs).

First, a set of legal measures needs to be applied by legislative and executive powers. It is necessary 1) to stipulate which of the obligations imposed on LGs by law are of a local character and which are of a national character and 2) to distinguish between the funds allocated to LGs for deciding on and organising handling of local issues from the funds allocated for performance of national obligations and provide for funding of national obligations imposed on LGs by law out of the state budget. In other words, Supreme Court (*en banc*) decision of 16 March 2010 3-4-1-8-09 needs to be implemented.

Sufficient revenue basis should be provided to LGs for performing of the public tasks assigned to them. Transformation of an income tax paid by resident natural persons and land tax into local taxes (LGs would have authority to change tax rates, within prescribed limits, and to establish tax allowances) is worthy of consideration. As a whole, however, the level of financing of LGs before the financial crisis of 2009 should be restored.

Procedural regulation of voluntary mergers (in the PLGM and LGOA) should have clear targets to be reached by means of voluntary mergers, concrete deadlines, and specification of the measures to be applied by the state if the process is not completed in due time. Acceleration of the process of voluntary mergers presupposes also merger grants larger than the existing ones, differentiation among their rates in line with the time of merger, and revision of the requirements related to the public services that the LGs should be capable of providing after they merge.

Substantial revision needs to be made to Chapter 10 of the LGOA with respect to co-operation of LGs. The forms of co-operation—‘to co-operate’; ‘to grant authority to another rural municipality or city for this purpose’ (LGOA, §62 (1) 1) and 2)—are formulated too declaratively and need specification. Also, a right for several LG units to establish a joint administrative agency to exercise powers of public authority cross-border is in need of legislative establishment. Relevant provisions should link establishment of such an agency with corresponding decisions of the LG councils concerned as well as with entering into contract under public law, in which management functions (particularly supervision and proceedings in cases of misdemeanours), financing, personnel arrangements, and other matters essential to normal functioning

⁴⁷ OECD Public Governance Reviews: Estonia: Towards a single government approach (see Note 6), pp. 50, 295.

of an agency would be regulated. Authorisation rules in special laws addressing various domains should be added to the norm of general competence in the LGOA.

Standards pertaining to the public services to be provided by LGs are in need of complex revision and amendment in terms of substantial criteria—requirements as to the accessibility of a service (the period, periodicity, and distance involved in provision of service), the qualifications of its provider (the public servant), and the technical equipment used in provision of a particular service. The purpose of the improvement of public services is—as has been the case in much of Europe for several decades now^{*48}—to bring the assumptions and expectations of citizens and offices closer to each other. Therefore, laws, rules, and other documents regulating local and state tasks performed by LGs (including documents from LGs themselves) need to be amended and supplemented in large numbers. Not all LGs must necessarily perform the same functions. Rural municipalities and cities can be assigned to separate groups legally (i.e., divided into various categories) on the basis of their ability to provide public services, and, accordingly, their competence could be different (Tallinn as the capital city should be regulated by means of a special law to take its largeness and other specifics into consideration). LGs that are unable to reach the legally required level of public service independently should be obliged by law to perform the relevant tasks through the joint administrative agency (as an alternative, these tasks could legislatively be transferred to the county association). Also a matter for consideration is whether county boundaries should be observed in the establishment and activity of joint administrative agencies. In the legal regulation, one must take into account that 1) any restriction of the LG's right of self-management must have a legitimate objective and must be in proportion to that objective (appropriate, necessary, and reasonable for the achievement of the objective), 2) the possibilities for voluntary co-operation should remain (CRE, §159; ECLSG, Art. 10), and 3) the decisive role in performance of local tasks should remain with the local community and its representative body—the LG council (CRE, §156; ECLSG, Art. 3); in other words, performing of tasks through any given form of co-operation must not lead to a situation in which an LG council as a representative body has lost its leading position in decision-making over performance of public tasks in the relevant rural municipality or city.

The existing model of regional administration is in need of substantial reorganisation. Several alternatives are conceivable: 1) attribution to the county of the status of a legal person under public law; 2) attribution to the county association of LGs of the status of a legal person in public law, along with foreseeing of the mandatory membership of rural municipalities and cities in it, and delegation of public tasks of a county-level character to the bodies of the county association along with fixation of a stable model of financing; and 3) formation of a full-fledged county self-government at the regional level. Similar options for a solution have been proposed by the General Meeting of Estonian Cities and Rural Municipalities (incorporating various county associations of LGs).^{*49}

