

Construction activities in local governments with fast population growth

Why are rural municipalities in the vicinity of big cities unable to curb construction activities in their territory?

Report of the National Audit Office to the Riigikogu, Tallinn, 15 March 2011

Summary of audit results

The National Audit Office audited the construction activities in five rural municipalities bordering the City of Tallinn and in three rural municipalities bordering the City of Tartu that were Estonia's main construction sites during the real estate boom in the second half of the 2000s.

For the audit, a number of new structures (residential buildings already complete or to be completed) whose information was not available in the state register of construction works were chosen in these rural municipalities. The audit analysed whether selected structures had been built lawfully, whether local governments had carried out relevant construction supervision and whether the state had supported local governments in carrying out abovementioned supervision with valid databases.

Economic growth brings along a wave of urban sprawl which expresses itself as an interest of a number of tax-payers to move from big city centres to a more private environment near the city, mostly to a local government neighbouring the city. Local governments that are the object of such interest must bear in mind that relevant technical (roads, utility lines, public transport) and social (schools, nursery schools) infrastructure must be ensured for new residents. However, it is in the interest of the current residents of these local governments that the growth in population and new construction areas be planned in a manner that would not damage their current living environment.

In Estonia local governments affected by the urban sprawl were under extreme pressure in the years of construction boom due to poor planning; and they often saw development and construction activities that ran their own course.

As a result of the audit the NAO identified structures built without a building permit in all audited local governments. The number of such structures was largest in Kiili, Jõelähtme, Rae and Tartu Rural Municipalities. In Kiili and Jõelähtme Rural Municipality, duties related to construction supervision were carried out in such a random manner that the NAO had to repeatedly specify the actual state of lawfulness of structures chosen for the audit even after the completion of audit. All audited local governments violated the obligation to disclose data on the building permit and authorization for use in the state register of construction works. Ministry of Economic Affairs and Communications, responsible for the maintenance of the register of construction works, has failed to ensure, either by making inquiries or in any other manner, the publication in the register of complete and accurate data on structures.

Observations made in the course of the audit concern eight rural municipalities, five of which are among the ten most efficient rural municipalities in Estonia according to the local government efficiency index compiled at the request of the Ministry of Internal Affairs. Compiler of the index, consulting and training centre Geomedia, has formulated efficiency as a measure indicating the sum of local government's abilities (potential) in handling things.

The NAO is of the opinion that the audited local governments were mostly bystanders in the illegal construction activities during the construction boom and did not make any attempts to curb it and

that today they only try to eliminate the consequences by regularizing new structures built without a building permit.

Once again it must be said that local governments may fail to fulfil their lawful duties for various different reasons without it having any consequence for the local government. The NAO cannot accept the fact that due to the lack of levers the state is not taking resolute steps in the field that has a significant impact on the environment and human safety. The state must decide whether the organization of construction supervision can be the duty of local governments without any exceptions. The NAO has previously addressed illegal construction activities and matters related to construction supervision carried out by local governments in its 2007 audit “Construction Activities in Coastal and Shoreline Areas” following which the Ministry of Economic Affairs and Communications demonstrated its readiness for analyzing the supervision mechanisms established in the Building Act. However, up to now the Ministry has not yet made any changes in this matter.

Main observations of the NAO:

- **Audited local governments are unable to identify and curb illegal construction activities.** In the course of the audit the NAO found that of the 85 structures in the sample there were 48 new structures that had been built without a building permit or whose permit could not be found by local governments. When the NAO reviewed the situation six months later it became clear that local governments had started infringement proceedings for only a quarter of these structures and in the case of many structures local governments had not even contacted the owners. Kiili Rural Municipality was the most passive in handling the matter of illegal structures.
- **State register of construction works, maintained by the Ministry of Economic Affairs and Communications, does not fulfil its purpose** and does not include or disclose accurate information, which is why official construction statistics compiled on the basis of this register, cannot be accurate either. According to the Land Board, a tenth of existing structures is missing from the register of construction works. Ever since the establishment of the register it has failed to include a number of older structures and it is not checked whether newer data is complete and accurate before it is entered into the register.
- **For local governments competition over new tax-payers is more important than organization of construction supervision.** There were several cases where the audited rural municipality had registered a structure built without a permit as the place of residence of new residence as it failed to check the bases for construction and state of the structure the residents wished to move to. In the new settlement areas of audited rural municipalities only 23% of buildings registered as residence have a authorization for use. A total of 28 permanent residents were registered into 12 of the 48 structures in the NAO’s sample that had been built without a building permit. This means that the rural municipality was under obligation to provide services for them: complete the construction of roads and if necessary, provide a place in nursery schools and schools.

Based on the audit, the NAO wishes to praise Saku Rural Municipality that has a much better overview than other auditees of the construction activities carried out in the territory of the rural municipality and efficient officials had been appointed to positions in the field of construction. Compared to other audited entities, the amount of illegal construction activities was the smallest in Saku Rural Municipality. However, the number of precepts and penalty payments related to violations was the largest. The rural municipality immediately began addressing the matter of two illegally built structures identified in the course of the audit: in both cases a precept was issued for their regularization and by the time the audit was completed both structures had been regularised.

Assessments of audited rural municipalities confirm that capacity is better if there is a sufficient number of positions and competent people are employed.

General comments on the report of the Minister of Economic Affairs and Communications, Minister of Regional Affairs and audited local governments

Minister of Economic Affairs and Communications found that thorough analysis of identified weaknesses shall surely help to improve the efficiency of construction supervision in local governments. Local governments are responsible for construction activities and construction supervision as well as for entering data in the register of construction works. Legislation regulating construction activities does not lay down the obligation of the Ministry of Economic Affairs and Communications to carry out supervision over local governments and the Ministry does not deem such duplication necessary.

