Transfer of state land into municipal ownership

Audit Report No. 2-5/04/100, 24 August 2004

Executive Summary

The State Audit Office audited the transfer of state land into municipal ownership on the basis of its work plan for the year 2004. The purpose of the audit was to obtain assurance that the municipalisation of land has been organised in compliance with legislation and on the basis of the objectives of the land reform. Auditees included the Ministry of the Environment, Harju County Government, Saare County Government, Kuressaare City Government, Kaarma Rural Municipality Government and Rae Rural Municipality Government.

Pursuant to the Land Reform Act, a portion of state land is transferred into municipal ownership, thus creating conditions for the development and more efficient management of local governments. The Government of the Republic has established the procedure for transfer of state land into municipal ownership. Land is transferred into municipal ownership without charge.

At the end of the year 2003, municipal land registered in the land register amounted to 13,656 ha, incl. 929 ha in Saaremaa and 3668 ha in Harju County as regards the counties covered by the audit.

Main findings

- Entities organising the transfer of land interpreted differently the opportunity of applying for land under buildings and constructions retained in municipal ownership and the land for servicing them, as established by law. The Land Board, which is entitled to provide explanations for implementation of legislation relating to the land reform, stated that buildings and constructions had to be retained in municipal ownership also after the separation of land. Some County Governors deemed it sufficient if the buildings and constructions were in municipal ownership at the moment of application for the land. Since additional requirements for verification of compliance with that condition were missing, the further use of the land was not monitored.
- On several occasions, local governments had established the right of superficies or the right of use on land transferred into municipal ownership for the benefit of commercial undertakings. Cases where land transferred into municipal ownership free of charge was later sold were frequent.
- The intended purpose of land that had been transferred into municipal ownership was often changed into commercial land or residential land, whereas, had the intended purpose of the land been defined as commercial land or residential land in the first place, it would have been difficult to apply for the land from the state.
- The change of the intended purpose of land was based on either the change of the purpose of use or the detailed plan of buildings. The lifetime of detailed plans was short in several cases. The detailed plans had prescribed the further use of land received from the state, incl. the sale of the land.
- The transfer of land, which had been in municipal ownership as of 16 June 1940, into municipal ownership complied with the requirements established in the Land Reform Act. Not all local governments had such opportunities for municipalisation of land. Hence, local governments were placed in unequal conditions.
- The records of transfer of land into municipal ownership do not provide an overview of the amount of land owned by local governments. In some local governments the actual sizes of municipal land differed materially from the data entered in the land cadastre.
- By now, only one-tenth of the land that the state would presumably need has been finally formalised as the state land reserve. Local governments' lack of information concerning the state land reserve has increased the number of dismissed applications.

Main conclusions

- The provisions of the Land Reform Act which concern the transfer of land into municipal ownership have been violated indirectly, and the sale of land by local governments is at variance with the purpose of the Act. The change of land-related relationships concerning land that had been transferred into municipal ownership indicated that the local governments did not always need that land for performance of the tasks assigned to them.

- The extent of taking general and detailed plans of land into account when deciding on the transfer of land has been insufficient. It has been quite easy to change detailed plans. Therefore, the existence of a detailed plan did not necessarily prove that the land was necessary for the local government.
- The state had not determined the location or sizes of land units belonging within the state land reserve. That circumstance complicates decision-making and satisfaction of the needs of local governments for land.

Main proposals to the Minister of the Environment

- To initiate the preparation of draft amendments of legislation, which would:
    - oblige the organisers to guide themselves more by general and detailed plans that specify the further use of land;
    - specify the rules of formation of the state land reserve and oblige the relevant authorities to determine the size and location of land units belonging within the land reserve, as well establish the terms for the said act;
    - allow the sale of the remaining land pursuant to the procedure established in the State Assets Act or transfer of that land into municipal ownership.

Response of the Minister of the Environment

The Minister noted that the more land that is transferred into municipal ownership, the more problems that will arise in connection with the municipalisation.

The Minister found that land belonging to a building in municipal ownership should not be transferred into municipal ownership in all cases. In such cases the buildings which are not used or are not necessary for performance of the tasks of the local government in question should be sold as movable assets.

The Minister emphasised that the need of local governments for land is first of all determined in the detailed plans. These plans specify the directions of construction of objects essential for local governments. It would be reasonable to establish the requirement to append extracts from the relevant plans and the justification of the application to each application. Until now, applications for transfer of land into municipal ownership under clause 28 (1) 7 of the Land Reform Act have been dismissed only for the reason that the state has decided to retain the land in state ownership.

The proposal to consider the amendment of legislation in order to ensure the use of land transferred into municipal ownership in accordance with the need and obligation to perform the tasks of local governments is worth weighing.

The Minister noted that the state ownership of land is not in conflict with the interests of local governments at present. The size of the state land reserve will become obvious in 1–2 years, after which it will be possible to take final decisions concerning the entire land reserve. One option is to transfer that land into the possession or ownership of local governments (that would probably not be the case with forest land).

Opinion of the State Audit Office concerning the response of the Minister of the Environment

The State Audit Office is grateful to the Minister of the Environment for the thorough and analysing response. The State Audit Office agrees to most of the statements and opinions set out in the response.

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