THE ROAD TO ESTONIAN STATEHOOD

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PRINCIPAL
CONSTITUTIONAL INSTRUMENTS
WITH BRIEF COMMENTARIES

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ESTONIANS – A NATION

INTRODUCTION

When a people becomes a nation – i.e., establishes a state of their own – this is not the result of a one-off action or event. Particularly so when we are speaking of a tiny ethnic group wedged between bigger states and empires. Rather, it shows the society's gradual development to maturity, as well as decisive action at the right time.

The success of a state-creating venture depends on many factors both within and around the population – these include the geopolitical situation, opportunities that may present themselves, the presence of popular leaders, the population's attitude to the project, and many others. Legal, political and administrative prerequisites for establishing a state are realized by taking decisions that seize an auspicious moment and by following up with steps to carry out those decisions. The process is unique and particular in the case of each state.

A few years ago, Estonia celebrated the centennial of its statehood. These hundred years have seen developments from liberal democracy to autocracy and from loss to restoration of statehood.

They have seen a peasant folk that used to inhabit a peripheral region of an empire complete its journey to the family of nations that is the European Union. One cannot fully grasp this journey without knowledge of the larger political processes that facilitated it, or of the decisions and constitutional instruments that were adopted in the course of or shaped by those developments.

The actions of a nation, its successes and failures are rooted in the constitutional order of the state. This is the framework within which the nation lives and goes about its business – often without taking conscious notice of the structure. Without examining and knowing these roots it is difficult to see why a nation has developed in the way it has. This is why, in order to understand the history and contemporary realities of a state, one needs to know the history and current state of its constitutional rules. To offer a glimpse of the requisite knowledge is the chief reason for compiling the present collection.

Constitutional rules assume centre stage and reveal their significance and determining force in particular when a state or society finds itself in an unusual situation, reaches a turning point, experiences a crisis, is faced with a new reality and must tackle the challenges that stem from it – or is about to transcend the accepted custom and practice of maintaining or operating its governance and constitutional structures.

The constitution guarantees an accepted framework of rules to govern day-to-day interactions between individuals and within society, and thus provides the sense of constancy and prospect that individuals and societies need. In the European legal space that is characterized by written rules, and in states that abide by the rule of law, the life of society and of the state proceeds following the aims, principles, rules and procedures defined in

the constitution. This is a general truth recognized by all constitutionalists. At the same time, no two states – even those that are immediate neighbours, in the same geopolitical area – share the same constitutional history and practice.

To members of a nation, its history is generally known through its culture, the education that its schools provide, through state institutions and through the fabric of popular memory. It is unfortunate that the constitutional history of Estonians – a tiny people that, for a long time, had been consigned to imperial periphery – has often been overlooked by the wider public because of the language barrier.

The present collection presents, in chronological order, the principal instruments[1] that reflect the development of Estonia's statehood, with brief explanations and commentaries concerning their setting. When creating this collection and writing its commentaries, I was struck anew by the realization of how hard it must be for someone who does not speak Estonian to find a concise presentation of constitutional developments in this small country during the last century.

The commentaries, similarly to references that they make to previous works, are not intended to be exhaustive. What follows is not a project of independent research but rather a high-level explanation, which will hopefully help the reader understand the social and political settings that gave rise to the decisions

[1] The English text of the instruments represents unofficial translations, most of which were undertaken in the context of compiling this collection. Existing translations that have been reproduced here include those of the four constitutions (subject to minor modifications in the case of the first three – see footnote 30), the Secret Protocol to the Molotov-Ribbentrop Pact and the Republic of Estonia Constitutional Review Procedure Act.

reported below. The material is intended for an English-speaking audience. The text includes references to a selection of relevant English-language literature published on the subject by Estonian as well as foreign authors.

Establishing a state of one's own – as well as developing and explaining it – is a legal as well as a political endeavour. If the course of development of a nation's statehood is not documented and elucidated by members of the nation itself, documentation and explanations will be provided from the outside – and from a perspective that best suits those providing them.

I hope that the principal instruments of Estonian statehood, collected into a single volume that also offers brief explanations of the relevant context as well as illustrative material, are sufficient to show, in broad strokes, the road that Estonians have travelled in order to become a nation. The accompanying commentaries represent the author's subjective condensation of the situational and historical realities surrounding the instruments. They do not claim to amount to an exercise in scholarly research. Rather, their aim is to help the reader understand the setting in which the Estonian state and its constitutional law were forged. Each reader is free to draw their own conclusions from the background material and translated instruments presented below.

Rait Maruste

CONTENTS

PART I

BECOMING A NATION

A SOCIAL PREHISTORY OF ESTONIA'S STATEHOOD **13**
PRE-CONSTITUTIONAL INSTRUMENTS **21**

1. Provisional Provincial Assembly's 15 November 1917 Resolution on the Highest Authority **23**
2. Manifesto to All Peoples of Estonia (Independence Manifesto) of 24 February 1918 **33**
3. Provisional Rules for Governing the Estonian Republic (4 June 1919) **45**
4. Peace Treaty between Estonia and Russia (Treaty of Tartu), 2 February 1920 **59**

THE CONSTITUTIONS

5. The Constitution of the Estonian Republic adopted by the Constituent Assembly on 15 June 1920 **73**
6. The Law to Alter the 1920 Constitution of the Estonian Republic, also known as the 1934 Constitution **102**
7. The 1938 Constitution of the Estonian Republic **125**

PART II

LOSS OF STATEHOOD. GOVERNANCE ARRANGEMENTS
IN ESTONIA DURING OCCUPATIONS

DEMISE OF ESTONIAN STATEHOOD **193**
Constitutional Law During Occupations Soviet Rule
in 1940–1941 **202**
Governance during the 1941–1944 German Occupation **204**
1944–1991: Soviet Legal Order in Estonia **208**

PART III

RESTORATION OF STATEHOOD.
CURRENT CONSTITUTIONAL ORDER

INTRODUCTORY REMARKS **210**
8. Declaration of the Supreme Soviet of the Estonian SSR
of 16 November 1988 on the Sovereignty
of Estonian SSR **219**
9.1 Declaration of the Congress of Estonia of 11 March 1990
on the Restoration of Lawful Governing Authority
in the Territory of the Republic of Estonia **229**

9.2 Resolution of the Supreme Soviet of the Estonian SSR of 30 March 1990 on Estonia's Statehood **231**
9.3 Declaration of the Supreme Soviet of the Estonian SSR of 30 March 1990 on Cooperation between the Supreme Soviet of the Estonian SSR and the Congress of Estonia **236**
10. Law of 8 May 1990 of the Supreme Soviet of the Estonian SSR on Estonia's National Symbols **240**
11. Law of the Republic of Estonia of 16 May 1990 on the of Provisional Rules for the Governing of Estonia **245**
12. Resolution of the Supreme Soviet of the Republic of Estonia of 20 August 1991 on Estonia's Independent Statehood **251**
13. The 1992 Constitution **261**
14. Accession to the European Union **320**
16. Constitutional Review Procedure Act; Jurisdiction of the Supreme Court **327**

PART I
BECOMING A NATION

A SOCIAL PREHISTORY[2] OF ESTONIA'S[3] STATEHOOD

Situated on the eastern shores of the Baltic Sea, Estonia's location at the frontier between civilizations has been both an advantage and a woe in the country's history[4]. The fact that the area was traversed by trade routes connecting East and West made it strategically important for great powers and nations to control the territory. Thus, Estonia's development has been shaped to a significant extent by Denmark, Sweden and Russia – the regional powers that held sway here in different historical periods. Since contemporary Estonian lands were historically divided into a northern and a southern part, respectively known as Estonia and Livonia, the country has also been influenced by Poland and Germany.

Throughout the centuries, Estonia's history has been shaped by its geopolitical location, small population and compact size.

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2 A longer explanation is provided here to stress that Estonia is not a 'former Soviet republic', i.e., not a country born of the 'fertile conditions' of Soviet rule. The roots of Estonian statehood trace back to a much earlier historical period.

3 The contemporary territory of the Republic of Estonia is 45,227 km^2, population 1.332m, GDP per capita 35 (IMF Country Reports, no. 22/289). Population in 1920 was 1.06m, in 1945 879,000 and in 2023, 1.33m. In 1881, the proportion of Estonians was 92.9%, which fell to 61.5% in 1989, with 30.3% Russians.

4 See: Miljan, Toivo. Historical Dictionary of Estonia. Scarecrow Press, 2004.

These have been a bane as well as a boon. It is easy to conquer a tiny people inhabiting a diminutive territory – which is what repeatedly happened. At the same time, these conquests brought with them new flows of goods, ideas and cultural influence.

A significant influence on the development of Estonia and of Estonians was exerted by the Hanseatic League, by the centuries-long presence of the Baltic Germans, by the country's overseas neighbour Sweden and continental neighbour Russia, by the Teutonic Order and by Protestantism. All of these factors influenced Estonian culture and the country's socio-economic development – including its legal order and constitutional culture.

The first known mention of Estonia and Estonians was recorded by the Roman historian Tacitus. At that early period in Estonia's history, its system of governance was reported as a patriarchal one based on communities and their elders. The first invaders were the Vikings. In the 11th and 12th centuries A.D., attempts were made by the Danes and Swedes to conquer and Christianize Estonia. From 1030 to 1192, Russia sought to subjugate Estonia on more than ten occasions, but to no avail.

The Christianization of Estonia commenced in 1180 when the Teutonic Knights established administrative authority over Estonia and Livonia and introduced Christianity in the region. Public authority over these lands was definitively vested in the Teutonic Order in 1346 and, with a few intermissions, the Order ruled Estonia for almost five centuries. At the end of this period, Estonian lands were conquered by Sweden, which held them under the Truce of Altmark (1629) until the conclusion, in 1721, of the Treaty of Nystad, by which Estonia became a governorate of the Russian Empire. Sweden's rivalry with Russia was particularly intense during the rule of the Muscovite Czar Ivan

the Terrible. Wars, power struggles and changes of rule had a devastating impact on the peasant population.

While under Russian rule, instead of the usual administrative and legal order imposed in Russia's governorates, Estonia was subject to a special governance regime provided for by the Treaty of Nystad. This regime preserved the territory's earlier administrative and legal system. Emperor Alexander I granted peasants the right to own private property (land) and, starting from 1863, serfdom was abolished in Estonian lands. By the end of the 19th century, Estonian peasants held 2/5 of the land in the governorate. The dominant language was German, later also Russian. The religion was Lutheran and, during the subsequent Russian imperial period, Orthodox.

Starting in the 1880s, the Russian Empire set about curtailing Baltic/Estonian autonomy (special governance regime) and started Russifying the area. This was the beginning of a forcible imposition of Russian language, culture, public administration, Orthodox religion and, generally, pan-Slavism. The policy was met with opposition and resentment among Estonians and Baltic Germans. Separatist ideas – couched in terms of autonomy or of accession to Germany – started spreading.

In economic terms, the end of the 19th and the beginning of the 20th centuries were marked by extensive industrialization, which resulted in a rise in the standard of living and, in towns – Tallinn in particular – in creation of big manufacturing operations. First and foremost, this served the interest of developing Russia's western border regions.

The 1889 judicial reform granted the Estonian Governorate autonomy to decide its judicial matters. This, together with a community-based social structure as well as the experience

people had accumulated as owners and entrepreneurs, shaped the preconditions for juridical self-government[5]. Jüri Uluots, the most notable jurist of the initial period of Estonian statehood and one of the drafters of the country's constitutions, who also worked as a politician and, during 1940–1945, served as head of state, considered the community-based right of self-regulation and the long-standing practice of that right to be the foundation of Estonia's statehood[6].

At the end of the 19th century, political dissent began brewing in the Russian Empire, culminating in the widespread unrest of 1905. This resulted in brutal repression, also carried out by the Empire in Estonian lands. Still, the social processes that this set in motion also spurred Estonia's development and its movement towards autonomy: debates on political and social issues began to spread among the population, political associations were established and local newspapers founded.

The idea of autonomy and the rise of national awareness drew on the period of Estonia's national awakening that started during the second half of the 19th century. This was reflected in various cultural initiatives, in laying the foundations of civil society, in a range of cooperative ventures and societies, in choruses and brass bands. The popular movement and political awareness were amplified by the free newspapers that had recently been established.

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5 Anepaio, Toomas. Justice Laws of 1889 – a Step in Estonia`s Constitutional Development. *Juridica International*, X/2005.

6 Constitution of the Republic of Estonia, with the Decision of the Estonian People for convening the National Constituent Assembly and the Law for the Transition Period, preceded by introductory articles by J. Uluots and J. Klement. Estonian State Printing Office. Tallinn, 1937, pp. 4–6. Available at URL: https://www.digar.ee/viewer/et/nlib-digar:302852/268403/page/5.

Significant political steps were taken towards self-determination and self-regulation. In 1901, Konstantin Päts – who later became one of Estonia's leading political figures – founded a moderately radical political newspaper *Teataja* [The Announcer]. Jaan Tõnisson, the founder of the daily *Postimees* [The Postman] that is published to this day established the National Liberal Party, which in November 1905 held a congress that drew 800 members. There was a palpable rise in the population's political awareness.

Still, at the time, statehood was considered unattainable and efforts were instead directed to achieving more extensive self-governance. In 1906, the then Estonian leaders drafted the first autonomy bill which, among other things, provided for a provincial assembly as the body representing the Estonian people. Provision was made for an executive self-government headed by a governor, for the territory's own judicial system and for the post of Minister/State Secretary to represent Estonia before the Russian central government. The bill never made it to debate or adoption in the Russian Duma. Although unrealized, it still represented a detailed blueprint for self-government.

