

# Estonian Municipal Law, Municipal Policy and Municipal Politics on the Threshold of Changes

Estonian municipal law is on the threshold of substantial reforms. Presently in Estonia, catch phrases such as administrative-territorial reform, administrative reform, etc. have emerged in the area of a local government. In essence, practically every day passes with the media presenting articles and viewpoints relating to reform. It has also been said that rather than talking about a reform, it would be more correct to refer to administrative reforms, the latter of which would include for example public service reform, administrative territorial reform, reform of management of ministerial areas of governments, reform of operations procedure, decrease in public sector, providing better public services to people, budget reform and a reform of inter-institutional management.<sup>1</sup> Be it as it may, reforming the system of the local government will not be feasible without reforming the municipal law. Thereby, the changes should embrace several pertinent laws. The aggregate of these changes would be targeted to the formation of local governments with adequate administrative potential. The latter follows also from the Constitution of the Republic of Estonia<sup>2</sup> and its articles about the social justice and the state based on the rule of law (§ 10). Municipal law in turn would create preconditions for the municipal policy setting its margins. The theoretical literature about the municipal law mentions that municipal policy is the product of the fact that elections take place in local governmental units, the political will on the local governmental level is formed, *inter alia*, by the parties and the sole responsibility to address the local issues lies with the local governments and the local governments associations. To carry out this function they have been provided with a broad range of possibilities facilitating the enforcement of the image of purposefulness (politics). Thus, whereas the municipal law provides a detailed explanation on the relation of the effective law and its interpretation, the area of law as it *is* (German: *Istbestand*) and as it *ought* (German: *Istzustand*), municipal politics is filling the gaps left by the legislator and the Constitution.<sup>3</sup> Within the frames of the general term of municipal policy it is possible to distinguish local staff policy, financial policy, social policy, *i.e.* also the

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<sup>1</sup> Ü. Madise. Kollegiaalne vastutus viib vankri kraavi. Haldusreformi eri valdkondade eest peaksid hoolitsema konkreetsed ministeeriumid (Collegiate Responsibility Will Take the Carriage off the Drive. Specific Area of the Administrative Reform Should be Governed by Appointed Ministries). – Postimees, 4 April 2000.

<sup>2</sup> Eesti Vabariigi põhiseadus (Constitution of the Republic of Estonia) – Riigi Teataja (the State Gazette) 1992, 26, 349.

<sup>3</sup> R. Stober. Kommunalrecht in der Bundesrepublik Deutschland. 3., völlig neu bearb. Und erw. Aufl. Stuttgart, Berlin, Köln: Verlag W. Kohlhammer, p. 17

municipal politics. The latter represents a branch of law of the municipality that compares the positive municipal law to the existing socio-economic situation and also to the enforcement of the constitutional order. It is based on the distinguishing of the “is” and “ought” norms and it will establish the necessary targeting and amendments of the municipal law and will be beneficial to its elaboration. Municipal law is therefore nothing more than municipal politics in movement. The latter considers the dynamism of the municipal law and reflects several concepts of enforcement of the municipal legal order.<sup>\*7\*8</sup>

The administrative reform of local governments being planned in Estonia is going to affect the broad spectrum of the municipal policy, including undoubtedly also the basic areas of municipal politics: order policy, structural policy and procedural policy.<sup>\*9</sup>

The frames of this article, but also the fact that a lot of essential issues has not been settled, *i.e.* the political decision is absent, would allow merely to outline the discussion points, thereby omitting several relevant issues like the organisational remedies for the reform, financing, etc.

It is clear that essential changes in the municipal law should be systematic and based upon firm conceptual foundation(s). The regrettable fact is that the conception<sup>\*10</sup> (hereinafter: Conception) elaborated by the Ministry of Internal Affairs pertaining to the administrative reform in the area of local governments, which is at the author’s disposal, is relatively sketchy and leaves a lot of fundamental issues untouched. It is possible that this attitude is not *per se* inappropriate, as the Minister has announced the necessity of carrying out the reform dialoguing with people as much as possible. It is difficult to believe that any other attitude would have been acceptable. The Cabinet has discussed the Conception twice and has taken the following positions according to the media:

- Administrative-territorial reform commissions shall discuss the merger of the units of local county governments. All county governors shall submit a planning of their county to the Ministry of Internal Affairs, along with the new local government units’ map, in the second quarter of 2001.
- As a result of the administrative reform, Estonia will remain with 60–80 local government units (alternatively up to 110), and corresponding borders should be fixed by spring 2001.
- As a general rule, each post-reform commune should have at least 3,500 residents, suburban communes 4,500 residents and cities with less than 10,000 residents shall have to merge its surrounding area.
- There will be no compulsory merger of counties, however, their merger will be accompanied by the extension of the borders, thus changing the area and in some cases the question of abolishing counties reduced to a critical extent may emerge.
- The state is not going to take the “coercive” role, rather its activity will be confined to counselling and consulting.
- The state will not offer merger rewards to local government units on the reason that such funds do not exist.<sup>\*11</sup>

The Conception has the general objective of the formation of a local government system that could be characterised as follows:

<sup>7</sup> *Ibid.*, p. 18.

