

Overview of legal expenses and lawsuits of rural municipalities, towns and cities

How much did local authorities spend on legal staff and on outsourcing legal services, which lawsuits did they participate in from 2006 to 2010?

Overview by the National Audit Office to the *Riigikogu*
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Summary of overview results

The size of the legal staff, the composition of positions and the expenses of Estonian local authorities were studied in the course of the overview. The National Audit Office defined the officials whose main task is to provide legal services to the other officials in the local authority or to represent the local authority in legal disputes (e.g. rural municipality or city secretary, lawyer) as legal staff. The money spent on legal aid or the money paid by local authorities to lawyers and other legal specialists was also under review. The National Audit Office also clarified how much and in what type of cases did local authorities participate in litigation. As this is not an audit, then we have not given any opinions of the work of local authorities, but simply presented a general overview.

In order to prepare the overview, the National Audit Office gathered data by interviewing the employees of local authorities and studying their websites; analysed the financial data of local authorities in the balance data information system for the period from 2006 to 2010 and the lawsuits of the same period in the information system of court rulings. The interview entailed sending an electronic questionnaire to local authorities, and 190 of them (i.e. 84% of all rural municipalities, towns and cities) returned them with their answers.

The quality of the legislation and actions of local authorities, and their consequences for the local authority and its residents, depends largely on the local authority's legal staff. The mistakes made by local authorities in legislative drafting and in the implementation of law may create additional expenses for local authorities that spend tax money as well as for others.

The National Audit Office had recognised in its earlier audits that the lack of competent staff is the biggest problem in smaller local authorities. The leaders of such local authorities have also admitted that the unsatisfactory quality of the local authority's legislation is one of the most significant problems in providing better public services. One of the solutions that has been considered is the employment of a common legal specialist by local authorities in a region. The specialist would have enough work that corresponds to their qualification and several authorities together could pay them the remuneration they deserve. Smaller local authorities cannot often do it on their own.

The National Audit Office also studied how smaller local authorities differ from bigger ones in terms of their staff, legal expenses and lawsuits.

The data collected in the course of the overview indicate the differences in the ability of larger and smaller local authorities to guarantee the legal servicing of their agencies in several different ways. Purely statistical data indicate that smaller ones are lagging behind. It once again shows that cooperation between local authorities should be made more efficient. As the administrative organisation of Estonia is still looking forward to the much-discussed reform, cooperation between local authorities is the main way to ensure that the officials in different local authorities have a similar ability to solve issues of local life and represent the interests of the local authority. There are examples of legal cooperation between local authorities in Estonia where common officials have been hired, but cases like this are still rather exceptional. The purpose of the overview is to urge the leaders of county associations of local authorities, above all, to show some initiative in order to

initiate a broader discussion of hiring officials who work for a county association or a joint agency of local authorities.

The legal staff of most Estonian rural municipalities, towns and cities is limited to the rural municipality or city secretary. 19% of the local authorities interviewed by the National Audit Office have considered it necessary to hire and hires one or more lawyers in addition to the secretary. Also, the latter is more characteristic of larger local authorities. It is important to know that pursuant to law, rural municipality and city secretaries also have to perform other tasks in addition to the legal ones (e.g. managing the office, organising administration and document management). The excessive workload of local authority officials and the fragmentation of activities are problems that the National Audit Office has highlighted in several previous audits. In terms of rural municipality and city secretaries, the consequences of this may become evident in the legal and administrative acts of local authorities, whose low quality has also been pointed out by the Chancellor of Justice.

In addition to having more lawyers, larger local authorities also pay their official higher salaries – and not only on the basis of the absolute amounts of remuneration. The remuneration of the rural municipality or city secretary in smaller local authorities with less than 3,000 people exceeds the average salary of the local authority's residents approximately 1.3 times, but in larger local authorities with more than 20,000 thousand the same indicator is 3.2 times. However, when compared to the average remuneration of legal specialists in the country as a whole, the majority of rural municipality and city secretaries (95%) are paid less than that.

Smaller local authorities with less than 3,000 residents have spent *ca.* 700 euros per year on purchasing legal services, but the average amount spent on these services by local authorities with larger numbers of residents is *ca.* 31,000 euros. Irrespective of the size of the local authority, the share of such expenses in the local authority's general management and administration expenses is usually *ca.* 3-4%. The expenses vary considerably in year on year comparison and area clearly needs-based. 36% of the local authorities interviewed by the National Audit Office had entered into a contract with a law firm in order to purchase legal services. The majority of them do not employ another lawyer in addition to the rural municipality or city secretary. However, this does not allow us to conclude that a contract with a law firm is a suitable alternative to hiring another local authority official. The main reason why such a contract is entered into is to receive assistance in legal disputes, not to request know-how in the organisation of the daily legal operations of local authorities. This is also evidenced by the relatively small amounts of money that local authorities spend on legal services.

In terms of litigation, most of the cases that local authorities are involved in are civil cases, which comprise 66-80% of court cases depending on the size group of the local authority. Most of them are proceedings on petition or issues that are resolved in court (e.g. appointing the guardian of a minor). The activities of local authorities have not been disputed in these cases, and there is no litigation in the ordinary sense. The remaining lawsuits of local authorities are predominantly administrative cases, and most of these are disputes concerning construction, planning and the ownership reform. According to the interviewed local authorities, most lawsuits end in favour of the local authorities (for example, they have won 72% of administrative cases). The cases lost by local authorities mostly concern mistakes in the implementation of various laws and breaches of the principles of discretion.

In the comparison of the size groups of local authorities, it is noteworthy that external representation (e.g. a lawyer) in administrative cases is more often used by smaller local authorities. 40% of local authorities with less than 3,000 residents had most of their cases processed with the assistance of an external representative. Cases with external representatives dominated in only 8% of local authorities in the group with 10,001 to 20,000 residents. The National Audit Office understands that using a representative in court may be necessary in some cases, but the

connections we described also show that the ability of smaller local authorities to represent themselves in court is clearly limited when compared to that of larger local authorities. As administrative cases are related to the daily principal activities of local authorities, the National Audit Office sees this as evidence that the ability of the legal staff of smaller local authorities is clearly poorer than in larger local authorities. Local authority officials should be able to explain the background of the local authority's resolutions, to justify its consideration and to defend their positions, whether in court or elsewhere. It must also be pointed out that using an external representative generates additional expenses, which local authorities have no hope of recovering in administrative cases, for example, even if they win the case and ask the court to require the other party to pay the costs of the proceedings. The usual stance of the courts is that local authorities must have their own specialists who are competent in administrative cases and requiring the other party to pay the costs of the proceedings is not justified.

Airi Mikli
Director of Audit, Local Governments Audit Department