The yearning for autonomy intensified with the outbreak of World War I and with the 1917 Russian Revolution. On 30 March 1917, Russia's Provisional Government approved a self-government bill for Estonia. In practice, this did not amount to any significant change, except that it combined the lands populated by Estonians into a single administrative unit. The Russian Empire of the time was not loved, yet was not perceived as the scourge that Communist rule as exercised by Lenin and Stalin would later become.

The above resulted in a nation capable of statehood, and defined the territory for its state. An elected representation of the people – the Provisional Assembly of the Province of Estonia that convened on 14 July and 12 October 1917 – provided the foundation for establishing effective government authorities. The Provisional Assembly appointed a provisional government presided over by Konstantin Päts.

These events were facilitated by the weakness and demise of the great powers – the Russian and German empires – that had previously been dominant throughout Estonian lands. In addition to Estonians, the crumbling geopolitical balance in Europe was also taken advantage of by other East European peoples.

The 1917 Bolshevist *coup d'état* in St. Petersburg (the so-called October Revolution) forced Estonians to take immediate and substantive steps towards actual autonomy and national self-determination. Thus, in the chaos that enveloped the Russian imperial administration following the October Revolution, on 28 November 1917 the Provisional Provincial Assembly used the interregnum to proclaim itself the holder of the highest authority in Estonia.

The creation of the Estonian state took place in the context of World War I. Imperial German troops had launched an offensive on the eastern front on 18 February 1918. On the following day, the Assembly's Council of Elders delegated its authority to Estonia's Salvation Committee, a three-member formation. Seizing the opportunity that had arisen as Russian troops were leaving Estonia and German troops had not completed their occupation of the territory, the Committee proclaimed the Estonian Republic on 24 February 1918. On 25 February, Estonia's provisional government was formed in Tallinn. Imperial

Germany did not recognize the Republic but, instead, attempted to establish a Baltic duchy in the territory of what today are Estonia and Latvia. The attempt proved abortive. The Estonian Republic was born.

The factors that had to be considered – in addition to action by the Estonian and Russian side – were the Baltic Germans of Estonian and Livonian lands and their aspirations. Most of the Baltic nobility did not believe in the creation and viability of an independent Estonian republic. During the period when the empires around them were disintegrating, the Baltic nobility and Estonian Knighthood sought to salvage their centuries-long privileges, self-rule and property.

On 12 April 1918, the Knighthoods of Estonia, Livonia and Curonia wrote a joint petition to the German emperor Wilhelm II to establish a united Baltic duchy. The idea of the duchy was particularly appealing to those Baltic Germans whom the Russian authorities had targeted and persecuted – including deporting them to Siberia – during the recent Russification period.

The German emperor recognized the independence of the Duchy on 22 September 1918, and a council of regents was formed on 5 November 1918 to govern it. Since Emperor Wilhelm II was deposed on 9 November and the German empire ceased to be, the duchy was never implemented either.

Attempts to establish control over Estonian lands were made by Germany as well as by Bolshevist Russia. Estonian independence had to be defended in the War of Independence against Soviet Russia during 1918–1920. Estonia managed to defend itself successfully and ended the war on favourable terms by the Treaty of Tartu. Another attempt to overthrow the Estonian government

was made by the Soviets in 1924 but Estonia managed to thwart that as well.

In sum – Estonians were able to realize their aspirations to independence owing to the favourable international situation, to people's rising awareness of belonging to a nation, to the rise of political leaders who sensed the opportunity, as well as to economic and military assistance from the West. The road to statehood was also paved with the historical Baltic German experience of a separate culture and of a special self-governance regime, accompanied by the collapse of Europe's empires as a result of World War I[7].

The development of Estonia's constitutional order can be divided into six consecutive stages. These are:

(1) the period from the de facto birth of the Estonian Republic by resolution of the Provisional Provincial Assembly on 15 November 1917 until the entry into force of the first Estonian Constitution on 21 December 1920;

(2) the period from the entry into force of the 1920 Constitution until the entry into force of the 1933 alterations and additions on 24 January 1934;

(3) the period from 24 January 1934 to the entry into force of the Constitution of 1937 on 1 January 1938;

(4) the period from 1 January 1938 until the occupation and annexation of the Estonian Republic in June 1940;

[7] For a closer look at the development of Estonian society, see: Raun, Toivo U. Estonia and Estonians. Hoover Institution Press, Standford, CA. 2nd edn, 2001; Misiunas, Romuald J. and Taagepera, Rein. The Baltic States: Years of Dependence. 1983. See also: Arens, O. United States Policy toward Estonia and the Baltic States 1918–1920 and 1989–1991. – *Ajalooline Ajakiri* [The Estonian Historical Journal] 2016/3–4.

(5) the period from the restoration of Estonia's independence on 20 August 1991 until the entry into force of the current Constitution on 3 July 1992;

(6) the period from the entry into force of the current Constitution to this day.

PRE-CONSTITUTIONAL INSTRUMENTS

As a rule, ground-breaking political steps on the road to statehood – prior to adoption of a constitution – take the form of legal instruments that are known in constitutional law literature as 'pre-constitutional'. Pre-constitutional instruments help us understand why, at the relevant time, various documents (declarations, resolutions or laws) that regulate the life of a society were written, or aims set, or institutions arranged the way that they were.

The decision on which instrument or event to consider as pre-constitutional is a matter of selection, assessment and judgement. The latter depends on the assessment of academic experts, on political practice, as well as on the views and attitudes of the public. The significance and status of one or the other instrument is, among other things, a function of their acceptance by society, their application in case-law, as well as their use in specialized literature and in teaching.

The pre-constitutional instruments crucial to establishment of the Estonian Republic should include at least the following three:

– the Provisional Provincial Assembly's 15 November 1917 Resolution on the Highest Authority;

– the 24 February 1918 Manifesto to All Peoples of Estonia (the Independence Manifesto);

– the Provisional Rules for Governing the Estonian Republic, adopted by the Constituent Assembly on 4 June 1919.

These instruments may be considered decisive in establishing Estonia's statehood. Other authors have suggested other instruments and texts – which certainly also have their place and significance in the creation of Estonian statehood. Still, the above instruments are without doubt part of Estonia's general and legal history and part of the fabric of any academic, legal and political analysis and of the relevant specialized literature.

In terms of international law, the context for movements towards statehood – in Estonia and elsewhere in East Europe – was provided by the general situation following World War I and the prevalent political and legal views of the period. Constitutional factors of central importance included the doctrine of peoples' right of self-determination propagated by Woodrow Wilson, the American president at the time, as well as the 3 March 1918 Treaty of Brest-Litovsk and the ensuing Treaty of Versailles. The latter two required Russia and Germany to recognize the new states – and their borders – that had sprouted from the remnants of the Russian empire.

Still, the international order in the making and several of the states leading that order had little enthusiasm for creation of small nations such as Estonia. Small states were perceived primarily as a threat to the stability of the system. These perceptions meant that considerable efforts were required and work from Estonia's political leaders and diplomats to achieve recognition of their country's statehood.

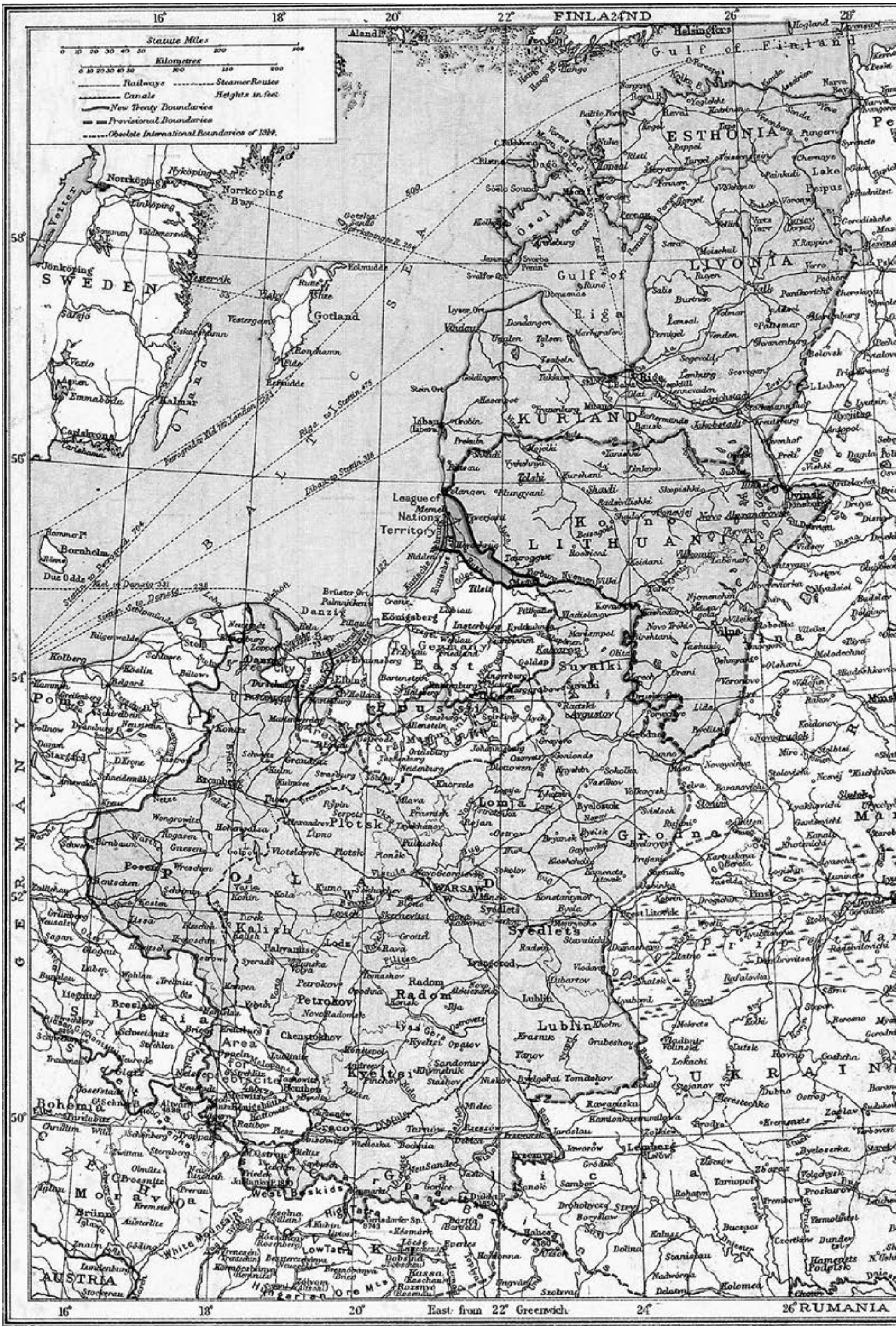
1. Provisional Provincial Assembly's 15 November 1917 Resolution on the Highest Authority[8]

RESOLUTION OF THE PROVINCIAL ASSEMBLY ON THE HIGHEST AUTHORITY

On the 15th/28th November of the year 1917, the Esthonian Provincial Assembly resolved:

1) The Esthonian Provincial Assembly proclaims itself the sole holder of the highest authority in Esthonia, whose regulations and orders must be followed in Esthonia by all until the convening of the Esthonian Constituent Assembly which will be convoked by the Provincial Assembly without delay under a democratic electoral law to determine the order of government of Esthonia and thereby set up, conclusively, the legislative and executive authority in the land.
2) Any regulations, commands and decrees, by whomever they are issued, only have effect in Esthonia before the convening of the Esthonian Constituent Assembly if they have been promulgated by the Provincial Assembly, and must not be followed if this is not the case.
3) For the time when the Provincial Assembly is not in session, the Board of the Assembly and the Council of Elders together with county governments, as representatives of Esthonia's highest authority, shall be vested with the power to promulgate and enforce urgent regulations and commands to regulate the life of the land, until the Assembly convenes and pronounces its decision concerning such regulations.

[8] Publication reference of the Estonian text: *RT* [State Gazette – transl.] 27.11.1918, 1.


Statute Miles
Kilometres
Railways
Steamer Routes
Canals
Heights in feet
New Treaty Boundaries
Provisional Boundaries
Obsolete International Boundaries of 1914.
FINLAND
Gulf of Finland
Helsingfors
Aland I.
ESTHONIA
Reval
Lake Peipus
Dagö
Ösel
LIVONIA
Gulf of Riga
Riga
KURLAND
Libau
League of Nations Memel Territory
Memel
LITHUANIA
Kovno
Vilna
Dvinsk
SWEDEN
Norrköping
Gotland
Öland
Kalmar
Carlskrona
BALTIC SEA
Bornholm
Danzig
Free City
Königsberg
East Prussia
GERMANY
Pomerania
Suvalki
POLAND
Warsaw
Plotsk
Lomja
Grodno
Kalish
Lodz
Radom
Petrokov
Lublin
Kyeltsi
Syedlets
Brest Litovsk
Posen
Silesia
Breslau
Area for Plebiscite
Cracow
Galicia
Lemberg
Przemysl
Tarnopol
UKRAINE
Bohemia
Moravia
Brünn
AUSTRIA
High Tatra
Low Tatra
Kassa
Minsk
RUMANIA
East from 22° Greenwich
16°
18°
20°
22°
24°
26°
28°
50°
52°
54°
56°
58°

COMMENTARY

Estonian lands were incorporated in the Russian Empire in 1721. However, similarly to the other Baltic provinces they did not become a typical imperial governorate. Under the terms of the Treaty of Nystad, Estonia continued to be subject to the so-called Baltic special regime under which it enjoyed considerable autonomy. Constitutionally speaking, in the period when Estonia asserted its statehood, it was part of the Russian Empire and subject to the latter's Fundamental Laws as amended in 1906.