<sup>8</sup> The coalition agreement of the parties in government (Estonian Reform Party, Pro Patria, Moderates) has expressed the following positions with regard to local government: greater concern to manage the operation of local governments, increase in the party system on the local governmental level; ensuring remedies for the constitutional right of citizens to receive information from the state and local governmental agencies and to enact the law on freedom with regard to information, elaboration of the public service system for more openness; joining inter-institutional communication system of local governments into one electronic system, making the functioning of the State Audit Office more effective and specification of its functions, adding to it a function to ensure the effective use of budgetary funds by the local governments and evaluation of the efficiency of the public sector; bringing the decision-making as close to the population as possible, *i.e.* to the level of the local governments. Increase in the role of the local governments and their empowerment, comprising: (1) changing proportions of the division of the state support to more and less wealthy local governments; (2) performance of the administrative-territorial reform on the basis of the systematic analysis and considering the specifics of each local governmental unit. Any scheme of joining the counties will be discussed only after the analysis of all of the relevant aspects; increase in the possibilities and enlargement of rights of local governments in distribution of the social benefits. The increase in the educational aids that is distributed through local governments for the purpose of ensuring the necessary minimum for purchasing of school lunches, textbooks and other school outfits for every family; the local government is responsible for municipal pre-school and basic education, while the state is responsible for the elaboration of the qualified upper secondary education in each region through an state county upper secondary schools’ net, supporting the planning by local governments. Coalition agreement. – Available at: <http://www.gov.ee/valitsus/MIRkoal.html> (25 April 2000).

<sup>9</sup> For a more detailed explanation of these terms, see: R. Stober (Note 3), p. 18.

<sup>10</sup> Haldusreform kohaliku omavalitsuse valdkonnas. Kontseptsioon (The Administrative Reform in the Area of Local Governments. The conception). Available at: <http://www.riik.ee/siseministeerium/kora.htm> (25 April 2000).

<sup>11</sup> A. Ideon. Haldusreform koondab sadu ametnikke (Administrative Reform To Lay Off Hundreds of Officials). Most active persons of nearly 15,000 local officials may start their way to private business already earlier. – Postimees, 13 April 2000.

A. Ammas. Maavanemad muudavad vallapiire (County Governors Changing the County Borders). – Eesti Päevaleht, 25 April 2000.

- Democratic leadership and participation of residents in the decision-making on essential issues.
- Adequate level of legislative regulation and its unambiguity.
- Equilibrium of the tasks delegated to a local government, optimisation of means for their fulfilment and the parameters concerning the differences in the size of the county.
- Accessibility of public services to the population and their quality.

Thereby, the document foresees changes in the following areas:

- Organisational arrangement of a local government (preconditions: the changes in Local Government Council Election Act<sup>\*12</sup>, Local Government Organisation Act<sup>\*13</sup>, Government of the Republic Act<sup>\*14</sup> and other laws);
- Budgetary arrangement of the local government (preconditions changes in the Rural Municipality and City Budget Act<sup>\*15</sup>, Rural Municipality and City Budgets and State Budget Correlation Act<sup>\*16</sup>, Local Taxes Act<sup>\*17</sup>, State Budget Act<sup>\*18</sup>, Taxation Act<sup>\*19</sup> and other laws).
- Administrative-territorial arrangement of a local government (preconditions: the conception for administrative-territorial reform of local government and the draft of the Local Government Administrative-Territorial Reform Act<sup>\*20</sup> etc).

Paradoxically, functioning of local governments is not the issue of this document, it is briefly mentioned, that this area falls within the competence of the Ministry of Finance.

Pursuant to § 156 (1) sentence one of the Constitution of the Republic of Estonia, representative body of a local government is the council which shall be elected in free elections for a term of three years. Local Government Council Election Act<sup>\*21</sup>, which is a constitutional law, prescribes elections due to merger of local governments in addition to the regular elections (§ 1<sup>2</sup>). The Conception repeats the objective set out in the coalition agreement to be conducive with partyism in local councils. As this is implemented, the formation of a political will undoubtedly changes. The present legal regulation, pursuant to which the last local government council elections were executed, provides that a political party or an election coalition formed according to the prescribed procedure (it may be formed by political parties or Estonian citizens who have the right to vote) has the right to present candidates for registration. An independent candidate may be presented for registration by any Estonian citizen who has the right to vote, including a person who intends to run as a candidate himself or herself for a local government's council elections. However, such possibility is absent for election coalitions. It is known by now, that the Government of the Republic has taken a fundamental decision to complete the reform entirely by 2002.<sup>\*22</sup> The partyism in councils definitely has advantages – the most important could be considered as the solidification of the political responsibility as compared with the present often temporary election coalitions that fall apart soon after the elections.<sup>\*23</sup> Nevertheless, the author of this article sees the artificial and speedy coercive implementation of partyism on the local level as pushing the events ahead quickly. In reality, most of the councils of the local governments have no partyism with the exception of some bigger cities. For instance, candidates were

