

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

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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-Martino, 'Reform and Modernization of Urban Government in France' – V. Hoffmann-Martino, 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.