The national awakening movement in Estonian lands, developments in other European empires and the events of 1905 in the Russian Empire combined to create a popular appetite for greater autonomy or partial independence. In 1906, Konstantin Päts, Jaan Teemant, Otto Strandman and other Estonian leaders of the time drafted a bill to provide for Estonia's autonomy, which included a proposal to bring all Estonians together in a single governorate to be autonomously ruled by its own provincial assembly. The aim at that point was not yet independence but autonomy. Unfortunately, the bill was never tabled in the Russian State Duma and thus did not result in any decisions. Still, its idea remained very much alive among the population and its leaders.

The frontiers of Estonia and Latvia after the peace treaties of Versailles and Brest-Litovsk, as shown on the 1920 Peoples Atlas by the London Geographical Institute. Wikipedia

On 30 March 1917, following the Russian February Revolution of the same year, the Russian provisional government approved a bill for Estonian self-rule.

To prepare for adoption and implementation of the corresponding regulation of the provisional government, a meeting was held over several days between representatives of Estonia's local self-governing units in which the representatives gave unanimous support to autonomy. The Estonian leadership of the time (Konstantin Päts, Jüri Vilms, Jaan Tõnisson and Otto Strandmann) drafted the proposal to the Russian government.

In order to speed up and support proceedings on the proposal, an extensive demonstration was organized in St. Petersburg that brought together up to 40,000 Estonians who were either working there or had come to participate in the event. Some 12–15 thousand of the demonstrators were ethnic Estonian soldiers. This was a force that the Russian provisional government could not ignore. Thus, on 12 April/ 30 March[9] 1917 it was forced to adopt provisional rules for administrative governance and local self-government in the Estonian Governorate. In essence, these established a governorate for ethnic Estonians and made provision for creation of a quasi-representative government of the people (in the form of the provisional provincial assembly

[9] Dates separated by a slash represent the date according to the old-style and new calendar respectively. On 1 February 1918, the old-style (Julian) calendar was replaced in Russia by the new Gregorian one.

and provisional provincial government) to assist the governorate's commissary (governor). The Russian provisional government also appointed an ethnic Estonian (Jaan Poska) as the commissary.

Eligibility to vote in the general election to the Provisional Provincial Assembly extended to all men and women of Estonia of at least 21 years of age. Although the election was held in several stages – first to be elected were municipal delegates, who then elected those of the counties – this did not alter the democratic nature of the endeavour. The Assembly (known in popular parlance as the *Maapäev* [Provincial Diet]) was Estonia's first modern and predominantly democratically legitimate popular representation for self-government. Its first meeting took place on 1/14 July 1917.

The Assembly was not yet a freely elected parliament – it was a body created by a regulation of the Russian central authorities. Nevertheless, it brought together Estonia's popular leaders of the time and, in this turbulent period, allowed the idea of autonomy to grow and, over time, mature into a fully-fledged aspiration to national independence.

Following the toppling of the Russian provisional government by the Bolsheviks on 25 October / 7 November 1917, a meeting of the Assembly convened on 15/28 November 1917 in the White Hall of Toompea Castle with 48 elected delegates participating. The meeting agenda contained six items.

The first two of these held ground-breaking significance for Estonian statehood – the issue of the highest authority and the decision on the organization of government until the convening of the Constituent Assembly.

Following preparations that had been made by the Assembly's Council of Elders and having regard to the principle of peoples' self-determination, the Assembly also decided to convoke the Estonian Constituent Assembly in order to determine Estonia's order of government, to establish a democratic and fully legitimate authority throughout the land and to resolve other matters. The Constituent Assembly was to be the body that would create the apparatus of governance and provide it with a legal basis. Until the convening of the Constituent Assembly, the Provisional Provincial Assembly proclaimed itself the sole holder of the highest authority in Esthonia, 'whose regulations and orders must be followed in Esthonia by all'.

By resolution of 15 November 1917, the Assembly univocally laid claim to the highest authority over Estonian lands and population. De facto, it proclaimed itself the sole authority in these territories – as a national autonomy within the Russian state. The resolution boosted and consolidated Estonians' self-awareness as a nation ready to govern itself.

Since statehood is primarily a matter of power, it was no surprise that the fluid political situation of the time, World War I action in Estonian lands,

economic uncertainty and other factors prevented the nation from directly building up its statehood. The first order of the day was survival. After the 15 November 1917 resolution, the Russian Bolsheviks scattered the Assembly. The Council of Elders continued its work clandestinely.

The leading Estonian jurists of the time – Jüri Uluots (1890–1945), Professor of Private Law of the University of Tartu and, later, Prime Minister of the Estonian Republic, and Ants Piip (1884–1942), Professor of International Law of the University of Tartu and subsequently Minister for Foreign Affairs of the Estonian Republic – stated, with good reason, that according to accepted understanding of the criteria of statehood, the 15 November 1917resolution by the Provisional Provincial Assembly represented the first (pre)constitutional instrument – one that established the Estonian state.

The Assembly's resolution created – lawfully and democratically – a new constitutional situation throughout Estonian lands. It defined the population, the territory and the democratically elected highest authority, and determined how the power of government was to be exercised.

The resolution broke off the substantive constitutional ties of Estonian lands to the crumbling Russian empire that Estonia had long formed part of. In spite of officially not proclaiming the Estonian state and secession from Russia, this represented the nation's de facto self-determination.

As the popular representative body, the Assembly resolved to assume responsibility to care for the territory and its population, and proclaimed itself to hold public authority to perform domestic and international duties. Regardless of turbulent times, these constitutional decisions determined the framework for life in Estonia moving forward. The Estonian people and its leaders made skilful and responsible use of the instability of the Russian imperial government and of the world order of the time. Thus, they established the fundamental preconditions for Estonian statehood.

On 31 December 1917 and 1 January 1918, all Estonian political parties, with the exception of the Bolsheviks, held a meeting based on which the Assembly's Council of Elders issued a declaration concerning the political situation in Estonia. The declaration consisted of a three-page document that provided a brief summary of Estonia's history and current situation and, on the basis of the Assembly's resolution of 15 November 1917, laid down the initial requirements concerning Estonia's future. The statement concluded by declaring, as the joint intention of the parties: 'to proceed, as soon as possible, with the proclamation of Estonia's independence and by calling all strata of the Estonian people and all residents of Estonian lands to support it'[10].

[10] The declaration of the Council of Elders was published for the first time in the newspaper *Eesti Sõjamees* [Estonian Soldier – transl.], issue no. 1–2, which appeared on 5/18 January 1918.

On 19 February 1918, having assessed critical developments in Estonia and abroad, the Council of Elders of the Assembly decided to create a three-member Salvation Committee consisting of representatives of the largest political parties and to vest the Committee with special authority.

The Committee proceeded to draft a manifesto of independence. Several unsuccessful attempts were made to proclaim it publicly. Eventually, the manifesto was read out in public in Pärnu, and a day later in Tallinn as well. On the same evening, the Salvation Committee appointed Estonia's provisional government and delegated all governing authority to that body.

The Constituent Assembly was elected on 5–7 April 1919 and worked as the representation of the people of Estonia and as the nation's legislative authority from 23 April 1919 to 20 December 1920; candidates represented ten political parties and groupings. The rate of electoral participation was high – some 80% of the people entitled to vote did so. The Assembly also included two political parties representing minority ethnic groups – the Baltic Germans and Russians – who participated in its deliberations.

The two major tasks and achievements of the Constituent Assembly were elaboration and adoption of the Land Law (1919) and of the Constitution (1920). During its working period, the Assembly adopted 88 laws and regulations.

Regardless of the fact that the circumstances prevented express proclamation of the Estonian Republic as an independent state and the determination of its type of government on 15 November 1917[11], it is that date that should, according to contemporary as well as historical constitutional interpretations, be regarded as the date of birth of the Estonian state. Based on historical tradition and convention, however, the date of 24 February 1918 has been retained as the latter.

[11] The Estonian State was proclaimed later – on 23 February 1918 in Pärnu and on 24 February 1918 in Tallinn.

2. Manifesto to All Peoples of Estonia (Independence Manifesto) of 24 February 1918[12]

MANIFESTO TO ALL PEOPLES OF ESTHONIA

Through the centuries, the Esthonian people has not lost its yearning for independence. From generation to generation, it has harboured the secret hope that, despite the dark age of slavery and the rule of force by foreign peoples, a day will dawn in Esthonia when 'all spills burst into flames at both ends' and 'Kalev at last returns home to render his children happy'. Now that time has come.

The unprecedented struggle of nations has shattered the rotten foundations of the Russian czarist state in their entirety. Across the plains of Sarmatia, a destructive chaos stretches, threatening to engulf all peoples that find themselves within the frontiers of the former Russian state. From the west, victorious German troops are approaching to claim a share of Russia's estate and, first and foremost, to subjugate the coastal regions of the Baltic Sea.

At this fateful hour, Esthonia's Provincial Diet as the lawful representation of Esthonia's lands and people has, by unanimous decision taken with Esthonian political parties and organizations that hold the popular mandate, based on peoples' right of self-determination, deemed it necessary to take the following decisive steps to determine the destiny of the Esthonian lands and people:

Esthonia, in her historical and ethnic frontiers, is declared from this day on to be an independent democratic republic.

[12] Publication reference of the Estonian text: *RT* 27.11.1918, 1.

The independent Esthonian Republic includes the counties of *Harju*, *Lääne*, *Järwa*, *Wiru* – including the town of Narwa and its environs –, *Tartu*, *Wõru*, *Wiljandi* and *Pärnu* together with the Baltic Sea islands – *Saaremaa* (Oesel), *Hiiumaa* (Dago), *Muhumaa* (Mohn) and others which have been populated by Esthonians in the overwhelming majority from time immemorial. The final determination of the Republic's frontiers in territories bordering on Latvia and on the Russian state will take place by plebiscite once the current World War has come to an end.

In the aforementioned territories, the sole higher and ruling authority is Esthonia's Salvation Committee as the popular authority established by the Provincial Diet.

The Republic of Esthonia intends to observe full political neutrality in respect of all neighbouring states and peoples, and, at the same time, firmly hopes that its neutrality is reciprocated by the former with equal neutrality.

The Esthonian armed forces shall be reduced to what is needed to maintain internal order. Esthonian soldiers serving in the Russian forces shall be recalled and demobilized.

Until the convening, by a general, direct, secret and proportional vote, of the Esthonian Constituent Assembly that will conclusively determine the order of governance in the land, the plenitude of executive and legislative authority remains in the hands of the Esthonian Provincial Diet and its creation, the Esthonian Provisional Government which, in its actions, must observe the following guiding principles:

1. All citizens of the Esthonian Republic, regardless of their religion, ethnicity and political convictions, enjoy equal protection under the laws and in the courts of the Republic.
2. The ethnic minorities residing within the frontiers of the Republic, Russians, Germans, Swedes, Jews and others, are

guaranteed rights of autonomy regarding their national culture.

3. All civic freedoms, the freedom of expression, of print, of religion, of assembly, of association, of unions and to strike, as well as the inviolability of the person and of the hearth must be established within the frontiers of the Esthonian state without fail based on laws that the Government must elaborate without delay.
4. The Provisional Government is tasked to establish, without delay, judicial authorities to ensure the security of the citizens. All political prisoners must be released immediately.
5. All self-government authorities of urban and rural municipalities and counties are called to resume, without delay, their work that was interrupted by violence.
6. To maintain public order, popular militias reporting to local self-government institutions must be created immediately, as must citizens' self-defence organizations in the towns and rural areas.
7. The Provisional Government is tasked to elaborate, without delay, on a broad democratic foundation, a legislative bill to determine the issue of land, the issue of workers, provision of food and issues of finance.

Esthonia! You are about to embark on a future full of hope that will allow you to determine your destiny freely and independently! Set about building your home, to be governed by order and justice, so that you may be a worthy member of the family of cultured nations! All sons and daughters of our native land, let us join forces as one in the sacred task of building our homeland! The sweat and blood of our forebears that has been spilled for this land calls for it, and our future generations hold us to it.

God keep His vigil over thee
And hold thee in His faithful care
And bless thy efforts everywhere,
My own dear Native Land![13]

Long live the independent democratic Esthonian Republic!
Long live the peace of nations!

In Tallinn, on the 24th of February 1918
Council of Elders of Esthonia's Provincial Diet.

Estonian Declaration of Independance.
National Archives of Estonia

[13] Excerpt of the lyrics created by Johann Woldemar Jannsen in 1869 and adopted in 1920 as Estonia's national anthem – in the 1926 English translation by dr P. Speek and D. E. Roberts – transl.

Manifest Eestimaa rahwastele.

Eesti rahwas ei ole aastasadade jooksul kaotanud tungi iseseiswuse järele. Põlwest-põlwe on temas kestnud salajane lootus, et hoolimata pimedast orja ööst ja wõeraste rahwaste wägiwalla walitsusest, weel kord Eestis aeg tuleb, mil **„kõik peerud kahel otsal lausa lööwad lõkendama"** ja et kord Kalew koju jõuab oma lastel õnne tooma.