<sup>12</sup> Kohaliku omavalitsuse volikogu valimise seadus (Local Government Council Election Act) – Riigi Teataja (the State Gazette) I 1996, 37, 739; 38, 1999, 60, 618.

<sup>13</sup> Kohaliku omavalitsuse korralduse seadus (Local Government Organisation Act). – Riigi Teataja (the State Gazette) I 1993, 37, 558; 1999, 82, 755. It is also possible to fix the necessary amendments in the new Local Government Act.

<sup>14</sup> Vabariigi Valitsuse seadus (Government of the Republic Act) – Riigi Teataja (the State Gazette) I 1995, 94, 468; 1998, 1999, 95, 845.

<sup>15</sup> Valla- ja linnaelarve seadus (Rural Municipality and City Budget Act) – Riigi Teataja (the State Gazette) I 1993, 42, 615; 2000, 7, 40.

<sup>16</sup> Valla- ja linnaelarve ning riigieelarve vahekorra seadus (Rural Municipality and City Budgets and State Budget Correlation Act) – Riigi Teataja (the State Gazette) I 1995, 94, 1627; 1996, 87, 1542.

<sup>17</sup> Kohalike maksude seadus (Local Taxes Act) – Riigi Teataja (the State Gazette) I 1994, 68, 1169; 1999, 101, 903. Alternative would be a new Local Taxes Act.

<sup>18</sup> Riigieelarve seadus (State Budget Act) – Riigi Teataja (the State Gazette) I 1999, 55, 584; 92, 824. A draft of a new State Budget Act is under consultation. Available at: <http://www.fin.ee> (2 May 2000).

<sup>19</sup> Maksukorralduse seadus (Taxation Act) – Riigi Teataja (the State Gazette) I 1996, 35, 714; 1999, 92, 826.

<sup>20</sup> Presently effective Territory of Estonia Administrative Division Act (Eesti territooriumi haldusjaotuse seadus – Riigi Teataja (the State Gazette) I 1995, 29, 356; 1999, 93, 833) is more suitable for the enforcement of few administrative-territorial rearrangements than a complex reform.

<sup>21</sup> Subsection 104 (2) 4 of the Constitution provides *expressis verbis* that a majority of the membership of the *Riigikogu* passes and amends the Local Government Election Act.

<sup>22</sup> Valitsuskabinet arutab teistkordselt haldusreformi (The Governmental Cabinet will Discuss the Administrative Reform for the Second Time). Available at: <http://www.riik.ee/siseministeerium/pressiteated/00-04-11-2.htm> (25 April 2000).

<sup>23</sup> See e.g. W. Gisevius on functions of parties and factions in local government. The policy of local government in the Federal Republic of Germany. Friedrich Ebert Foundation, 1996 pp. 70–73 and 83–87.

presented by parties or election coalitions by parties only in 99 communes or cities in 1996<sup>\*24</sup>, and thereby, those candidates often failed to obtain seats. For comparison, it has to be noted that at present there are 247 local government units in Estonia – 42 cities and 205 communes. This number was more or less the same in 1996. A proposal to consider for the purposes of financing not only the number of seats in *Riigikogu* but also representation in local councils, seems to be an effective remedy for increasing the interests of parties in participation in the local elections. The attempt to deny the participation of election coalitions in campaigns on the local level should be assessed more broadly. Namely, *Riigikogu* has already amended correspondingly the *Riigikogu* Election Act.<sup>\*25</sup> Accordingly, an independent candidate or a list of candidates may be presented by a party, and an independent candidate may be presented by an Estonian citizen with the right to vote.<sup>\*26</sup> The implementation of this principle would certainly benefit bigger parties on local elections.

