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IMPERIAL RUSSIAN RULES ON THE STATE OF EMERGENCY IN THE ESTONIAN REPUBLIC¹

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Summary

In 1918, the Provisional Government of Estonia decided that, until new laws could be established, the legal acts of the Russian empire would continue to be valid. The rules on the state of emergency remained in force, too. At the end of November 1918, the state of emergency was declared throughout the territory of Estonia. For the entire period of its first independence, the Republic of Estonia was under some form of state of emergency either across the whole country or in certain areas. At first the state of emergency was declared using Imperial Russian norms on martial law. In 1930, the Estonian parliament adopted the State of Defence Act, which formally abolished the rules of Russian martial law. However, the Estonian Act on the State of Defence was, in essence, still largely based on the provisions of the General Act on the Governorates of the Russian Empire. The new State of Defence Act was adopted by presidential decree in 1938 and could be described as an attempt to summarise as valid law the practices that the authoritarian regime had hitherto used without legal basis.

Introduction

Although the Estonian Republic was declared independent on 24 February 1918, in reality the young state was only able to start functioning more than half

¹ The research and writing of this article is supported by the Estonian Research Council, grant PRG 969.

a year later. On the same 24 February, the German occupation army arrived in the Estonian capital Tallinn. The occupation lasted until the end of World War I. Thereafter, on 28 November 1918, the Russian Red Army attacked Estonia and a new war, the War of Independence, began. As result of this, martial law as a state of emergency was declared throughout the territory of Estonia on the 29 November 1918.² The War of Independence against Bolshevik Russia ended with the peace treaty of Tartu on 2 February 1920. Already during the war, in April 1919, the Estonian Constituent Assembly had been elected. Its most important task was to elaborate a constitution but also generally to create a basis for the new state and its legal order. The Constitution for the new republic, with a democratic parliamentary system, was adopted on 15 June 1920³ and was in force in its entirety from 21 December 1920, when the first constitutionally elected parliament (Est. Riigikogu) assembled.

In this paper, we will provide an overview of the use of the state of emergency in the subsequent period in the Estonian Republic. We will also analyse the application of Imperial Russian legislation in Estonia, because it remained in force and was used to declare the state of emergency in the first decade of the Republic. In 1930 and 1938, Estonia adopted its own State of Defence Acts. The question arises as to whether the content of those acts was substantially different from Imperial Russian legislation.

1. State of emergency as ‘universal’ rule

In the first parliament, the extreme left-wing, the communists, demanded the abolition of martial law, as the war had ended. Martial law was abolished county by county from the beginning of 1921. After 13 February 1924, martial law remained in force only in the capital, the border regions, and on the railways.⁴ After the communist coup attempt on 1 December 1924, a state of emergency was declared once again throughout the country,⁵ although no longer under the term martial

² Sõjaseadus ja mobilisatsioon välja kuulutatud. Ajutise Valitsuse otsus [Martial law and mobilization have been declared. Decision of the Provisional Government]. Riigi Teataja (State Gazette, hereinafter “RT”) 1918, 3.

³ Eesti Vabariigi Põhiseadus [The Constitution of the Republic of Estonia]. RT, 09.08.1920, 113/114, 243. In English: The Constitution of the Estonian Republic (Passed by the Constituent Assembly on 15 June, 1920). London 1920; The Constitution of the Republic of Estonia: 15 June 1920. London: H.M.S.O., 1927.

⁴ See more details in the corresponding map Luts-Sootak M., Siimets-Gross H. Eesti õiguse 100 aastat. Vene keisririigi pärandi haldajast Euroopa õiguse kaaskujundajaks [100 years of Estonian law. From the manager of the legacy of the Russian Empire to the co-designer of European law]. Tallinn: Post factum, 2019, p. 51; originally Sedman M. Military Penal Law – not only for Military Personnel: Developments in Estonian Penal Law after the First World War. In: Luts-Sootak M., Osipova S. Schäfer F. L. (eds.). Unity and Plurality in the Legal History of the Baltic Sea Area. Frankfurt am Main: Peter Lang, 2012, p. 272.