Nüüd on see aeg käes.

Ennekuulmata rahwaste heitlus on Wene tsaaririigi pehastanud alustoed põhjani purustanud. Üle Sarmatia lagendiku laiutab end häwitaw korralagedus, ähwardades oma alla matta kõiki rahwaid, kes endise Wene riigi piirides asuwad. Lääne poolt lähenewad Saksamaa wõidukad wäed, et Wenemaa pärandusest omale osa nõuda ja kõige päält just Baltimere rannamaid oma alla wõtta.

Sel saatuslikul tunnil on Eesti Maapäew, kui maa ja rahwa seaduslik esitaja, ühemeelsele otsusele jõudes rahwawõimuse alusel seiswate Eesti politiliste parteidega ja organisatsionidega, toetades rahwaste enesemääramise õiguse pääle, tarwilikuks tunnistanud, Eestimaa ja rahwa saatuse määramiseks järgmisi otsustawaid samme astuda:

Eestimaa, tema ajaloolistes ja etnografilistes piirides, kuulutatakse tänasest pääle iseseiswaks demokratliseks wabariigiks.

Iseseiswa Eesti wabariigi piiridesse kuuluwad: Harjumaa, Läänemaa, Järwamaa, Wirumaa ühes Narwa linna ja tema ümbruskonnaga; Tartumaa, Wõrumaa, Wiljandimaa ja Pärnumaa ühes Läänemere saartega — Saare — Hiiu ja Muhumaaga ja teistega, kus Eestirahwas suures enamuses põliselt asumas. Wabariigi piiride lõpulik ja üksikasjalik kindlaks määramine Lätimaa ja Weneriigi piiriäärsetes maakohtades sünnib rahwahääletamise teel, kui praegune ilmasõda lõppenud.

Eeltähendatud maakohtades on ainsamaks kõrgemaks ja korraldawaks wõimuks Eesti Maapäewa poolt loodud rahwawõim **Eestimaa päästmise komitee** näol.

Kõigi wabariikide ja rahwaste wastu tahab Eesti wabariik täielikku politilist erapooletust pidada ja loodab ühtlasi kindlasti, et tema erapooletus nende poolt niisama ka täieliku erapooletusega wastatakse.

Eesti sõjawägi wähendatakse selle määrani, mis sisemise korra alalhoidmiseks tarwilik. Eesti sõjamehed, kes Wene wägedes teeniwad, kutsutakse koju ja demobiliseeritakse.

Kuni Eesti Asutaw Kogu, kes üleüldise, otsekohese, salajase ja proportsionaalse hääletamise põhjal kokku astub, maawalitsemise korra lõpulikult kindlaks määrab, jääb kõik walitsemise ja seaduse andmise wõim Eesti Maapäewa ja selle poolt loodud Eesti Ajutise Walitsuse kätte, kes oma tegewuses järgmiste juhtmõtete järele peab käima:

1) Kõik Eesti wabariigi kodanikud, usu, rahwuse ja politilise ilmawaate pääle waatamata, leiawad ühtlast kaitset wabariigi seaduste ja kohtude ees.

2) Wabariigi piirides elawatele rahwuslistele wähemustele: wenelastele, sakslastele, rootslastele, juutidele ja teistele kindlustatakse nende rahwuskulturilised autonomia õigused.

3) Kõik kodaniku wabadused, sõna-, trüki-, usu-, koosolekute, ühisuste, liitude ja streikide wabadused, niisama isiku ja kodukolde puutumatus peawad kogu Eesti riigi piirides wääramata maksma seaduste alusel, mida walitsus wiibimata peab wälja töötama.

4) Ajutisele Walitsusele tehtakse ülesandeks wiibimata kohtuasutusi sisseseada kodanikkude julgeoleku kaitseks. Kõik politilised wangid tulewad otsekohe wabastada.

5) Linna-maakonna ja walla omawalitsuse asutused kutsutakse wiibimata wägiwaldselt katkestatud tööd jatkama.

6) Omawalitsuste all seisew rahwamiilits tuleb awaliku korra alalhoidmiseks otsekohe elusse kutsuda, niisama ka kodanikkude enesekaitse organisatsionid linnades ja maal.

7) Ajutisele Walitsusele tehtakse ülesandeks wiibimata seaduse eelnõud wäljatöötada maaküsimuse, töölisteküsimuse, toitlusasjanduse ja rahaasjaaduse küsimuste lahendamiseks laialistel demokratlistel alustel.

Eesti! Sa seisad lootusrikka tulewiku läwel, kus sa wabalt ja iseseiswalt oma saatust määrata ja juhtida wõid! Asu ehitama oma kodu, kus kord ja õigus walitseks, et olla wääriliseks liikmeks kultura-rahwaste peres! Kõik kodumaa pojad ja tütred, ühinege kui üks mees kodumaa ehitamise pühas töös! Meie esiwanemate weri ja higi, mis selle maa eest walatud, nõuab seda, meie järeletulewad põlwed kohustawad meid selleks.

Su üle Jumal walwaku
Ja wôtku rohkest ônnista:
Mis iial ette wôtad sa
Mu kallis isamaa!

Elagu iseseisew demokratline Eesti wabariik!
Elagu rahwaste rahu!

Eesti Maapäewa Wanemate Nôukogu.

Proclamation of the Estonian Republic by Salvation Committee,
1925/26 oil painting by Maximilian Maksolly. Tallinn City Museum

COMMENTARY

From the constitutional point of view, the Independence Manifesto was a declaratory yet also highly significant document.

The Manifesto proclaimed (manifested) that which the Provisional Provincial Assembly had substantively already resolved, but had not stated in so many words and in public. By the Manifesto[14] 'to all peoples of Estonia' the territory was proclaimed an independent state. The drafting and proclamation of the instrument took place during a period in which society experienced a classic interregnum – a power vacuum.

The Manifesto was drafted by Estonia's Salvation Committee (consisting of Konstantin Päts, Jüri Vilms and Konstantin Konik). After its proclamation, government authority was delegated to Estonia's Provisional Government. Due to the ongoing war, the Government was forced to work clandestinely. It took considerable effort to become an actual state capable of exercising its authority – among other things, this required taking up arms to resist invading Russian Bolsheviks and German imperial troops as part of the War of Independence.

[14] There are minor differences of dates and of wording between the original text and that published in the State Gazette. They reflect the haste and accessible printing technology of the time. The text that appeared in the State Gazette should be regarded as the official one.

The need to proclaim Estonian statehood was dictated by the rapidly changing situation in Europe – the World War had reached Estonian territory. West Estonian islands had already fallen to the Germans, who were marching on towards Tallinn, the capital city. The opportunity had to be seized and the nation's statehood staked out.

Because of the war, actual state-building work could only commence in November 1918. Almost immediately (on 28 November 1918), the War of Independence broke out between Estonia and Bolshevist Russia, threatening to nip Estonian statehood in the bud.

Bolshevist troops conquered a large part of Estonian territory and were only a few dozen kilometres from the capital city. Yet Estonia managed to regroup and – with the support of a British fleet as well as of Finnish, Swedish and Danish volunteers and of the Russian White Guard – to win the war and regain control of its territory. An armistice to stop hostilities was concluded on 3 January 1920 and a peace treaty with Soviet Russia signed on 2 February 1920.

The Manifesto shows similarities to corresponding French and American declarations. It was preceded by a meeting between representatives of all Estonian political parties to jointly assess the situation. Among other things, the meeting clearly expressed the view that Estonia should remain neutral.

The aim of proclaiming Estonia's neutrality was to achieve speedy international recognition which was and is one of the important (although not determining) criteria of statehood[15]. When assessing the situation, the political parties concluded that Estonia needed to become an independent neutral state to stop ethnic Estonian soldiers risking life and limb in the Russian-German struggle. On 19 February 1918, the Council of Elders of the Provisional Provincial Assembly decided, due to the urgency of the situation, to confer 'all government authority' on the Salvation Committee until the situation normalized[16].

In a rapidly changing situation, this was a politically astute and necessary move. From the practical point of view of asserting Estonian statehood, it did not have any significant constitutional impact. Rather, it represented a declaratory step intended to inform the population and other states, and to ensure continuity of government authority for worst-case scenarios.

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[15] The fact that the proclamation of neutrality was a significant factor that helped Estonia successfully establish its statehood may be part of the explanation why, at the end of the 1930s and before World War II, Estonian leaders of the time chose to reaffirm it. One of the key persons behind these decisions on both occasions was the same – Konstantin Päts.

[16] This step, too, shows that there was a state that needed to be saved. Had this not been the case, there would not have been anything to save.

The Independence Manifesto, in spite of its emotive and declaratory style, constitutes an important step in the constitutionalization of Estonia's statehood because it:

- declared Estonia an independent state within its historical and ethnic boundaries;
- defined the state that was established as a republic and proclaimed democracy as its system of government;
- proclaimed the equality of citizens before the law and the courts;
- proclaimed all civic rights known at the time, i.e., freedom of expression, of the press, of religion, of assembly, of association, of unions and to strike, as well as the inviolability of the person and of the home. As an exception to the constitutional traditions of the time, cultural autonomy was guaranteed to minority ethnic groups;
- in addition, steps were taken to establish the third branch of power characteristic of a democratic republic (the judiciary), an appeal was made to resume work by municipal authorities (a natural part of democracy) that had been interrupted, and steps were taken to resolve the issue of property (land) ownership.

Despite the ongoing War of Independence, the election to the Constituent Assembly was held on 5–7 April 1919. The new democratically and freely elected popular representation commenced work on

23 April 1919. The Assembly's work lasted until 20 December 1920, by which time it had adopted 88 laws and regulations that laid the foundation for Estonia's own legal order.

On 19 May 1919, the Assembly adopted a declaration on Estonia's independent statehood and sovereignty[17]. This was primarily oriented to the international community, although also widely circulated domestically. The document explained the situation that Estonia found itself in and affirmed the country's final separation from Russia. The declaration served to bolster the people's awareness of independent statehood. Its constitutional significance consisted in the fact that it once more described and explained the democratic and legitimate process by which Estonia had attained its statehood.

The Assembly appointed governments and accepted their resignations, determined the state budget and decided matters of war and peace. It operated as the parliament of a democratically governed state.

Of the instruments adopted by the Assembly, the most important from the perspective of Estonian statehood are – in addition to the declaration mentioned above – the Provisional Rules for Governing the Estonian Republic (adopted on 4 June 1919), the Land Law (adopted on 10 October 1919), ratification of the Treaty of Tartu on 13 February 1920

[17] Publication reference of the Estonian text: *RT* 1919, 47, 97.

and the Constitution of the Estonian Republic (adopted on 15 June 1920).

Estonia's becoming an independent nation triggered a tide of political and entrepreneurial activity across the country. In 1919, land reform was introduced and the large estates – first and foremost, manorial estates that belonged to Baltic Germans and made up approximately 60% of the stock of agricultural land – were nationalized. Tens of thousands of new family farms that provided people with work and sustenance were created by the reform. The changes established the preconditions for expansion in all areas of the nation's economy and for the consolidation of its statehood.

3. Provisional Rules for Governing the Estonian Republic (4 June 1919)[18]

Provisional Rules for Governing the Esthonian Republic (4 June 1919).

I. General Rules.

Art. 1. Esthonia is an independent sovereign democratic republic.

Art. 2. [Description of the frontiers of Esthonian territory]

Art. 3. The official language of the Republic of Esthonia is Esthonian.

In those lands where the majority of the inhabitants are not Esthonian but a local ethnic minority group, the business language in the local self-government institutions may be the language of that group, whilst everybody has the right to use the official language in such institutions. The local self-government institutions in which the language of the minority group is used must in their interaction with state institutions employ the official language, as also in interactions with other local self-government institutions where the language of the minority group is not used.

Citizens who belong to a local ethnic minority group have the right to address central institutions of the state in writing in their own language. The use of the languages of minority ethnic groups in the courts, as well as in local institutions of the state, shall be determined in detail by a special law.

Note: Germans, Russians, Swedes and Latvians are considered local ethnic minority groups.

[18] Publication reference of the Estonian text: *RT* 1919, 44, 91 / *RT* 1919, 109, 199.

II. On the Rights and Duties of Citizens.

Art. 4. All Esthonian citizens are equal before the law. In Esthonia, there are no class privileges or class titles.

Art. 5. In the Esthonian Republic, primary education is compulsory, and gratuitous, for all children who have reached school age. Every citizen of the Republic may receive his education in his mother tongue.

Art. 6. No restrictions may be imposed on the inviolability of the person and of the residence, confidentiality of correspondence, freedom of conscience, and of religion, speech, language use, press, association and movement of any citizen of the Esthonian Republic other than on conditions that shall be determined by laws.

Art. 7. In the Esthonian Republic, each citizen must be guaranteed the right to conditions of living worthy of human beings in accordance with the rules determined by a corresponding law; for the exercise of that right, citizens must be guaranteed the right to be allocated land for cultivation and for use as an abode, as well as the opportunity to find work, protection of maternity and of the labour force, as well as allowances from the state in relation to youth or old age, incapacity for work, and in the case of accident.

Art. 8. The rights and duties of Esthonian citizens may be restricted, and special obligations imposed on them, only based on a state of war declared pursuant to rules prescribed by the law and within the limits determined by the corresponding laws.