The independence of a local government in resolving issues and managing is subject to limitation. In principle, the term “independently” in § 154 (1) of the Constitution of the Republic of Estonia is synonymous to the term “at its own responsibility” as used in the theory of a local government.<sup>\*27</sup> “Own responsibility” is defined as a right of a local government to resolve freely, *i.e.* without guidelines by the state and to manage the issues of local life (The audit of legality of local government acts does not conflict with this guarantee).<sup>\*28</sup> Independence is one element of the guarantee resting with a local government as a legal authority. In that context, it is worthwhile to note the judgement of the Constitutional Review Board of the Supreme Court of 4 November 1993 regarding the proposal by the President of the Republic pursuant § 107 of the Constitution of the Republic of Estonia for the declaration of the Taxation Act enacted by the *Riigikogu* on 28 September 1993 to be contrary to the Constitution of the Republic of Estonia (III-4/A-4/93).<sup>\*29</sup> It is said in the reasoning part of the judgement: “Pursuant to § 154 of the Constitution of the Republic of Estonia, local governments resolve local issues and manage and they shall operate independently pursuant to law. Subsections 7 (2) and (5) of the Taxation Act are contrary to the provisions of § 154 and § 157 (2) of the Constitution of the Republic of the Estonia, because determining the substance of a tax, its approval and registration by the Ministry of Finance and according to the procedure established by him or her, shall preclude the independent action for a local government in establishing taxes according to the law”<sup>\*30</sup>. It seems that the representatives of central administrative agencies have started to comprehend the above-mentioned principle, although opinions are expressed from time to time that it is hindering the effectiveness of the executive activity.

As mentioned above, it is possible to talk about diverse policies within the framework of the municipal policy. Within the context of the administrative-territorial reform, **staff policy** of a local government has emerged as a central topic. It relates to the staff power as one element in the catalogue of the spheres of responsibilities of a local government. Staff power, in a more broader sense, would empower a local government to resolve general staff issues (for example planning the seats, assignment to posts and promotion conditions, remuneration limits, etc.); staff power in a narrower sense allows a local government to resolve concrete staff issues at its own discretion. As a rule, only parts of this competence are regarded as local issues; as a rule, the state empowers a local government only to resolve concrete staff issues and considers general judgements (for example promotions and remuneration issues) to be national.<sup>\*31</sup> Pursuant to § 30 of the Constitution of the Republic of Estonia, offices in state agencies and local governments shall be filled by Estonian citizens, on the basis of and pursuant to procedure established by law. These offices may, as an exception, be filled by citizens of foreign states or stateless persons, only in accordance with the law. In the context of the administrative-territorial reform, a drastic decrease in the number of public servants of a local government may be foreseen – it has been suggested that this may be as high as 50%

<sup>24</sup> See Kohaliku omavalitsuse volikogu valimised 20. oktoober 1996 (Elections of the Local Government Councils 20 October 1996). Tallinn, National Election Committee, 1997, p 328

<sup>25</sup> *Riigikogu* valimise seaduse §-de 8, 26, 27, 29, 38 ja 40<sup>1</sup> muutmise seadus (the Act of Amendment §§ 8, 26, 27, 29, 38 and 40<sup>1</sup> of the *Riigikogu* Election Act) – *Riigi Teataja* (the State Gazette) I 1998, 102, 1678.

<sup>26</sup> *Riigikogu* valimise seadus (*Riigikogu* Election Act) § 26 (3) – *Riigi Teataja* (the State Gazette) I 1994, 47, 784; 1999, 18, 22.

<sup>27</sup> R. Stober. Verfassungsrechtliche und verfassungspolitische Beurteilung der Bestimmungen über die örtliche Selbstverwaltung in der Verfassung der Republik Estland. Gutachten erstellt im Auftrag der Deutschen Stiftung für internationale rechtliche Zusammenarbeit e. V. für das Ministerium der Justiz Estland. Hamburg 1997, p. 12.

<sup>28</sup> Th. Maunz, G. Dürig. Grundgesetz. Kommentar. Band II. München: Beck, 1991, Art. 28, Rn. 66.

<sup>29</sup> *Riigi Teataja* (the State Gazette) I 1993, 72, 105.

<sup>30</sup> *Ibid.*

<sup>31</sup> E. Schmidt-Aßmann. Kommunalrecht. – P. Badura u.a. Besonderes Verwaltungsrecht. 10., neubearbeitete Auflage. – Berlin, New York: Walter de Gruyter, 1995, p. 22, Rn. 23.

decrease. Using hereby the words of the present Minister of Internal Affairs: “In broad terms, the merger of four communes and cities will leave two surplus governments. On the one hand – social catastrophe. On the other hand – better use of better staff.”<sup>32</sup> Irrespective of the reform schedules of the government, the restructuring of the management has commenced in Tallinn, the capital city. There also, broad lay-offs can be foreseen. And yet, the staff power is not merely for the resolving of lay-off issues and the Government of the Republic cannot prescribe the exact number of servants for local governments.<sup>33</sup> In any case, the judgements to be taken by merging communes/cities regarding the staff policy<sup>34</sup> will be more complex and very difficult for the participants, thus making it very likely that the results shall be diverse depending on, for example, the political powers represented in councils.