⁵ Vabariigi Valitsuse otsus I. detsembrist 1924 a. [Order of the Government of the Republic of the 24th December 1924]. In: RT 1924, 145, II.

law but as a state of defence, the term used by the Estonian constitution (§ 26). The state of defence was enforced for the whole territory until 18 June 1926. Even after its overall validity ended, the state of defence remained in force in certain areas, as at the beginning of 1924.

In the summer of 1926, the political situation had calmed down and the danger posed by the communists was held to have sufficiently diminished, so that a state of defence was not required for the whole territory. However, there were new tensions in society: the parties in parliament presented their conflicts and personal quarrels as a constitutional crisis and prepared to change the constitution. According to all amendment drafts, the institution of the head of state or president was needed, and the power of parliament should be reduced. The worldwide economic depression, with devastating economic consequences, hit Estonia in 1930 and aggravated the political crisis. The League of Veterans of the Estonian War of Independence (Eesti Vabadussõjalaste Liit), which had started as a populist movement outside parliament, now became an important political movement and demanded revision of the constitution, too.⁶ The League of Veterans became increasingly provocative and aggressive, thus, in the summer of 1933 the government declared another nationwide state of defence. However, that autumn parliament did not approve the state of defence and consequently it lasted only for a few months.

The governing prime minister, called State Elder (riigivanem), Konstantin Päts alleged that the League of Veterans was preparing a coup d'état and organised one himself on 12 March 1934. After the coup in 1934, a state of defence for the whole of Estonian was enacted and extended, at first for six months and then in every autumn until the occupation of Estonia by the Soviet Union.⁷

For the entire period of its first independence, the Republic of Estonia was under some form of state of emergency – either across the whole country or in certain areas. In 1938, as the new constitution⁸ had already been adopted and parliament elected according to new rules, the wish of the government to extend the state of defence was criticised. The member of the first chamber of the Parliament, Karl-Arnold Jalakas, summed it up at the plenary meeting of parliament on 2 November 1938, as follows: “Our State of Defence Act is an act

⁶ Kasekamp A. I. *The radical right in interwar Estonia*. Houndmills [etc]: Macmillan Press, 2000; Kasekamp A. I. *The Rise of the Radical Right, the Demise of Democracy, and the Advent of Authoritarianism in Interwar Estonia*. In: Fleishman L., Weiner A. (eds.). *War, Revolution, and Governance: The Baltic Countries in the Twentieth Century*. Boston: Academic Studies Press, 2018, pp.76–100.

⁷ Kenkmann P. “Universaalne valitsemisvahend”: kaitseisukord Eesti Vabariigis aastatel 1938–1940 [“Universal Means of Governance”: the State of Defence in the Republic of Estonia in 1938–1940]. *Tuna. Ajalookultuuri ajakiri* [Past. Historical Culture Magazine] 2018, No. 1, p. 23; Kaasik P. *Kaitseisukord ja selle rakendamine okupatsioonivõimu teenistusse* [The State of Defence and its application to the service of the occupying power]. In: Tarvel E. (ed.). *Sõja ja rahu vahel. II, Esimene punane aasta* [Between War and Peace. II, The First Red Year]. Tallinn: S-Keskus, 2010, pp. 187–188.

⁸ *Eesti Vabariigi Põhiseadus* [The Constitution of the Republic of Estonia]. RT 1937, 71, 590. *Constitution of the Republic of Estonia*. Official Edition. Tallinn: Estonian State Printing Office. 1937. Available: <https://www.digar.ee/viewer/en/nlib-digar:302852/268403/page/1> [viewed 17.10.2021.].

of governance and not an act to bridle extraordinary circumstances.”⁹ One of the main ideologist of Päts’ authoritarian regime, Prime Minister Kaarel Eenpalu, called the state of defence a “universal means of governance that in some aspects helps to substitute the outdated acts of normal times”.¹⁰ In this context, it seems rather ironic that the norms regulating the state of defence stemmed in essence in Russian Tsarist law, from which the Estonian Republic had tried to back away after gaining independence.