III. On Authorities.

Art. 9. The highest authority of the Esthonian Republic is vested in the Esthonian people. In the name of, and as appointed by, the people, the highest authority is exercised by the Constituent Assembly. The Speaker of the Assembly is statutory representative of the Republic; in matters of representing the state, the Speaker is entitled to receive relevant information from the Government of the Republic.

On the mandate given to it by, and under the oversight of, the Assembly, the highest executive authority is exercised by the Government. On the mandate given to it by the Assembly, and in the name of the Republic, the highest judicial authority is exercised by the Supreme Court.

The Assembly, the Government and the Court exercise the authority conferred upon them, untiringly keeping and protecting the external sovereignty and inviolability of the Republic, the rights and well-being of the people, the internal public order and security and the rights and freedoms of the citizens.

IV. Constituent Assembly.

Art.10. The Constituent Assembly sets itself the task of:

issuing the Constitution of the Esthonian Republic together with determining the foundations of the rights and duties of the citizens; as well as determining the foundations of land use arrangements and of the principal social innovations.

Art.11 Until the legislative body prescribed by a permanent constitution commences its work, the legislative and governing authority of the state is exercised by the Constituent Assembly; which:

a) issues laws;

b) determines the budget of the Republic's revenue and expenditure, approves the reports of the Republic's Auditor General, decides the raising of loans and the emission of money;

d) elects the members of the Government of the Republic, i.e., ministers, and their deputies as well as the chairman of the Government – i.e., the Prime Minister – and his deputy, the members of the Supreme Court and the Chief Judge of the Court, the Auditor General, and approves the appointment of members of the National Audit Committee;

e) debates and approves any treaties and alliances concluded with foreign states, authorizes the declaration of war and the making of peace, declares a state of war;

g) exercises oversight over the actions of the Government and may address interpellations to the Government and its members, call the Government and its members to account, and issue directions and set tasks to the Government.

Art.12. For urgent legislative needs, the Constituent Assembly designates from among its members a special legislative delegation which, during periods between the Assembly's sittings, is also tasked with carrying out other duties entrusted to it by the Assembly. The details of the organization and scope

of authority of this Delegation shall be determined by the Assembly by special laws.

Art. 13. Any laws of the Constituent Assembly that are not of an urgent nature must be put to the people to be adopted or rejected if this is required by 25,000 citizens who have the right to vote, or by 1/3 of the members of the Assembly.

The Assembly determines the requirements and time limits that must be observed when conducting a plebiscite.

Esthonian citizens are guaranteed the right to legislative initiative, provided the proposal is made by at least 3000 citizens who have the right to vote, according to rules that shall be determined in detail by a corresponding law.

Art. 14. The Constituent Assembly is convoked extraordinarily by the Board of the Assembly, either on its own initiative or when this is required by the Government of the Republic or 20 members of the Assembly.

In an emergency, the Assembly may be convoked by the Government of the Republic.

V. Government of the Republic.

Art. 15. The highest regulatory and executive authority of the Esthonian Republic is exercised by the Government of the Republic, the Government is in charge of all of the Republic's domestic and foreign affairs, in accordance with the laws and regulations that have effect in Estonia, as with the instructions and tasks that the Constituent Assembly sets it:

a) sees to the internal and external security, and defence, of the Republic. In an emergency, the

Government of the Republic may, during recesses between sittings of the Assembly, declare a state of war in the entire land or in any of its parts. In such a situation, the Assembly is convoked without delay.

b) at the proposal of the Minister of War, appoints the Commander-in-Chief of the Republican People's Army;

d) sees to the Republic's financial affairs, presents to the Assembly the budgets for, and reports on, state revenue and expenditure;

e) presents legislative bills to the Assembly;

f) reports to the Assembly on its work and intentions.

Art. 16. The Government of the Republic is elected for one year or, should a permanent constitution be elaborated and brought into effect earlier, then until the commencement of work of the Government formed on its basis.

Art. 17. The work of the Government of the Republic is coordinated and its are presided over by its chairman or, in his absence, by his deputy, who are both elected for the duration of the Government's term of office.

The Government is competent to act when at least one half of its members are convened. Meetings of the Government meetings are closed to the public.

Detailed regulations shall be brought into effect – by means of a special law – concerning the relationship between the chairman and other members of the Government and concerning the organization of the Government's work.

Art. 18. Affairs within the purview of the Government of the Republic are allocated by the Constituent Assembly between the members of the Government in accordance with their departments, i.e., ministries. The ministries are: 1) the Ministry of Education, 2) the Ministry of Commerce and Industry, 3) the Ministry of the Judiciary, 4) the Ministry of Agriculture, 5) the Ministry of Finance, 6) the Ministry of the Interior, 7) the Ministry of War, 8) the Ministry of Roads, 9) the Ministry of Food Provision, 10) the Ministry of Work and Welfare, and 11) the Foreign Ministry.

Note 1.: The Assembly is entitled to assign two or more departments to be managed by one Government member.

Note 2.: To protect the cultural interests of local minority ethnic groups, culture offices shall be created at the Ministry of Education, whose Heads (Ethnic Group Secretaries) shall be appointed by the Government of the Republic at the proposal of minority ethnic group organizations. The Heads (Ethnic Group Secretaries) are entitled to appear as advisors before the Government in matters in which they disagree with the decision of the Minister of Education.

VI. On the Authority of Members of the Constituent Assembly and of the Government of the Republic.

Art. 19. Members of the Constituent Assembly and of the Government of the Republic are liable under regular rules for any ordinary offences that they may commit during the time of their membership of the respective body, as well as for any offences that they

may commit in the course of performing their official duties or on performing the same.

No one may be held liable for any representations or explanatory statements made before the Constituent Assembly or its committees.

Art. 20. Members of the Constituent Assembly and of the Government of the Republic may be held liable, i.e., arrested, and their apartments may be searched strictly on the decision of the Assembly or, if the Assembly is not convened, on the decision of the legislative delegation provided for by Article 12. A negative decision shall be final. Where the decision in the matter of holding the person liable is affirmative, the accused resigns from their official duties and jurisdiction to hear the case vests in the Supreme Court.

Art. 21. Members of the Constituent Assembly and of the Government of the Republic are exempt from the duties of national defence service.

VII. Force of Laws and of Regulations.

Art. 22. All hitherto laws and legislative regulations remain in effect until the Constituent Assembly, the Government of the Republic or any other relevant lawful authority abrogates, amends or supplements the same following a legislative procedure, unless the same have already been abrogated, amended or supplemented by these Provisional Rules.

Art. 23. The laws of the Republic enter into legal force on having been adopted by the Constituent Assembly, i.e., by the legislative authority of the Republic, and shall have effect from the day of their publication and

delivery in the State Gazette, unless another period or other rules for their publication have been prescribed by the Assembly.

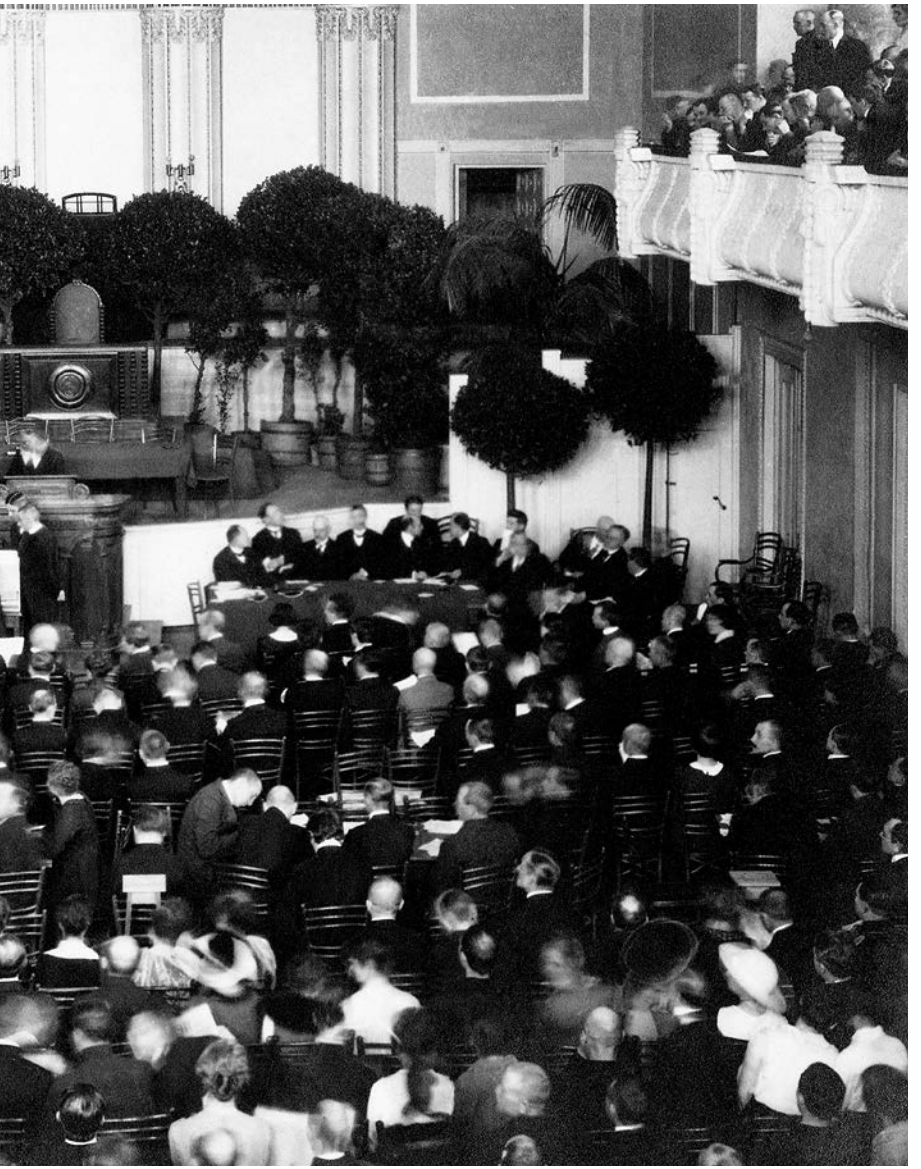
VIII. Implementation and Alteration of the Provisional Rules.

Art. 24. These Provisional Rules may be amended strictly with the agreement of at least one half of the overall number of members of the Constituent Assembly.

Art. 25. The Provisional Rules of the Republic enter into effect from the day of their publication in the State Gazette and remain in effect until the Constitution of the Esthonian Republic is promulgated.

Chairman of the Constituent Assembly: A. Rei

Secretary: H. Martna



Inauguration of the Constituent Assembly.
National Archives of Estonia. Photo: Parikas

COMMENTARY

The Rules can be seen as Estonia's provisional constitution – they laid down the constitutional points of departure for the exercise of public authority pending elaboration and adoption of a proper constitution.

The Rules were adopted by the Constituent Assembly on 4 June 1919, published in the official register of legislative instruments, the State Gazette, on 9 June 1919 and remained in force until 20 December 1920. The democratically elected Constituent Assembly[19] functioned as a (pre)parliament and was the central body responsible for the practical construction and regulation of the newly established Estonian statehood.

The state had to be built up and made to function lawfully. The Rules concisely and conclusively determined the fundamental organizational and operational structure of the newly established Republic. They were drafted by the 15-member Constitutional Committee formed during the second meeting of the Constituent Assembly. The Committee accomplished this within a single month during precarious times for the Republic – the empires around Estonia were collapsing, the events of World War I had led to civil war and an interregnum in Russia, and the fledgling nation was fighting the Independence War on domestic fronts.

[19] The degree to which they were considered a threat by the Communists is reflected in their subsequent fate. Of the members of the Constituent Assembly, 26 fled the country with the start of World War II; of those who remained, at least 32 suffered repression from the Soviet occupying authorities.

The Rules represented a conclusive self-regulatory instrument of the initial period of Estonia's statehood and constituted a natural and expected follow-up to preceding developments. They reaffirmed the independence and sovereignty of the Estonian Republic and appointed the Constituent Assembly as the highest authority of the land and the body to exercise government power in the name of the people.

The Rules restated many of the constitutional decisions taken up to that date, the most important of which were:

- determining the authority of the Constituent Assembly;
- fixing (delineating) the frontiers of Estonia's territory;
- providing the fundamental rights and duties of Estonian citizens and the basic rules for ensuring their protection[20];
- appointing the Government of the Republic as the lead executive and determining the scope of its authority and its duty of accountability to the legislature;
- determining the effect of previous legislative instruments;
- appointing the Supreme Court as the highest judicial instance;

[20] See: Vallikivi, Hannes. *Kodanikuõiguste peatükk Eesti 1919.aasta ajutises põhiseaduses* [The Chapter on Civic Rights in the Estonia's Provisional Constitution of 1919 – transl.] (Abstract in English: Civil Rights Chapter in Estonia's 1919 Preliminary Constitution, pp. 327–330. *Ajalooline Ajakiri* [The Estonian Historical Journal] 16.06.2020. https://doi.org/10.12697/AA.2019.3-4.01

- declaring Estonian to be the official language and regulating the use of minority languages;
- abandoning the institution of a separate head of state and vesting the relevant authority in the head of the executive;
- postulating the principle that state authority emanates from the people.

In the organization of government, unambiguous expression was given to the principle of separation of powers – the executive (the Government of the Republic) was required to 'report […] to the Assembly on its work and intentions'.