## Local Financial Policy

This area is of especial importance to a local government and the necessity for its restructuring is beyond doubt. Legal frames for the local financial policy are provided by the municipal financial law; to mention hereby the State Budget Act, Rural Municipality and City Budget Act, Rural Municipality and City Budgets and State Budget Correlation Act, Local Taxes Act, specific tax laws, and specific laws assigning local governments the fulfilment of state obligations, that the state is obliged to finance from the state budget according to § 154 (2) of the Constitution of the Republic of Estonia. The provisions of the European Charter of Local Government should be added to this list.<sup>35</sup> Estonia has ratified the above mentioned Charter without reservations.

In order to clarify, hereby the formation of the revenue of the local budgets shall be presented. Commune and city budgets collect a certain percent of certain state taxes:

- 1) One hundred per cent of the land tax<sup>36</sup> (1999 – 255,000,000)<sup>37</sup>;
- 2) Fifty-six per cent of the income tax paid by or withheld from a resident natural of the taxpayer’s residence<sup>38</sup> (1999 – 3,790,100,000);
- 3) Five per cent of the gambling tax payable for a gambling location if a game of chance, game of skill, betting or totalisator is organised.<sup>39</sup>

The share of local taxes is nominal.

State Budget designates the following support and allocations to local governments:

- 1) From the Support Fund (support will be determined according to the city or commune revenue and population)<sup>40</sup>;
- 2) Specific allocations for concrete investments<sup>41</sup>;
- 3) Additional support to local governments in exceptional geographical and economic conditions.

<sup>32</sup> A. Ideon. Haldusreform koondab sadu ametnikke (Administrative Reform To Lay Off Hundreds of Officials). – Postimees, 13 April 2000.

<sup>33</sup> Avaliku teenistuse seadus (Public Service Act) – Riigi Teataja (the State Gazette) I 1995, 16, 228; 2000, 28, 167). Pursuant to § 11 (1) of the Act, the structure, staff and salary rates of public servants of local government administrative agencies shall be approved by the local government council.

<sup>34</sup> The question of how many local governments are there that could be addressed as having a meaningful staff policy, should be treated separately. The author of the present article does not have data of any relevant researches and on merely empirical grounds it could be ascertained that staff policy could mostly be attributed to cities (especially, bigger cities) and even that with reservations.

<sup>35</sup> Riigi Teataja (the State Gazette) II 1994, 26, 95.

<sup>36</sup> The rate of land tax shall be 0.5–2.0% of the assessed value of land annually. Exceptionally, until 31 December 2000, the rate of land tax for areas under cultivation and for natural grasslands and forest land shall be 0.3% to 1.0% of the assessed value of the land annually. (Maamaksu seadus (Land Tax Act) § 5 (1) and § 11 (1) – Riigi Teataja (the State Gazette) I 1993, 24, 428; 1997, 82, 1398). The tax rate is established by the local government council uniformly for both categories and may be amended only as of the start of the budgetary year.

<sup>37</sup> 2000. aasta riigieelarve eelnõu seletuskiri (Explanatory Note to the Draft of the State Budget of 2000). Available at: <http://www.riigikogu.ee/ems/index.html> (25 April 2000).

<sup>38</sup> Tulumaksuseadus (Income Tax Act) § 5 (1) – Riigi Teataja (the State Gazette) 1990, 101, 903.

<sup>39</sup> Hasartmängumaksu seadus (Gambling Tax Act) § 8 (1) – Riigi Teataja (the State Gazette) I 1995, 95, 1630; 1997, 11, 95.

<sup>40</sup> Valla- ja linnaelarve ning riigieelarve vahekorra seadus (Rural Municipality and City Budgets and State Budget Correlation Act) § 5.

<sup>41</sup> Valla- ja linnaelarve ning riigieelarve vahekorra seadus (Rural Municipality and City Budgets and State Budget Correlation Act) § 6.

For instance, the present budget year foresaw budget allocations to city and commune budgets in the total amount of 950,300,000 (EEK) (1999 – 910,518,000).<sup>\*42</sup>

The revenue and support of local governments as of 29.02.2000, is the following<sup>\*43</sup>:

Local governments			
		Filled as of 29.02.00	
<b>I</b>	<b>Total revenue and support (II+VII)</b>	915.2	422.8
<b>II</b>	<b>Total revenue (III+VI)</b>	750.6	344.6
<b>III</b>	<b>Current revenue (IV+V)</b>	740.1	342.7
<b>IV</b>	<b>Revenue from taxes</b>	636.2	301.6
1	Income tax	619.7	291.1
1.1	Individual income tax	619.7	291.1
4	Ownership tax	11.7	8.3
5	Domestic taxes on goods and services	4.8	2.2
5.1	VAT tax	0.7	0.1
<b>V</b>	<b>Nontax revenue</b>	103.9	41.1
8	Revenue from enterprising and property	80.5	33.1
9	Administrative payments and remunerations, nonproductive and occasional sales	20.7	6.4
10	Fines	1.1	0.6
<b>VI</b>	<b>Capital earnings</b>	10.5	1.9
13	Sale of fixed assets	10.2	1.9
15	Sale of land and immaterial assets	0.3	0.0
<b>VII</b>	<b>Supports</b>	164.6	78.2
17	From abroad	1.7	1.7
18	From another governmental level	162.9	76.5