2. The legal heritage of the Russian Empire in the Estonian Republic

After the German occupation, on 19 November 1918 the Provisional Government of Estonian Republic passed a law about the transitional period¹¹, the goal of which was to mitigate chaos and the settlement preparations of a new form of government. In principle, the laws of the Russian Empire were maintained, including the legal acts concerning the state of emergency. The legislation of Imperial Russia recognised an enhanced state of emergency (*polozhenie usilennoj ohrany*) and exceptional state of emergency (*polozhenie chrezvychajnoj ohrany*), which could be declared in peacetime, on the one hand, and martial law, which required military action, on the other hand. Martial law was the most severe type of state of emergency. In Estonian practice, only the rules of martial law were applied. It is understandable that martial law was in force during the War of Independence. The application of the rules governing it later, in peacetime, came about because of the sense of insecurity triggered by the December 1924 rebellion.¹²

The grounds and procedures for the imposition of martial law were laid down in § 1–7 of the annex to Art. 23 of the General Act on the Governorates.¹³ Based on

⁹ Riigikogu üldkoosoleku stenograafilised aruanded ja nende lisad: I koosseis: I ja II istungjärg: 1.-5. koosolek: 1938 [Stenographic reports of the Plenary Meeting of the Riigikogu and their annexes: I composition: I and II session: 1–5 meeting: 1938]. Tallinn: s.n., 1938, p. 21. Available: <http://www.digar.ee/id/nlib-digar:371507> [viewed 16.10.2021.].

¹⁰ Kaitseisukorda pikendati üheks aastaks [State of defence was extended for one year]. Uus Eesti [New Estonia], 12.09.1938, No. 250 (1025), p. 1. Available: <https://dea.digar.ee/cgi-bin/dea?a=d&d=uuseesti19380912> [viewed 16.10.2021.].

¹¹ Ajutised administratiivseadused. Seadus 1. Ülemineku aja kohta [Temporary administrative laws. Statutory act 1. About the transitional period]. RT 1918, 1.

¹² The 1926 decision of the Supreme Court concluded that, given the extraordinary danger to national security of the events of 1st December 1924, martial law was declared as the valid type of state of emergency. Riigikohtu administratiiv-osakonna 21. septembri/1. oktoobri 1926. aasta otsus nr 32 [Decision no. 32 of the Administrative Division of the Supreme Court of 21 September/1 October 1926. In: 1926. aasta Riigikohtu otsused [Supreme Court decisions of 1926]. Tartu: Riigi trükikoja trükk, 1927, pp. 5053.

¹³ Obshhee Uchrezhdenie Gubernskoe [General Organization of Governorates]. – Svod zakonov Rossijskoj imperij [Complete Collection of Laws of the Russian Empire]. II Volume, St. Petersburg, 1912, pp.170–174. The 1912 edition was unofficial but is easily available: <http://civil.consultant.ru/reprint/books/172/170.html> [viewed 16.10.2021.].

these provisions, martial law could be declared in areas of special importance from the point of view of national or military interests, and where hostilities were taking place, as well as in conjunction with or as a result of mobilisation. In imperial Russia, martial law could be declared by the emperor, the commander-in-chief or the army commander, depending on the legal grounds. When a martial law was declared, it was not necessary to specify for how long it would remain in force.

In Estonia, § 26¹⁴ and § 60 (5)¹⁵ of the Estonian Constitution of 1920 provided the constitutional basis for the establishment of a state of emergency. In summer 1919, the Constituent Assembly adopted the so-called Provisional Constitution.¹⁶ This included in § 8 and § 11 (e) the predecessors of the abovementioned provisions of the Constitution of 1920. The substantive disputes about the scope of the provision on the state of defence were held and settled when § 8 of the Provisional Constitution was drafted, so § 26 of the Constitution did not give rise to much controversy or disputes during its drafting in the Constituent Assembly.¹⁷ However, it was decided to use the phrase ‘state of defence’ instead of the former ‘martial law’ when drafting this provision, as ‘state of defence’ was said to have a much broader meaning.¹⁸ Paragraph 26 of the Constitution allowed extraordinary restrictions on freedom and basic rights to come into force when a state of defence was declared – in accordance with law – and demanded that a clearly defined period for the state of defence be announced. The demand for a clearly defined period differed from the inherited Russian law, which included no such obligatory restriction.

