

Activities of local governments in the collection of support for children under their guardianship

Have local governments collected child maintenance from the parents and other persons obliged to maintain the children under their guardianship?

Summary of audit results

What did we audit?

Local governments are the guardians of 428 children deprived of parental care as of the beginning of August 2015. Local governments have wards in 84 municipalities, towns and cities (see also Annex 1). The National Audit Office analysed what the local governments have done to obligate the persons responsible for these children (primarily their biological parents) to pay them maintenance, and assessed whether the action taken by local governments complies with what the Family Law Act expects them to do.

Why is this important to taxpayers?

Children are one of the most vulnerable groups in society, so protecting their rights requires special attention. In particular, this applies to children deprived of parental care, whose maintenance must be organised by society. Often, these children have parents. However, the parents do not want or are not able to care for their children, which is why they have lost custody of their children. This does not release them from the obligation to continue contributing to the care of the child, which usually means paying support.

When the local government has been appointed the guardian of a child deprived of parental care, it has to make every effort to ensure that the parents perform their obligations. Omissions in the activity of the local governments may not lead to the situation where relieving oneself of the responsibility of maintaining one's children is easy by letting the taxpayer take care of it.

What did we find and conclude on the basis of the audit?

The National Audit Office finds that the activities of most local governments in the collection of support for children under their guardianship have been insufficient. All of the actions stipulated by law for collecting the support are not taken or they are taken too late. **Only seven of 84 local governments had used all of the options offered by law for receiving support in respect of every child under their guardianship.** They are Halliste, Kiili, Kõo, Mäetaguse, Puka, Rae and Rõuge municipalities. **Thirty-six or ca 40% of local governments had done nothing at all to collect maintenance.**

The law does not give local governments the option to decide at their own discretion whether or not to claim maintenance as the guardian of a child. Even if it is known that the persons from whom maintenance should be collected have social problems and find coping difficult themselves, it is not possible to waive the claim for maintenance. In justified cases, the court can lighten the maintenance load, but not release a person from it. The inactivity of local governments is one of the reasons why they have only managed to collect maintenance in a few cases (to some extent for 16% of children).

The National Audit Office also finds that local governments are not the only ones that deserve criticism. Courts who supervise guardianship should also give this issue more attention, because courts are the ones that can influence the attitudes and activities of local governments.

Key observations of the National Audit Office:

- **Maintenance had not been claimed at all in more than half of all cases.** In respect of the children covered by the audit, the local government had not claimed maintenance from any of the persons obliged to maintain the child, either in or out of court, in 53% of the cases. Among local governments with a larger number of wards, Kohtla-Järve had not demanded maintenance from any of the obligated persons in the case of 34 out of 35 children, in Tallinn this had not been done in the case of 56 out of 87 children, and in Narva in the case of 13 out of 27 children.
- **There are no reasonable explanations for inactivity.** This inactivity is often justified with the economic difficulties of the obligated person. In the case of the child's mother or father, this is the explanation given for waiving the claim in 40% of all cases. The most common reason why maintenance was not claimed from the child's grandparents is that it had already been claimed from the child's mother or father (44% of cases), despite the fact that the local government failed to collect any maintenance from the mother or father. In several cases, passivity was justified with the claim that the local government does not have enough resources to deal with this (in 20% of the cases concerning the mother and father). None of the above are valid reasons.

Maintenance must be collected from the child's mother or father if they are alive and known. If they fail to perform their obligation, maintenance must be claimed from the grandparents. In general, monthly maintenance should be at least half of the minimum monthly wage (215 euros at present), but the court may consider the person's economic status and require them to pay a smaller amount. There are examples where this is *ca* 10 times less. The principle is that any amount is important.

- **Cases are often referred to court too late.** Maintenance can be claimed retroactively for one year only in court (specifically, by filing an action). The data collected in the audit revealed that agreements made in court hold better. For example, the fathers of children under guardianship don't usually pay maintenance when no courts are involved but have complied with the rulings made by courts in the case of 31% of children (mothers in the case of 34% of children). Also, only rulings made by a court can be referred to bailiffs for enforcement proceedings.

The National Audit Office is of the opinion that local governments often go to court too late. In approximately one-third of cases, the matter has been referred to court only in the second year after the guardianship was established or at the time when part of the possible maintenance claim can no longer be retroactively collected. This portion of the money has been lost for the child.

What do we recommend as a result of the audit?

The local governments that have failed to collect maintenance for their wards out of court should go to court as soon as possible in 2016. The National Audit Office intends to monitor this and in early 2017, collect information again from local governments and publish it as an addition to this report if necessary.

The National Audit Office also advises updating the reporting rules implemented for guardians and adding specific questions about maintenance to the report submitted to the court every year. This would discipline the guardians and increase the attention courts are giving to the issue of maintenance. If necessary, the court can issue precepts to the guardian requiring the latter to look out for the ward's interests better.

In relation to the planned Family Benefits Act, pursuant to which the state will also pay monthly maintenance allowance in the amount of 100 euros on behalf of parents to children in substitute homes, the National Audit Office advises the Minister of Social Protection to analyse the possibilities to also use this money for financing the substitute home service on certain conditions and to develop the necessary rules. At present, the maintenance received from the parents of children in substitute homes has usually not been used to cover the children's expenses, because the substitute home's costs

are covered by the state. The same should not happen to the maintenance allowance paid by the state. This would not be purposeful from the position of using taxpayers' money or a reasonable result.

Responses of auditees: Both the Minister of Justice and the Minister of Social Protection promised in their responses to the draft audit report to comply with the recommendations made by the National Audit Office.