<sup>42</sup> The distribution is as follows:

**unspecified** allocations to city and commune budgets:

1) allocations to the commune and city budgets' Support Fund, distributed according to the procedure provided in § 2 of the State Budget Act of 2000 (Seadus "2000. aasta riigieelarve" – Riigi Teataja (the State Gazette) I 2000, 1, 1) – 865,800,000 (1999 – 734,177,000);

2) allocations to the commune and city budgets' Support Fund, distributed according to the procedure established by the Government of the Republic – 3,000,000 kroons (including allocations to local governmental units in exceptional geographical and economic conditions – 3,000,000) (1999 – 60,000,000 kroons, including communal Support Fund 55,000,000 kroons and allocations to local governmental units in exceptional geographical and economic conditions – 5,000,000);

**specified** allocations to city and commune Support Fund, distributed according to the procedure established by the Government of the Republic – 81,500,000 kroons (1999 – 116,341,000).

For the purposes of investment, the commune and city budgets were allocated the total amount of 224,767,500 kroons (1999 – 433,035,000).

<sup>43</sup> Valitsussektori tulud ja toetused seisuga 29.02.2000 (Revenue and Subsidies of the Governmental Sector as of 29.02.2000). Available at: [http://www.fin.ee/majandus/elarve/finantsstatistika/2000/vs\\_tulud\\_ja\\_toetused.htm](http://www.fin.ee/majandus/elarve/finantsstatistika/2000/vs_tulud_ja_toetused.htm) (26 April 2000).

The real financial situation of local governments is characterized by the analysis of the budget revenue and expenditure of local government units executed by the State Audit Office.<sup>\*44</sup> The following conclusions can be made: § 154 of the Constitution of the Republic of Estonia is not followed. According to the data of local governmental units, at least 500 legal acts provide for state obligations, but in most of the cases, it has not been regulated as to how the resulting expenditure will be compensated in spite of the State Budget Act provisions. Local taxes do not serve their purpose. Their administration will cost more than the collected revenue. After all, imposing such taxes is unpopular, economically harmful and does not conduce to the local entrepreneurship. The share of local taxes in the structure of the revenue of local governmental units is nominal (circa 1% of the revenue) and its increase could not be foreseen. Nearly half of the natural persons' income tax is collected in North Estonia, therefore it has larger revenue basis than other regions. Only 9 local governmental units have revenue that exceeds expenditure, 245 local governmental units need state support. Therefore, the majority of local governmental units is not able to act effectively and provide their residents with the necessary public benefits. Local governments are not capable of supporting the development of neither the private sector nor society. Taking into account the Estonian conditions, it is not feasible to create a uniform revenue system that would guarantee all the local government units the 100 per cent coverage of expenditure with their own revenue. The cost of general administration per resident is high and differs in regions. Small revenue would not allow financing education or science on a necessary level.

No final decisions have been taken yet with regard to the structure of revenue of local budgets and changes in the mechanism of support by the state budget. However, the Ministry of Internal Affairs has proposed the following fundamental changes:

1) Establishment of two taxes independent of each other on the basis of the income tax of individuals; state tax on the basis of the share presently collected by the state budget and local tax (income tax collected by local governments) on the basis of the share of the income tax presently collected by local governments.<sup>\*45</sup> Thereby, the local government could be empowered to change the tax rate (increase or decrease within the limits of two per cent comparing to the estimated tax rate). To calculate the state support, the estimated tax rate will serve as a foundation and the application of the different tax rates will be implemented on the basis of income declarations.

In order to implement such changes, the taxation should be changed, while the right of local governments to change the tax rate would hardly give any positive effect. If, for instance, the Piriissaare commune collected income tax of more than 63,300 kroons in 1999<sup>\*46</sup>, then it will be of nominal meaning to the financial policy whether it will be 64,566 or 62,034. As a whole, such change in tax administration would be too costly and bureaucratic.

2) Collection of the motor vehicle tax and the entertainment tax in the local budgets and establishment of the limits to the tax by law; the local council will have the power to specify the tax.<sup>\*47</sup>

In fact, the motor vehicle tax and the entertainment tax are currently collected from within the local budgets (Local Taxes Act § 12 (4) and § 14 (3)). The motor vehicle tax could still be a state tax, because the tax object is not of local character. However, no commune or city has imposed the entertainment tax as it is.