¹⁴ Par. 26: “[...] Extraordinary restrictions of the freedom and fundamental rights of the citizens come into force in the event of the proclamation of a State of Defence during a stated period, announced in the legal way on the basis and within the limits of the corresponding laws.” Constitution of the Estonian Republic (1920). Available: [https://en.wikisource.org/wiki/Constitution_of_the_Estonian_Republic_\(1920\)](https://en.wikisource.org/wiki/Constitution_of_the_Estonian_Republic_(1920)) [viewed 16.10.2021.].

¹⁵ Par. 60. “The Republican Government direct the home and foreign policy, attend to the internal and external security and the observance the laws. They [...] (5) Proclaim a state of defence as well in single parts as in the whole of the State, which they submit to the State Assembly for approbation.” *Ibid.*

¹⁶ The Provisional Constitution, as it was called during the drafting, was finally named Temporary Regime of Government. *Asutava Kogu poolt 4. juunil 1919. a vastuvõetud Eesti vabariigi valitsemise ajutine kord* [Temporary Regime of Government of the Republic of Estonia adopted by the Constituent Assembly on the 4 June 1919]. RT 44, 91, 09.07.1919.

¹⁷ Vallikivi H. Kodanikuõiguste peatükk Eesti 1919. aasta ajutises põhiseaduses [Chapter on Citizens’ Rights in the Estonian Provisional Constitution of 1919]. *Ajalooline Ajakiri/The Estonian Historical Journal*, 2019, No. 3/4, pp. 318–319. Available in Estonian with English abstract: <https://ojs.utlib.ee/index.php/EAA/article/view/AA.2019.3-4.01> [viewed 17.10.2021.].

¹⁸ Põhiseaduse komisjoni koosolekute protokollid koos lisadega [Minutes of meetings of the Constitutional Affairs Committee, with annexes]. 22.01.1920–26.03.1920. In: Estonian National Archives [hereinafter ‘ENA’] ERA.15.2.374, p. 56v. The most comprehensive source-based study on the law of the state of defence in the Republic of Estonia is available unfortunately only in Estonian: Lindmets J. *Vene keisririigi õigus kui Eesti Vabariigi algusaegade eriolukorraõigus ja 1930. aasta kaitseseisukorra seaduse eeskuju* [The law of the Russian Empire as the law of emergency in the early days of the Republic of Estonia and the example of the 1930 on the State of Defence Act]. Master’s thesis (Supervisors Luts-Sootak M., Siimets-Gross H., Vallikivi H.) Tartu, 2020. Available: <https://dspace.ut.ee/handle/10062/68537> [viewed 18.10.2021.].

According to § 60 (5) of the Constitution, the Government of the Republic could proclaim a state of defence, but had to submit its decision to the parliament for approval. In 1922, when the General Committee of parliament discussed the first draft of the Estonian State of Defence Act, a dispute about how the approval of the state of emergency should actually take place in parliament arose: should it be a simple decision by way of presentation or should the state of defence be adopted in three readings, as was the case with ordinary laws. Over the years, however, the view predominated that the decision on a state of defence should be approved in the form of a simple decision by way of a preliminary draft in only one reading.¹⁹

The rights of the Governor General contained in the annex to Art. 23 of the Russian General Act on the Governorates were in Estonia given to the Minister of Home Affairs.²⁰ This meant that the minister had the right to issue general obligatory acts for the protection of national security and public order, and to restrict a whole range of basic rights. The minister had, for example, the right to prohibit meetings, thereby restricting the freedom of assembly enshrined in § 18 of the Constitution; seize immovable property and seize movable property, restricting the right to property protected by § 24 of the Constitution; expel people from certain areas, restricting the freedom of movement enshrined in § 17 of the Constitution, etc. Another feature of martial law was the possibility of subjecting civilians who had committed certain offences during the period of martial law to military tribunals and military justice.²¹ In addition, the law also made it possible to bring under the jurisdiction of a military court the offences not listed in the law. In the early years of the Republic of Estonia, those offences were for the Minister of War²², and later the Minister of Home Affairs²³, to decide.