Being responsible for the maintenance of the state register of construction works, the Ministry of Economic Affairs and Communications has established an electronic database of the state register of construction works and provided every opportunity and established rules for the entry into register of data related to structures. The Ministry has had no feedback to indicate even the slightest problems in the entry into the register of such data.

The Ministry is under no obligation to nor does it have resources for checking the accuracy of data created in the local governments in the course of processing documents. The Ministry cannot agree with the statement that the register of construction works does not include and disclose accurate information. The register of construction works is a public statistical register and all data related to construction activities and structures in commerce and submitted to the register by owners of structures via local governments must be accurate.

Recording in the register of construction works of illegal structures or structures that for certain reasons have not yet been entered into the register is a matter that needs to be thoroughly analysed and requires state expenditure.

Minister of Regional Affairs stated that in December 2010 he addressed in writing all local government leaders with a request to thoroughly analyse in the local government the performance of duties arising from the Building Act, establish effective measures for identifying illegal structures and ensure accurate entry into the state register of construction works of existing structures as well as organization of address details.

Saku Rural Municipality Government concurred that in the years of construction boom the local governments affected by the urban sprawl were under extreme pressure due to poor planning and that they often saw development and construction activities that ran their own course. On the example of Saku Rural Municipality it can be noted that 2004 was the year that saw the beginning of efficient construction supervision. It was then that a qualified specialist was employed, first precepts were issued and infringement proceedings started. During the construction boom the situation of municipality specialists was worse; they did not know how to assert themselves. For instance, it was easier to initiate a detailed plan than to not initiate it. A negative decision concerning a developer generally led to court action and adverse decisions were avoided. It was difficult to find competent specialists for the local government as the wages in construction companies and planning bureaus were much higher and responsibility smaller. By now construction and planning activities have stabilized and rural municipality government and council can weigh their decisions more thoroughly and they know how to justify adverse decisions. Likewise, it is extremely important that in 2009 Saku Rural Municipality approved the Saku Rural Municipality comprehensive plan. The 1993 comprehensive plan, valid during the construction boom, did not serve as a basis for development

activities in Saku Rural Municipality. At the moment the rural municipality has no problems with identifying and curbing illegal construction activities as systematic construction supervision is in place.

Rae Rural Municipality Government replied that cooperation between offices and officials shall be improved in order to identify and process construction violations. Illegal structure/construction activities notification form has been established which will help register the case in the rural municipality's documents information system and forwarded to be processed by a relevant official. In September 2010 four officials completed a training organized by the Ministry of Internal Affairs in the field of extrajudicial misdemeanour procedure to learn how to use the misdemeanour procedure website. "Explaining the proceedings of violation of law to self-learning officials other than lawyers" has been developed for training officials within the rural municipality. As of 01.01.2011 the rural municipality's land and environment office employs a construction and environment supervision specialist whose main duties include identification and processing of construction violations. As of 01.01.2011 there are monthly reports on the construction and environment violations.

Harku Rural Municipality Government concurs with the audit's recommendations and implemented measures and added that in order to improve its capacity an additional position of a construction supervision specialist has been provided for in the structure as of 2011 and that said specialist shall begin work not later than by the summer of 2011. With this additional position there are now three officials addressing the matters of building permits and authorization for use as well as construction supervision.

Jõelähtme Rural Municipality Government stated that the rural municipality government has established positions related to the organization of construction supervision in the rural municipality. Staff changes have also been made in the field of construction supervision: a competent and experienced construction adviser has been employed. Likewise, its internal procedures and allocation of duties shall be supplemented so as to improve the efficiency of construction supervision in the rural municipality.

Kiili Rural Municipality Government analysed the findings of the report and is of the opinion that the situation in the rural municipality is not as bad as described by the NAO in the audit report. However, rural municipality government admits that significant shortcomings were identified in the course of the audit. Kiili Rural Municipality Government seeks to improve this situation by employing an official to identify illegal structures and issue precepts.

Tartu Rural Municipality Government replied that it is aware of the problems and is actively engaged in eliminating them. To prevent unauthorized construction activities in the rural municipality, the rural municipality government employs a construction specialist whose main duty is to ensure construction supervision.

Luunja Rural Municipality Government admitted that due to Estonia's legislation and administrative capacity in the years of construction boom the local governments affected by the urban sprawl were under pressure from developers and this was often accompanied by uncurbed development and construction activities. In the rural municipality's recently approved 2011–2017 development plan special attention has been drawn to planning and construction activities, with one of the development objectives being a quality, reconditioned and safe living environment as well as the need for thorough and comprehensive planning activities and quality processing of construction projects.

Luunja Rural Municipality Government is of the opinion that execution of construction supervision is a direct obligation of every local government, irrespective of location and population processes.

Rural municipality government concurs with the opinion of the NAO that capacity is ensured if there is a sufficient number of positions in the rural municipality government and competent people are employed. Luunja Rural Municipality Government concurred with the proposals of the NAO relating to the improvement of the field and plans to implement specific measures to substantially improve the field of construction in the rural municipality.

Likewise, Luunja Rural Municipality Government is of the opinion that it is extremely necessary to initiate amendments to legislation on state level so as to fill the gaps in efficient organization of planning and construction activities. Among other things this includes regularization of illegal structures as well as matters relating to structures built in bad faith and ignoring existing requirements. In our judicial area owners of such structures often enjoy better protection than local governments.

A serious problem lies in incomplete areas where developers have, for various reasons, stopped their activities and where local governments do not have sufficient funds for constructing the infrastructure in extensive development areas to keep in pace with the fast-growing number of residents.

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