3) The fee for mineral extraction is excluded from the revenue of a local government. The additional needs of the local governments that had used the basis of resource fees shall be excluded, the Support Fund of local governments shall increase accordingly and the resource fees will be converted to the specified allocation for the purpose of compensating the damages incurred on the natural environment (this change

<sup>44</sup> It was based upon the data in the Ministry of Finance regarding the collection of taxes in local governmental units as of 1997 and monthly reports of local governmental units about budget collection as of 01.01.1998 and the data regarding household accounting of population of communes as of 01.01.1997. See Peakontrolöri 18. jaanuari 2000. a. otsus nr. 70-13/008 Kohalike omavalitsüksuste eelarvete tulude ja eelarve kulude analüüs (Resolution No. 70-13/008 of 18 January 2000 of the Chief Auditor Analysis of the Budget Revenues and Expenditures of Local Governmental Units). Available at: [http://www.sao.ee/Est/Tulemus/Otsus2000/Lc/70\\_13\\_008.html](http://www.sao.ee/Est/Tulemus/Otsus2000/Lc/70_13_008.html) (26 April 2000).

<sup>45</sup> Two alternatives have been presented: 1) a new local taxes and payments act would determine the limits for the said taxes and the tax rates to compensate the removal of the state budget Support Fund. If this act does not fix the rates, it should be done in the Rural Municipality and City Budgets and State Budget Correlation Act; 2) the separation of the state and local income tax within the frames of Income Tax Act amending it considering the rules on imposing the land tax.

<sup>46</sup> Omavalitsuse eelarvetesse ülekantud tulumaks (Income Tax Remitted to Budgets of Local Governments). Available at: <http://www.ma.ee/statistika/omvtm.3shtml> (26 April 2000).

<sup>47</sup> Two alternatives have been presented: 1) both taxes would be the objects for a new local taxes and payments act; 2) both taxes would be established by separate laws as state taxes.

will mostly effect the communes in East-Viru county, on the territories of which the oil-shale resources are located).

This approach seems to be reasoned. Oil-shale (but not least) is the national asset of Estonia. It is also worthwhile to mention, that natural resources payments were collected in the local budgets in 1999 in the amount of 65,000,000 EEK.<sup>\*48</sup>

4) Elaboration of an act regulating new local taxes and payments is foreseen. It is surely necessary, but not within the frames of one legal act. For instance, in the area of payments a lot of arbitrary action is around.<sup>\*49</sup>

The next area influencing the municipal financial policy subject to reforms is planned to be the mechanism of state budget support to local budgets. Understandably, this area is facing remarkable tensions. A characteristic example is the extremely critical inquiry of the Estonian Local Government Associations' Union to the Prime Minister in respect of the distribution of operational appropriations to commune and city budgets contained within the state budget of 2000.<sup>\*50</sup> It has also been planned to complement the distribution mechanism from the state budget Support Fund to local budgets (to change the support distribution formula pursuant to the tax basis in a way to ensure the increase in base revenues including the support fund due to the higher level of tax income per resident; to base the calculated own revenue on a three-year period instead of a one-year period; the possible complementation of the distribution mechanism of the Support Fund with the criterion of expenditure needs); and amendment to the Rural Municipality and City Budgets and State Budget Correlation Act.

In the field of assets and investments of commune/city, the Conception elaborated by the Ministry of Internal Affairs proposes to implement the principle of depreciation for municipal real estate; to separate the budgets of local current budgets and investment budgets and to reform the system of municipal investment dividing the present state investments programme into two – state investment support (new construction and reconstruction) and repair fund (depreciation calculation of the revenue basis of local governments). The office of the Legal Chancellor has mentioned the need to elaborate and regulate by law the problem of division of the budget into cash and assets budget (although the latter is only emerging as an object of regulation).<sup>\*51</sup>

Corrective actions have been planned for the supervision of the financial liabilities of local governments and the local governmental units, which appear to be permanently insolvent. These would embrace the mechanism for the cases of insolvency of local governmental units and the implementation of sanction mechanisms in case of loans or other financial obligations of local governmental units; the complementation of the register of the liabilities of Local Governmental Units. It has already occurred, that a commune has virtually become bankrupt due to its own irresponsible financial policy (for instance Vormsi commune).<sup>\*52</sup>

<sup>\*53</sup> In prewar Estonia, such occasions were legally regulated. However this would not correspond to the European standards of today.<sup>\*54</sup>

The principle of the unitary state follows from § 2 (2) of the Constitution of the Republic of Estonia.<sup>\*55</sup> According to this principle, Estonia has an integral local government system. The issues of the local government organisation are comprised in the field of order policy, which in turn is the part of municipal

<sup>48</sup> 2000. aasta riigieelarve eelnõu seletuskiri (Explanatory Note to the Draft of the State Budget of 2000). Available at: <http://www.riigi.kogu.ee/ems/index.html> (25 April 2000).