Including a declaration of civic rights in the founding instrument of statehood was exceptional at the time among new as well as established nations. Following a detailed and intense debate, the decision was made to confine the text to five rights: the rights to equality, to inviolability of the person, to political freedom, to primary education, and to social protection. In spite of lengthy debates, the rights to protection of private property and to private prosecution were omitted. The provisions represented declarations of aims that were not subject to judicial protection as individual rights proper. Still, in the context of the times, they should be seen as a progressive step.

Estonia gradually consolidated its international status. In 1921, the nation was recognized by the world's leading powers. In the same year, it became a member of the League of Nations. The United States recognized Estonia in 1922.

4. Peace Treaty between Estonia and Russia (Treaty of Tartu), 2 February 1920[21]

PEACE TREATY
BETWEEN ESTHONIA AND RUSSIA
(Tartu Peace Treaty).

2 February 1920

ESTHONIA, of the one part, and RUSSIA, of the other part, guided by a firm resolve to end the war that has broken out between them, have decided to enter into peace negotiations and to make an abiding, fair and just peace as soon as possible, and have appointed, as their plenipotentiaries:

the GOVERNMENT OF THE REPUBLIC OF ESTONIA –

Jaan (son of Jaan) POSKA, member of the Constituent Assembly,

Ants (son of Jaan) PIIP, member of the Constituent Assembly,

Mait (son of Aleksander) PÜÜMANN, member of the Constituent Assembly,

Julius (son of Jüri) SELJAMAA, member of the Constituent Assembly and

Jaan (son of Heinrich) SOOTS, Major General of the General Headquarters,

and

[21] Publication reference of the Estonian text: *RT* 1920, 24/25 (only the two articles that have constitutional significance are included in this collection); League of Nations Treaty Series, vol. 11, pp. 30–71.

the COUNCIL OF THE PEOPLE'S COMMISSARS OF THE SOVIET FEDERATIVE SOCIALIST REPUBLIC OF RUSSIA –

Adolf (son of Abram) JOFFE, member of the All-Russia Central Executive Committee of the Soviets of the Deputies of Workers, Peasants, Soldiers of the Red Army and Cossacks and

Isidor (son of Emmanuel) GUKOVSKY, member of the College of the People's Commissariat for State Control.

The aforementioned plenipotentiaries, having convened at Tartu, on having reciprocally presented their credentials, which were acknowledged to be constituted in due form and to be satisfactory in all respects, have agreed as follows:

Article I.

As of the day that this Peace Treaty enters into force, the state of war between the parties to the Treaty ceases.

Article II.

Based on the right of free self-determination of all peoples – up to complete secession from the state of which they are a part – that has been proclaimed by the Soviet Federative Socialist Republic of Russia, Russia unconditionally recognizes the sovereignty and independence of the Estonian state, voluntarily and for all time abandoning any sovereign rights that it enjoyed in respect of the Estonian people and lands under the constitutional order, as well as treaties, that were in effect previously, and that now, for the purposes set forth herein, are rendered ineffective for the future.

The fact of having formerly been part of the Russian state does not entail, for the Estonian people and territories, any obligations whatsoever towards Russia.

[…]

ARTIKKEL I.

Selle rahulepingu jõusse astumise päevast arvates lõpeb lepinguosaliste vahel sõja seisukord.

ARTIKKEL II.

Minnes välja Venemaa Sotsialistliku Föderatiivse Nõukogude Vabariigi poolt kuulutatud kõigi rahvaste vabast, kuni täieliku lahtilöömiseni riigist, mille hulka nad kuuluvad, enesemääramise õigusest, tunnustab Venemaa ilmtingimata Eesti riigi rippumatust ja iseseisvust, loobudes vabatahtlikult ning igaveseks ajaks kõigist suverään-õigustest, mis olid Venemaal Eesti rahva ja maa kohta maksvusel olnud riigiõiguslise korra, kui ka rahvusvaheliste lepingute põhjal, mis nüüd siin tähendatud mõttes edaspidisteks aegadeks maksvuse kaotavad.

Eesti rahvale ja maale ei järgne endisest Vene riigi külge kuuluvusest mingisuguseid kohustusi Venemaa vastu.

ARTIKKEL III.

1. Riigi piir Eesti ja Venemaa vahel läheb:

Narva lahest üks verst lõuna pool Kalameeste majast Ropscha küla peale, edasi Mertvitskaja jõekest ning Rossoni jõge mööda Ilkino külani, Ilkino külast ühe versta kauguselt lääne pool Keikino küla, poole versta kauguselt lääne pool Isvosi küla Kobõljaki küla peale, Schtschutschka jõesuu, Krivaja Luka küla, Petschurki karjamõis, Vtroja jõe kolme algharu kokkujooksu-koht, Kuritscheki küla lõunapoolne serv ühes selle maadega, sirge joon Peipsi järve keskkohta, kesk Peipsi järve ühe versta kauguselt ida pool Piirisaart (Porka), edasi järve kitsuste keskkohta mööda kuni Salu saareni; kitsuse keskkohalt Salu saare juurest edasi Talabski saarte ja Kamenka saare vahelise kitsuse keskkohta, lääne poolt Poddubje küla (Pihkva järve lõunakaldal),

Signed text of the treaty. National Archives of Estonia

СТАТЬЯ I.

Со дня вступления в силу настоящего мирного договора состояние войны между договаривающимися сторонами прекращается.

СТАТЬЯ II.

Исходя из провозглашенного Российской Социалистической Федеративной Советской Республикой права всех народов на свободное самоопределение вплоть до полного отделения от государства, в состав которого они входят, Россия признает безоговорочно независимость и самостоятельность Эстонского Государства и отказывается добровольно и на вечные времена от всяких суверенных прав, кои принадлежали России в отношении к Эстонскому народу и земле в силу существовавшего государственно-правового порядка, а равно на основании международных договоров, которые в указанном здесь смысле теряют силу на будущие времена.

Из прежней принадлежности к России для Эстонского народа и земли не возникает никаких обязательств в отношении к России.

СТАТЬЯ III.

1. Государственная граница между Россией и Эстонией проходит:

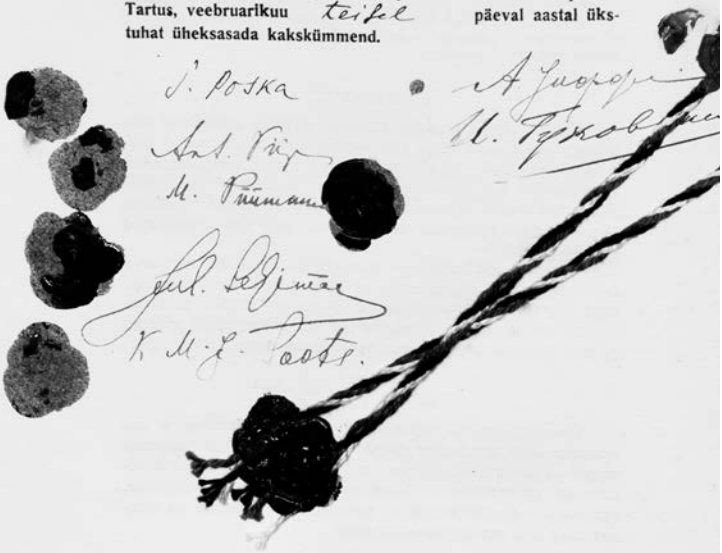
От Нарвского залива в одной версте южнее Дома рыбаков на д. Ропша, далее по речке Мертвицкая и реке Россонь до д. Илькино, от д. Илькино в одной версте западнее д. Кейкино, в полуверсте западнее д. Извоз на д. Кобыляки, устье реки Щучка, д. Кривая Лука, полум. Печурки, слияние трех истоков реки Втроя, южная окраина д. Куричек с ея угодьями, прямая линия к середине Чудского озера, по середине Чудского озера, в одной версте восточнее острова Порка (Пирисар), далее по середине проливов до острова Салло; от середины пролива у острова Салло к середине пролива между Талабскими островами и островом Каменка, западнее деревни Поддубье (на южном берегу Псковского озера), железнодорож-

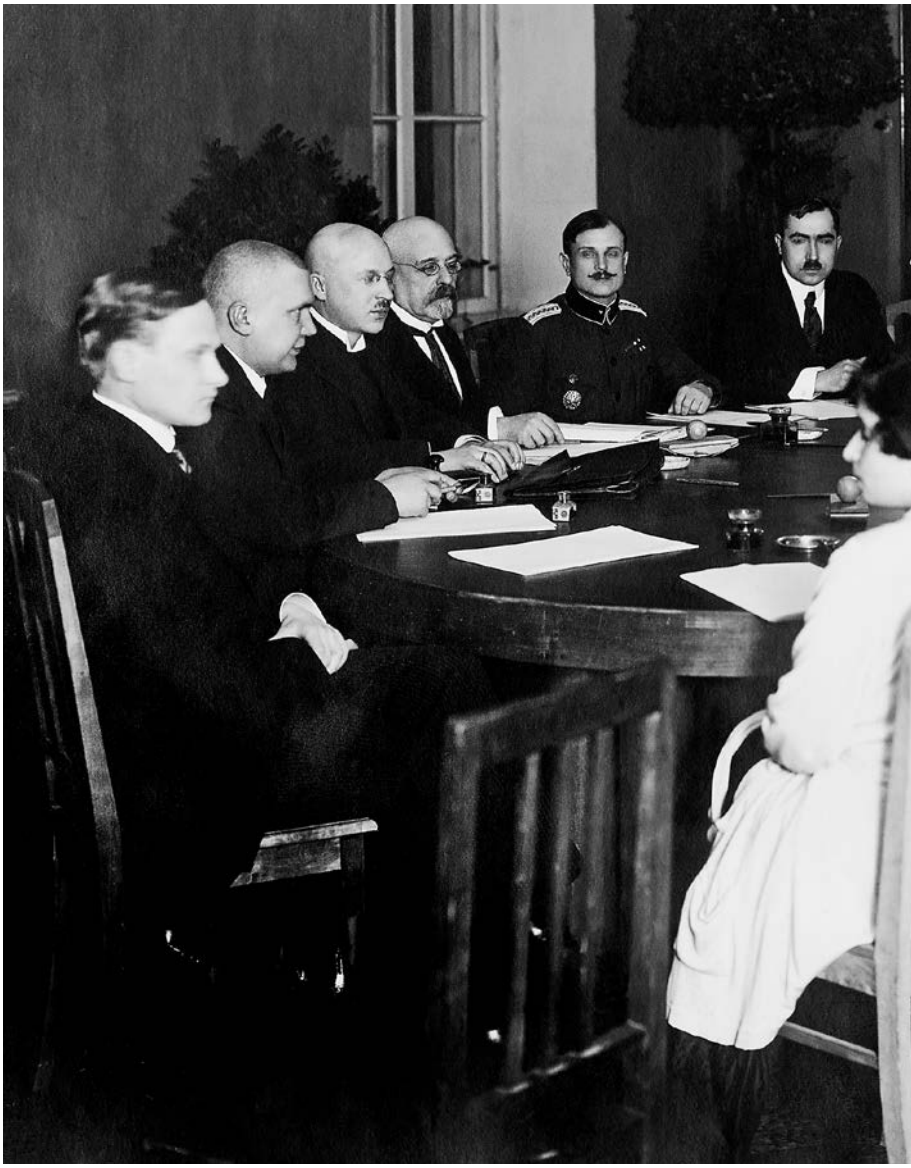
Rahuleping astub seaduslikku jõusse tema ratifitseerimise silmapilgust.

Igal pool, kus käesolevas lepingus algtähtajana nimetatakse rahulepingu ratifitseerimise silmapilku, mõistetakse selle all aega, mil mõlemad lepinguosalised tolmepandud ratifikatsioonist vastastikku teatavad.

Selle tõendamiseks kirjutasid mõlema poole volinikud käesolevale rahulepingule oma käega alla ja kinnitasid tema oma pitseritega.

Algkiri tehtud ning alla kirjutatud kahes eksemplaaris Tartus, veebruarikuu teisel **päeval aastal üks-tuhat üheksasada kakskümmend.**





The Treaty of Tartu – negotiating delegations.
National Archives of Estonia. Photo: A. Lomp

The Russian plenipotentiary Joffe signs the treaty.
National Archives of Estonia

As a matter of fact, a treaty between two states does not normally amount to a constitutional instrument. In addition, the Estonian state was already in existence, both de facto as well as *de jure*. Still, its high symbolic and practical significance has firmly ensured the Treaty of Tartu a place among the root texts of the nation's statehood.

The Treaty should be regarded as an instrument of fundamental importance to the Estonian people and the Estonian state because of the context in which it was concluded – it was a treaty between the centuries-long liege (Russia) and vassal (Estonia) by which the former recognized, *expressis verbis* and unambiguously, the secession of the latter as an independent state and renounced its sovereign authority over Estonia for all time[22].

The preconditions for the Treaty and for the success of negotiations were laid by Estonia's winning the War of Independence[23]. Over the 13 months of the

[22] According to the official position of the Foreign Ministry of the Russian Federation, presented on the eve of the 100th anniversary of the Treaty of Tartu, the treaty has no effect and should be seen as a mere historical record. In the Russian view, Estonia as an independent country lost its statehood when it acceded to the Soviet Union in 1940. The Republic of Estonia is a new state that was created upon the disintegration of the Soviet Union. This interpretation represents the way of 'the third Republic', one of the options that were suggested at the time Estonia's independence was being re-established (see commentaries to instruments of that period). The term 'former Soviet republic' is also widely used in the current mass media. The Republic of Estonia continues to regard the treaty as valid and as one of the bulwarks of the continuity of its statehood.