The martial law rules laid down in the annex to Art. 23 of the Russian General Act on the Governorates were extremely strict. The legislation of the Russian Empire was modelled on the basis of the legal systems of continental Europe, but the Russian approach to the state of emergency differed from these, giving the executive much broader powers than were customary elsewhere.²⁴ National security considerations were placed above individual freedoms and procedural guarantees. The same principles were carried over to the Republic of Estonia by Imperial Russian laws.

¹⁹ Üldkomisjoni koosolekute protokollid [Minutes of General Committee meetings]. 13.03.1922-05.03.1923. In: ENA ERA.80.1.478, p. 4 (Minutes No. 6, meeting No. 6, 03.05.1922; State of Defence Act II reading).

²⁰ Äratõmme Vabariigi Valitsuse protokollist 1.12.1920 [Apograph of the Minutes of the Government of the Republic 1.12.1920]. RT 1920, 211–212.

²¹ See for more Sedman M. 2012, 253–273.

²² Äratõmme Vabariigi Valitsuse protokollist [Apograph of the Minutes of the Government of the Republic]. 01.12.1920. RT 1920, 211–212.

²³ Äratõmme Vabariigi Valitsuse protokollidest [Apograph of the Minutes of the Government of the Republic]. 07.01.1925. RT 1925, 9–10.

²⁴ In this way, Russian emergency law was also assessed in Estonian contemporary legal literature. Maddison E. Erakorralisest seisukorrast. III osa [About the State of Emergency. III Part]. Eesti Politseileht [Estonian Police Newspaper]. 10.03.1923, No. 10/11, p. 134.

Conclusion

Imperial Russian rules on state of emergency continued to be in force in Republic of Estonia during the first decade of the Republic, although some aspects were confirmed by the Constitution of 1920.

On 10 July 1930, parliament adopted the State of Defence Act²⁵, which formally abolished Russian rules of martial law (§ 18). However, the Estonian Act on the State of Defence was, in essence, still largely based on the annex to Art. 23 of the General Act on the Governorates of Russian Empire. There were now clearer rules restricting the government's right to establish a state of emergency, but during the state of emergency, the powers of the executive were even broader and restricted citizens' basic rights more than before.

In addition to the establishment of the institution of the Head of State, the constitutional amendments of 1933,²⁶ which were drafted by the League of Veterans, had given the Head of State the right to pass laws in the form of decrees "in case of urgent state need" (§ 60 (12)).

Head of State Päts used the right to pass laws in the form of decrees among other things, to adopt new State of Defence Act on 11th April 1938.²⁷ The 1934 coup and the norms adopted during and after it were often in conflict with the current constitution, and also with State of Defence Act.²⁸

The new State of Defence Act of 1938 could be described as an attempt to summarise as valid law the practices that the authoritarian regime had hitherto used without legal basis. The reformulation of the purpose of the act in § 1 clearly shows that the need to react quickly and effectively to war or the threat of war, as well as to serious crime threatening the constitutional order and security of Estonia, was no longer emphasized. In the new act the aim of the state of defence was formulated as a vague desire to "promote the exercise of national defence and the protection of the state's internal security and public order". This helps us understand why politicians spoke of the state of defence as a universal means of day-to-day governance. In the second half of the 1930s, the practice of governing the Republic of Estonia, where the state of emergency had become the norm, did not differ much from that of the former Russian Empire in terms of its ideology and methods, and Estonia's law of emergency continued in the same tradition.

²⁵ Kaitseseisukorra seadus [State of Defence Act]. RT 1930, 61, 423.

²⁶ Rahvahääletusel vastu võetud Eesti Vabariigi põhiseaduse muutmise seadus [The Act to Amend the Constitution of the Republic of Estonia, passed by referendum]. RT 1933, 86, 628.

²⁷ Kaitseseisukorra seadus [State of Defence Act]. RT 1938, 40, 365.

²⁸ Luts-Sootak M., Siimets-Gross H. Eine rechtmäßige Diktatur? Estlands Verfassungsentwicklungen in der Zwischenkriegszeit des 20. Jahrhunderts [A legitimate dictatorship? Estonia's constitutional developments in the interwar period of the 20th century]. *Parliaments, Estates and Representation*, 2021, 41:2, 201–225, DOI: 10.1080/02606755.2021.1928863.

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