<sup>49</sup> J. Liventaal, p. 17.

<sup>50</sup> EOÜ pöördumine peaministri poole (Estonian Local Government Associations' Union's inquiry to the Prime Minister). Available at: <http://www.ell.ee/discus/messages/59/433.html> (25 April 2000).

<sup>51</sup> J. Liventaal, p. 17.

<sup>52</sup> See A. Ammas. Pankrot: Vormsi ähvardas pankrotti minna, kuid sai kontrollid kaela (Bankruptcy: Vormsi Threatened to Go Bankrupt, but was Subjected to Auditors). – Eesti Päevaleht, 11 December 1997.

<sup>53</sup> Legal regulation of the loan policy for communes is in Valla- ja linnaeelarve seadus (Rural Municipality and City Budget Act) § 8.

<sup>54</sup> For instance, pursuant to § 204 of the 1937 Vallaseadus (1937 Commune Act – Riigi Teataja (the State Gazette) I 1937, 32, 310), the Government of the Republic could stop the activity of the commune council on the proposal by the Minister of the Internal Affairs, if the solvency problems had reached the extent of not being capable of the fulfilment of its obligations. In case of the stop in the activity of Commune Council, the tasks of the elected commune government and council were delegated to the governor appointed by the Minister of the Internal Affairs. The Minister of the Internal Affairs could also appoint assistants to the governor. The decisions of the appointed governor in the matters that were subject to council decision-making, were presented to the corresponding local government except the decisions that had to be approved by a Minister or Agency by law. If the local government appointed in such way had re-established order in the management of the local government, the Government of the Republic would decide on the proposal by the Minister of the Internal Affairs whether to allow the regular agency to return.

politics. This field is presently regulated by the Local Government Organisation Act and the draft of a new Local Government Act, now in the proceedings in the *Riigikogu*.<sup>56</sup> The Conception foresees the reorganisation of the commune and city governments; the main content of it would be the following:

- A government shall be formed of council members and representatives of coalition not belonging to the council. According to the Statutes of a commune/city, the members of the government will retain their seats in the council or give up the seat thus allowing the replacement candidate to fill the seat;
- A rural municipality mayor/city mayor manages the work of the council and the government and shall form the government;
- Agency shall be managed by a commune/city director, appointed by the Government with the term of office of 4 to 8 years according to the Statutes of the commune/city;
- The agency of the commune/city will be named as commune/city office. An existing office will be incorporated as a department.

In fact, the postulates above set out no extraordinary news. In many states, the government would branch out through commissions of the council<sup>57</sup>, the posts of the chairman of the council and the governor had been merged in Estonia at an earlier date.<sup>58</sup> Nevertheless, the author of this article could not identify the reasons and analysis to discard the structure of the present executive structure of local government.

According to the Conception, public law local government associations of counties would be formed comprising all of the local governmental units of that county. Due to the intention to examine this topic more closely, it shall not be discussed in further detail here.

In summary, it is possible to say that political decisions intended to implement reformation at the level of local government will radically change the municipal laws that are currently in effect. Whether these changes prove to be fully rationalised is not yet clear. In the context of the excessive dynamism inherent in the municipal law, it would not be superfluous to remember the old Estonian proverb: “take measure nine times and make a cut once”.

<sup>55</sup> See R. Maruste. Põhiseadus ja selle järelevalve. Võrdlevad selgitused. Kommentaarid. Tekstid (The Constitution and its Supervision. Comparative Explanations. Commentaries. Texts). Tallinn: Avatud Eesti Fond, 1997, pp. 81–82.

<sup>56</sup> Kohaliku omavalitsuse seaduse eelnõu (Draft of the Local Government Act). Available at: <http://riigikogu.ee/ems/index.html> (2 May 2000) (in Estonian).

<sup>57</sup> See for example S. Häggroth, K. Kronvall, C. Riberdahl, K. Rudebeck. Swedish Local Government. Traditions and Reforms. – The Swedish Institute, 1993, pp. 57–65. A review of Danish local government. Danish–Estonian seminar. 8–10 January 1992, editor M. Kaldmäe pp. 54–67.

<sup>58</sup> See § 6 (7) of Eesti Nõukogude Sotsialistliku Vabariigi kohaliku omavalitsuse aluste seaduse (The ESSR Local Government Fundamentals Act) § 6 (7) – Eesti NSV Ülemnõukogu ja Valitsuse Teataja (the ESSR Supreme Council and Government Gazette) 1989, 34, 517; 1991, 27, 324.