[23] Rauch, Georg von. The Baltic States: The Years of Independence 1917–1940. Hurst and Co., 1974, p. 73.

war, Estonia's casualties amounted to 5000 dead and 15,000 wounded. For the first time since the early 13th century, Estonia had regained its independence.

For Russia, the treaty represented a tactical manoeuvre intended to break the blockade imposed by the world's nations on the Bolshevist state. Indeed, even in that year, the Bolshevik leader Lenin had already declared that soon a Soviet Estonia would be created that would conclude a new treaty with Russia. For the Russian side, the Treaty of Tartu represented a forced tactical move, a diversion seen as a provisional measure. This is demonstrated by the series of subsequent actions taken by Soviet Russia in respect of the Estonian Republic. The first, albeit abortive, attempt to subdue the Republic by violence was undertaken by the Bolsheviks in December 1924.

However, Russia's positions or actions do not render the Treaty or its substantive provisions non-existent. The Treaty was the first concluded between the parties as states. Both parties had an interest in concluding it, Estonia as well as Russia. The interest of the Russian side is demonstrated by the fact that Russia was prepared to renounce its claim to any properties of the Russian Empire situated in Estonia, to grant 15 million gold roubles to Estonia under the heading of war reparations and to undertake to return property evacuated from Estonia[24].

[24] The obligation has not been fulfilled in that, for example, the property of the University of Tartu that was evacuated to Russia has not been returned to this date.

The Treaty of Tartu was followed by other treaties that the Estonian Republic concluded with other nations. The reorganization of international relations and networks was a natural part of the process of disintegration of empires and creation of new states after World War I.

The Treaty has been referred to by Lennart Meri (Estonia's first president under the 1992 Constitution) as the birth certificate of the Estonian Republic. The symbolic comparison links to a self-evident truth – a viable new-born is issued a birth certificate. Still, the comparison contains more symbolism and national pride than direct constitutional significance.

Of immediate constitutional significance in the Treaty were the provisions that determined the territorial extent of the Estonian Republic by reference to that of the other party. The Treaty contained a detailed description of the frontier between Estonia and Russia[25]. Similarly, the Treaty allowed Estonia to lay claim to an important attribute of statehood – recognition by other states.

The Finnish government recognized the Estonian Republic *de jure* on 7 July 1920, the Polish government on 31 December 1920 and the Supreme Council of

[25] Soviet Russia (the USSR) renounced the border that had been agreed by the Treaty of Tartu and unilaterally changed it on several occasions. The latest of such changes – the so-called 'administrative boundary' of the Estonian SSR has become the *de facto* state border of the current Estonian Republic – yet it has not been approved by a border treaty ratified between contemporary Estonia and the Russian Federation.

the *Entente* on 26 January 1921. The latter in particular was not an easy achievement, as is shown by the rejection of Estonia's application to the League of Nations in December 1920. Recognition depended on the stance that the majority of nations took in respect of Bolshevist Russia[26].

The Treaty of Tartu facilitated the movement of Estonian nationals (citizens) to their native land. The Treaty specifically determined the frontiers and jurisdiction of the Estonian Republic as the area to which Estonians were entitled to repatriate.

The Treaty was significantly more voluminous than the provisions presented in this volume. It contained a series of technical and practical rules concerning military forces, property, repatriation and other subjects that do not have immediate constitutional significance. Among other things, it made provision for the right of the residents of states that had been created in the course of the disintegration of empires following World War I – including Estonia – to choose their state of citizenship. For one year, Estonian residents who found themselves in Soviet Russia had the right to return to Estonia. Similarly, Russian subjects residing in Estonia were entitled to return to Russia.

To sum up, the principal constitutional results of the Treaty of Tartu were:

[26] See: Laidre, Margus. Legal Consequences of the Molotov-Ribbentrop Pact for the Baltic states: The obligation of overcoming the problem of the past. *Akadeemia* no. 10, 2002.

– cessation of hostilities between the parties and acknowledgment of peoples' freedom of self-determination;[27]

– Russia's unconditional recognition of the independence and sovereignty of the Estonian state, 'voluntarily and for all time renouncing any sovereign rights that it enjoyed in respect of the Estonian people and lands under the constitutional order, as well as treaties, that were in effect previously, and that now, for the purposes set forth herein, are rendered ineffective for the future';

– fixing the frontier between the parties[28];

– determining rules to govern the co-optation, or choice of citizenship, of both parties' subjects (citizens).

The arrangements reached as part of the Treaty of Tartu helped Estonia consolidate its statehood. The treaty was ratified in the Constituent Assembly on 13 February 1920[29].

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[27] One of the first practical applications ever of a people's right of self-determination in its contemporary interpretation.

[28] See footnote 25.

[29] At the time of Estonia's annexation and occupation in 1940, the original text of the Treaty of Tartu was taken to Swedish National Archives for safekeeping. It was returned to independent Estonia in 2002.

THE CONSTITUTIONS[30]

5. The Constitution of the Estonian Republic adopted by the Constituent Assembly on 15 June 1920[31]

CONSTITUTION OF THE ESTHONIAN REPUBLIC
(Adopted by the Constituent Assembly on 15th June, 1920.)

The Esthonian people with unwavering faith and unshaken resolve to create a state based on justice, law, and liberty, for the protection of internal and external peace, and as a pledge for the social progress and general welfare of present and future generations, has adopted and laid down through the Constituent Assembly the following Constitution:

[30] Unofficial historical translations are available of the 1920, 1934 and 1938 Constitutions (for instance, https://en.wikipedia.org/wiki/Constitution_of_Estonia). In their original form, these represent the best effort to make the fundamental rules of the Estonian Republic easily accessible to the international community. Still, in light of contemporary understanding and usage, as well as to correct minor omissions and inaccuracies, they are reproduced below in a rectified and adapted form to facilitate comparison and allow the reader to trace identically worded concepts. The rectifications and adaptations seek to convey the original Estonian wording as accurately as is possible without compromising intelligibility. The translation of the 1992 Constitution, while also unofficial, has been carefully considered by a body of experts and appears on the website of the Estonian State Gazette (https://www.riigiteataja.ee/en/eli/530122020003/consolide).

[31] The English text reproduced below represents a translation done a century ago. Its use of the form 'Esthonia' (now obsolete) and of its derivatives has been preserved as a mark of the historical period, while the contemporary reference 'Estonia' is employed in the commentary. Since the 1934 Constitution is formally an amended version of the 1920 text, the same historical use has been followed – again, with the contemporary form employed in the commentary.

Chapter I.
General Rules.

Art. 1. Esthonia is an independent sovereign Republic in which the authority of the state is vested in the people.

Art. 2. To the territory of Esthonia belong *Harjumaa, Läänemaa, Järwamaa, Wirumaa* with the town of Narwa and its environs, *Tartumaa*, *Wiljandimaa*, *Pärnumaa*, the town of Walk, *Wörumaa*, *Petserimaa* and other mainland frontier areas inhabited by Esthonians, the islands of *Saaremaa* (Oesel), *Muhumaa* (Moon), and *Hiiumaa* (Dago), and other islands and shoals situated in Esthonian waters. The fixation of Esthonia's frontiers shall be settled by treaties.

Art. 3. The authority of the Esthonian state cannot be exercised by anybody otherwise than on the basis of the Constitution and of the laws adopted under it.

Art. 4. The laws in force in Esthonia are those adopted or recognized by her own institutions. Generally accepted regulations of international law are valid in Esthonia as an inseparable part of her juridical order. No one may plead ignorance of the law as their excuse.

Art. 5. The official language of the Esthonian Republic is Esthonian.

Chapter II.
On the Fundamental Rights of Esthonian Citizens.

Art. 6. All Esthonian citizens are equal before the law. There cannot be any public privileges or restrictions derived from birth, religion, sex, class, or ethnicity. In Esthonia, there are no classes or class titles.

Art. 7. The Esthonian Republic confers no decorations or marks of distinction on its citizens, excepting members

of the defence forces in time of war. Esthonian citizens are likewise not at liberty to accept marks of distinction or decorations from foreign states.

Art. 8. Personal inviolability is guaranteed in Esthonia.

No one can be subjected to a criminal investigation except in situations and pursuant to the rules prescribed by a law.

Unless caught committing a criminal offence, no person may be arrested or his personal liberty restricted otherwise than by decision of judicial authorities, and this decision, with all grounds, must be communicated to the person arrested at the latest three days after arrest. Any citizen has the right to demand communication of the above decision to the person arrested, if this has not taken place in the period previously mentioned.

Transferring a citizen against his will from the jurisdiction of the court designated by law to that of another one is not allowed.

Art. 9. In Estonia, no punishment may be imposed on anybody for an act not recognized as punishable by a law that entered into force before the act was committed.

Art. 10. The home is inviolable. No forcible entrance to, or search of, the home is allowed except in situations and in execution of the requirements mentioned by a law.

Art. 11. In Esthonia, there is freedom of religion and conscience. Nobody is obliged to perform religious acts or to be a member of a religious association or undertake public obligations in the interests of the same.

The practice of religion is not hindered, provided it does not interfere with public order and morals.

Creed and outlook may not excuse any offence or avoidance of civic duties.

There is no state religion in Esthonia.

Art. 12. Science, art and their teachings are free in Esthonia. Education is compulsory for children who have reached school age, and is gratuitous in public elementary schools. Minority ethnic groups are guaranteed education in their mother tongue. The provision of education is overseen by the state.

Institutions of higher education are guaranteed autonomy within the limits foreseen by their statutes that have been adopted by means of a legislative procedure.

Art. 13. In Esthonia, there is freedom to express one's ideas by spoken or printed word, writing, images or sculpted forms. This freedom may be restricted only for the protection of the state and morals.

There is no censorship in Esthonia.

Art. 14. In Esthonia, the confidentiality of messages and letters transmitted through the post, telegraph, telephone or any other commonly used means is guaranteed. Only judicial authorities are entitled to derogate from this in situations foreseen by a law.

Art. 15. The right to address complaints or petitions to public institutions competent in the matter is guaranteed in Esthonia. Complaints or petitions must not be accompanied by any coercive measures. The competent institutions are bound to deal with the matter as prescribed by law.

Art. 16. Preliminary permission is not needed for prosecution of public officials.

Art. 17. Travel and change of abode are free in Esthonia. In this freedom, no one may be restricted or hindered other than by the judicial authorities.

In the interests of public health, this freedom may also be restricted by other authorities in situations and pursuant to the rules prescribed by the corresponding laws.

Art. 18. All Esthonian citizens have the right to hold public meetings unarmed, provided this is done without disturbing the public peace.

The forming of unions and federations is free in Esthonia.

In Esthonia, the freedom to strike is guaranteed.

These rights may be restricted by law only in the interest of public security.

Art. 19. In Esthonia, liberty in the choice of occupation, in the opening of enterprises and exploitation of the same in agriculture, commerce and industry – as well as in other economic branches – is guaranteed. No one may be restricted or hindered in this freedom otherwise than on the basis and within the limits of the laws.

Art. 20. Every Esthonian citizen is free to determine his or her ethnicity. In cases where individual choice is not possible, the determination is made pursuant to the rules prescribed by a law.

Art. 21. Members of minority ethnic groups within the frontiers of Esthonia may, for the promotion of the interests of their national culture or for charitable purposes,

create the corresponding autonomous institutions in so far as these do not run contrary to the interests of the state.

Art. 22. In those localities where the majority of the inhabitants are not Esthonian but a local ethnic minority group, the business language in the local self-government institutions may be the language of this group, whilst everybody has the right to use the official language in such institutions. The local self-government institutions in which the language of the minority group is used must in their intercourse with state institutions – as also with other local self-government institutions where the language of the minority group is not used – employ the official language.

Art. 23. Citizens who are ethnic Germans, Russians, and Swedes have the right to address central institutions of the state in writing in their own language. The use of the language of these ethnic groups in the courts, as also in local institutions of the state and in local self-government institutions, is determined in detail by a special law.

Art. 24. The right to private property is guaranteed in Esthonia to every citizen. Without the owner's consent his property may only be expropriated in the general interest on the basis of, and pursuant to the rules prescribed by, the laws.

Art. 25. The organization of economic life in Esthonia must correspond to the principles of justice that – by corresponding laws relating to the acquisition of land for cultivation, to the finding of housing and employment, to the protection of maternity and of the labour force, as well as to allowances in relation to

youth or old age, disability and accident – aim to guarantee conditions of living worthy of human beings.

Art. 26. The rights and freedoms of citizens referred to in Articles 6–24 above do not exclude other rights that emanate from the principles of this Constitution or are compatible with it.

In the event that martial law is declared for a specified period of time pursuant to rules prescribed by law, extraordinary restrictions of citizens' freedoms and fundamental rights come into force on the basis and within the limits of the corresponding laws.

Chapter III.
On the People.

Art. 27. In Esthonia, the supreme authority of the state is the people itself, acting through citizens who have the right to vote. The right to vote is enjoyed by every citizen who has reached twenty years of age and has held Esthonian citizenship without interruption for at least one year.

Art. 28. The right to vote is not enjoyed by citizens: (a) who, following a legislative procedure, have been pronounced demented or insane; and (b) the blind, deaf-mutes and spendthrifts if they have been placed under guardianship.