As for the second possible option mentioned above, some additional considerations (besides those noted in critical remarks already made on the present legal status of the county associations of LGs as not-for-profit associations: inability to perform supervision etc.) can be highlighted. First of all, in the case of legislative shifting of responsibility for certain public tasks currently performed by rural municipalities and cities to the level of county associations, the restrictive nature of this measure with regard to the right of self-management of LGs (CRE, §154 (1)) should be taken into account. Consequently, precise standard—i.e., detail-level characteristics of public tasks—for the respective public services to be rendered by LGs are essential here if one is to provide justifiability of such a transfer of responsibility: abstract reference to improvement of the level of quality is insufficient in this respect. It should also be noted that legislative transfer of certain public tasks to the county associations of LGs as legal persons in public law can be characterised as a milder measure than top-down amalgamation of LGs; it also maintains local democracy, provides local-level government with a more stable revenue basis, etc. Mandatory membership of rural municipalities and cities in the county associations as legal persons in public law should not impair the right of LGs to form unions and joint agencies with other LGs (CRE, §159) and must conform with legal reservation (CRE, §160).

⁴⁸ See, for example, M. Kiviniemi. *The Improvement of the Public Services: Quality, Conditions and Development As Factors of Evaluation*. Helsinki: Administrative Development Agency, Government Printing Centre 1988, p. 9.

⁴⁹ Eestimaa Linnade ja Valdade Üldkogu. Tallinn 2012 [‘General Meeting of Estonian Cities and Rural Municipalities, Tallinn, 2012’], p. 7. Available at http://www.emovl.ee/files/Linnade,valdade_ildkogu/Linnade_ja_Valdade_Yldkogu_31.03.2012_Tooryhmade_materjalid_Yldkogule.pdf (most recently accessed on 2.4.2013) (in Estonian).

Whatever the concrete solution(s) may be, it is obvious that the hitherto existing state management model at regional level is unbalanced on account of lack of an influential self-governmental counterpart. Purely voluntary forms of co-operation need to be complemented with certain forms of a mandatory co-operation. Putting regional management in order should begin with answering the principal question on the position of the self-governmental ordering of the affairs of life in it and its relationship with state management.

Recently (in October 2012), the Minister of Regional Affairs (within whose area of administration matters of LG belong) announced an initiative on LG reform, in which six potential models of self-government organisation were proposed: 1) an Estonia of very small rural municipalities, 2) an Estonia of LG associations, 3) a two-level Estonia, 4) an Estonia of parishes, 5) an Estonia of 'pull centres', and 6) an Estonia of counties. After this, the minister informed of his intention to apply option 5 (a 'pull centre' is a densely populated settlement that is an important destination in pendulum migration for the residents of its hinterlands, within the radius of a 30-minute automobile trip for residents of other settlements) as a starting point for his further activity, to result in the appearance of 30 to 50 new LG units instead of the current 226. During a transitional period, formation of rural-municipality districts managed by administrative boards might be considered.⁵⁰

Mandatory merger of LGs separately from the legal specification of tasks (local mandatory tasks or national obligations) assigned to them, without establishment of requirements related to public services and revision of the financing model for rural municipalities and cities, cannot be considered an adequate response to the problems that are already evident. Rather, it has to do with carrying on 'traditions' of undertakings of a similar kind, which has reduced the substance of reform to pure merger of existing LG units while functional problems, though inseparably linked to territorial factors, have been given no notice.

3. Conclusions

Estonian LG law is in need of further substantial development if the administrative capability of rural municipalities and cities is to be raised to the level required by the Constitution. To this end, a number of measures closely connected with one another should be applied. Existing problems cannot be resolved through purely mechanical consolidation of current LG units: both territorial and functional aspects should be dealt with as a whole. Voluntary co-operation of LGs has considerable potential to enable LGs' better protection of the fundamental rights and freedoms (CRE, §14) and provision of public services with appropriate quality and access (CRE, §4 (1)). For making use of this potential, it is necessary to clarify through specification and amend the legislative provisions for voluntary co-operation (e.g., regulation of joint administrative agencies), on the one hand, and to complement voluntary forms of co-operation with forms of mandatory co-operation, on the other. Public tasks assigned to LGs through laws should be legally defined (mandatory self-government tasks or national obligations), and funds allocated to LGs for deciding on and organising the handling of local issues should be distinguished from the funds assigned for performance of national obligations.

⁵⁰ Omaavalitsusreformi elluviimise kava. Koostatud regionaalministri valitsemisalas 06.03.2013 ['Implementation plan for local government reform, drafted within the governmental purview of the Minister of Regional Affairs on 6.3.2013']. Available at https://www.siseministeerium.ee/public/OMAAVALITSUSREFORMI_KAVA_LUHIKOKKUVOTE_06032013.pdf (most recently accessed on 3.4.2013) (in Estonian).