The right to vote is withheld from certain categories of criminal according to the law on elections to the National Assembly.

Art. 29. The people exercises the authority of the state: (a) by plebiscite; (b) by popular legislative initiative; and (c) by election of the National Assembly.

Art. 30. Every law adopted by the National Assembly remains unpromulgated for a period of two months dating from the day of its adoption if this is required by one third of the legal number of the Assembly's members. If during this period 25,000 citizens who enjoy the right to vote require the law to be submitted to a plebiscite for acceptance or rejection, its subsequent promulgation depends on the outcome of the plebiscite.

Art. 31. Under the rules of popular legislative initiative, 25,000 citizens who enjoy the right to vote are entitled to require that a law be adopted, changed or repealed. The respective requirement, in the form of a fully developed bill, is presented to the National Assembly. The Assembly may either adopt the bill as a law or reject it. In the latter case the bill is submitted to the people for acceptance or rejection under the rules of the plebiscite. If, in the plebiscite, the majority of the participants declare the law in question to have been adopted, it acquires statutory force.

Art. 32. If the people reject a law adopted by the National Assembly or adopt a law rejected by the Assembly, a new election to the Assembly shall be proclaimed, and shall take place not later than seventy-five days after the plebiscite.

Art. 33. Plebiscites are overseen by the Board of the National Assembly. The principles and rules of the plebiscite are determined by a special law.

Art. 34. The budget, raising of loans, tax laws, declaring war and making peace, declaring martial law and terminating the same, ordering mobilization and demobilization, as well as treaties with foreign states, are not subject to plebiscite and may not be decided by means of popular legislative initiative.

Chapter IV.
On the National Assembly.

Art. 35. Legislative authority is exercised by the National Assembly as the representative of the people.

Art. 36. The National Assembly consists of 100 members elected by universal, equal, direct and secret ballot based on the principles of proportional representation.

The National Assembly may increase the number of its members; the corresponding law shall come into force at the next election to the Assembly.

The law on elections to the National Assembly is adopted as a special law.

Art. 37. Every citizen who enjoys the right to vote is entitled to participate in the election, or stand to be elected as a member, of the National Assembly.

Art. 38. Members of the National Assembly, with the exception of assistants to members of the Government of the Republic, may not hold any office whose incumbent is appointed by the Government or its institutions.

Art. 39. After every three years, a new election to the National Assembly shall be held. The beginning of the mandate of members of the Assembly is deemed to be the day on which the results of the election were announced.

Art. 40. In a situation where a member of the National Assembly forfeits his right to be elected or is arrested by consent of the Assembly, or passes away or resigns, he is replaced by a new member pursuant to the rules of electoral law, until expiry of the period mentioned in the foregoing Article.

Art. 41. The National Assembly convenes for an ordinary session on the first Monday of October of each year.

Art. 42. The Board of the National Assembly may also convoke the Assembly for extraordinary sittings when circumstances so require. The Board must do so when this is required by the Government of the Republic or by one fourth of the legal number of members of the Assembly.

Art. 43. The National Assembly elects the Speaker and other members of the Board at its first sitting after the election. Until the Speaker's election, the sitting is presided over by the Speaker of the previous Assembly.

Art. 44. The National Assembly issues rules of procedure which are published as a law.

Art. 45. Members of the National Assembly are not bound by their mandates.

Art. 46. The National Assembly is competent to act when at least one half of the legal number of its members have convened.

Art. 47. Meetings of the National Assembly are public. Only in extraordinary situations, two thirds of the members convened agreeing, may a meeting of the Assembly be declared closed to the public.

Art. 48. Save for that prescribed by the rules of procedure, members of the National Assembly bear no responsibility for their political declarations in the Assembly or in its committees.

Art. 49. A member of the National Assembly may not be arrested without the consent of the Assembly except where he is caught committing a criminal offence. In such a situation the arrest, together with its reasons, is communicated at the latest within forty-eight hours to the Board of the Assembly, which submits it to a resolution of the Assembly at its next sitting.

The National Assembly may postpone any imprisonment or other restriction imposed on its members until the Assembly is in recess or until expiry of its mandate.

Art. 50. Members of the National Assembly are exempt from defence service for the duration of their mandate.

Art. 51. Members of the National Assembly are paid a travel allowance and remuneration the amount of which is fixed by a law and which the Assembly may only alter for subsequent Assemblies.

Art. 52. The National Assembly promulgates laws, fixes the budget of the state's revenue and expenditure, and decides on raising loans and other matters on the basis of the Constitution.

Art. 53. The laws adopted by the National Assembly are promulgated by the Board of the Assembly.

Art. 54. A law enters into force on the tenth day following its promulgation in the State Gazette, unless it prescribes other rules or some other period.

Art. 55. Through the relevant institutions that it establishes, the National Assembly oversees the economic activities of state institutions and enterprises as well as implementation of the state budget.

Art. 56. At sittings of the National Assembly, each member of the Assembly is entitled to put questions to the Government of the Republic. One fourth of the legal number of members of the Assembly is entitled to address interpellations to the Government, on which an explanation must be given.

Chapter V.

On the Government.

Art. 57. In Esthonia, executive authority is exercised by the Government of the Republic.

Art. 58. The Government consists of the State Elder and ministers.

The number of the latter, the division of responsibilities between them as well as the detailed rules of business shall be determined by a special law.

Art. 59. The Government of the Republic is appointed to and released from office by the National Assembly. On the resignation of an individual minister and pending the appointment of a new incumbent, his duties are performed by a member of the Government as designated by the latter.

Art. 60. The Government of the Republic is in charge of domestic and foreign policy of the state's, attends to its external inviolability, internal security and the observance of its laws. The Government:

(1) prepares the budget for state revenue and expenditure and submits it to the National Assembly for approval;

(2) appoints and dismisses military and civil officials, in so far as this function is not vested by laws in other public institutions;

(3) concludes treaties with other states on behalf of the Esthonian Republic, and lays them before the National Assembly for ratification;

(4) declares war and makes peace on the basis of the corresponding resolutions of the National Assembly;

(5) proclaims martial law in particular regions as well as in the entirety of the state, and submits this to the National Assembly for approval;

(6) presents bills to the National Assembly;

(7) issues regulations and orders on the basis of laws;

(8) decides on petitions for mercy.

Art. 61. The State Elder represents the Esthonian Republic, leads and coordinates the work of the Government of the Republic, presides over its meetings, and may address interpellations to individual ministers concerning their actions.

Art. 62. The Government of the Republic appoints a member of the Government as a deputy to the State Elder.

Art. 63. Meetings of the Government of the Republic are closed to the public. Only on special solemn occasions may they be declared open to the public.

Art. 64. The Government of the Republic must possess the confidence of the National Assembly. Where the Assembly openly declares that it has no confidence in the Government or its individual members, the Government or its members resign their office.

Art. 65. The Government of the Republic has a State Chancery to assist it which is supervised by the State Elder. The Chancery is led by the State Secretary who is appointed to office by the Government.

Art. 66. All executive decisions taken by the Government must bear the signatures of the State Elder, the respective minister and the State Secretary.

Art. 67. Prosecution of the State Elder and ministers for offences related to their office is allowed strictly based on the corresponding resolution of the National Assembly. Jurisdiction to hear the case is vested in the Supreme Court.

Chapter VI.
On the Courts.

Art. 68. The administration of justice in Esthonia is exercised by the courts, which are independent in their work.

Art. 69. The highest judicial authority in Esthonia is exercised by the Supreme Court, which is composed of justices elected by the National Assembly.

Art. 70. Any judges, who, under the law, are not elected, are appointed by the Supreme Court.

Art. 71. Judges may be dismissed from office strictly by judicial procedure.

Judges can be moved from one location to another against their will only in situations where this results from application of the law.

Art. 72. Judges cannot hold any other paid office, with the exception of situations prescribed by a law.

Art. 73. In accordance with and pursuant to the rules prescribed by the corresponding laws, jurisdiction to try specific categories of criminal cases is vested in juries. The previous Article is not binding on jurors.

Art. 74. Extraordinary courts are allowed within the limits of the corresponding laws strictly during the time of war, during martial law and on naval vessels.

Chapter VII.
On Self-Government.

Art. 75. In so far as no special institutions have been created by law for this, government authority is exercised locally by self-government institutions.

Art. 76. Representative bodies of local self-governing units are elected by universal, equal, direct and secret ballot based on the principles of proportional representation.

Art. 77. In order to carry out their functions, local self-governing units are entitled to levy taxes and impose duties within the limits and pursuant to the rules determined by a law.

Chapter VIII.
On Defence of the State.

Art. 78. On the basis of and pursuant to the rules prescribed by a law, all Esthonian citizens are under a duty to take part in the defence of the Republic.

Art. 79. For the defence of the Republic, defence forces shall be created, the organization of which shall be determined by a special law.

Art. 80. Upon the ordering of mobilization, as well as upon the beginning of war, command of the defence forces of the Republic passes from the Government of the Republic to the special Commander-in-Chief, the scope of whose authority is determined by a special law.

Art. 81. On the basis of and pursuant to the rules prescribed by a special law, the Government of the Republic is entitled to enact decrees and regulations concerning the defence forces.

Art. 82. The order for mobilization of the defence forces of the Republic shall be decided by the National Assembly.

The Government of the Republic has the authority to order mobilization without awaiting the decision of the National Assembly if a foreign state has declared war on the Republic, commenced hostilities, or ordered mobilization against the Republic.

Jaan Tõnisson speaking from the rostrum in the National Assembly.
National Archives of Estonia

Chapter IX.
On State Taxes and the Budget.

Art. 83. No public tax or duty may be imposed on any person otherwise than on the basis of a law.

Art. 84. No person may be awarded a pension, grant, or other remuneration on account of the state other than based on the corresponding law.

Art. 85. For every year, a general budget for state revenue and expenditure shall be compiled. By legislative means, its effect can be prolonged in stages until adoption of the new budget.

Chapter X.
On the Force and Alteration of the Constitution.

Art. 86. The Constitution is the constant guide for the actions of the National Assembly, the courts, and institutions of the executive branch.

Art. 87. The power to initiate an alteration of the Constitution is vested in the people pursuant to the rules of popular legislative initiative, as well as in the National Assembly pursuant to regular rules.

Art. 88. An alteration of the Constitution, whether initiated under the rules of popular legislative initiative or by the National Assembly, shall be decided by the people by means of a plebiscite.

Art. 89. The bill to alter the Constitution must be communicated to the people at least three months before the day of the plebiscite.

A. Rei,
Chairman of the Constituent Assembly

COMMENTARY

For the first time in its history[32], Estonia possessed a law laying down the order of its governance as an independent state – the nation's constitution. It was drafted by Estonia's own jurists and politicians based on the dominant views and aspirations of the time. The 1920 Constitution has rightly been characterized as democratic because it included many of the principles of democratic governance that are still widely recognized.

The principal constitutional task of the Constituent Assembly was to draft the first constitution of an independent Estonia. To carry out this task, a permanent 15-member Constitutional Committee was formed on 4 June 1919. Most of the nation's leading lawyers were involved in the drafting effort[33]. In those days, the nation had few jurists who were well versed in constitutional law. Nor was there any experience of independent statehood. The context for the drafting work was set by the education and practical experience that Estonian jurists had accumulated in universities and public institutions

[32] Important features of the constitutional order were also determined by the Provisional Rules for Governing the Estonian Republic, adopted on 4 June 1919. Due to its status and effect, the instrument – although not intended as such – has been described as Estonia's first constitution.

[33] The major constitutional instruments of the first period of independence were drafted predominantly by jurists. The circle of drafters was considerably broader during the second period of independence, when the nation's leading figures from various walks of life were involved.

of the Russian Empire. Due to the turbulent constitutional and political context of the time, the number of analogous instruments elsewhere in Europe that were suitable as models was also very limited.

The first reading of the bill tabled in the Constituent Assembly by the Constitutional Committee took place on 27 May 1920. The final vote was held on 15 June 1920. According to the record of proceedings in the Constituent Assembly, the result of the vote, in which 90 delegates participated, was 'with three votes against, the Constitution of the Estonian Republic has been adopted at the third reading'. Estonia became a country with a constitution of their own.

The Constitution entered into force six months later, on 21 December 1920. It remained in force without alterations for 13 years. Generally speaking, in Estonian constitutionalism the period 1920–1934 reflects the ideas of Romantic nationalism and liberalism[34], while the period 1934–1940 is marked by conservatist nationalism and autocracy.

The method that is typically used to imbue a constitution with the highest degree of authoritativeness and legitimacy is its adoption directly by the population – by plebiscite. Once the constitution has been approved by the majority of the people, it is logical to assume it will be broadly accepted.

[34] See: Clark, R. T. The Constitution of Estonia. – *Journal of Comparative Legislation and International Law*, 3/1921/4.

The fact that, in 1920, an indirect method was employed to adopt the constitution can be explained by the urgency of the situation and the absence of experience in practical exercise and regulation of statehood. The Constitutions of 1933 and 1992 were adopted by the people. The 1938 Constitution was adopted by the National Constituent Assembly without holding a plebiscite to obtain popular approval.

The impact of decades of Russian imperial constitutional doctrine and practice continued to be felt in Estonia's political life and practical administrative organization. Doctrine and practice had shaped the legal training and views of the leading jurists of the time and their manifestations could be seen throughout the public sphere.

The 1920 Constitution carried a clearly discernible imprint of its time. It reflected the ideas of the French Enlightenment, including Rousseau's idea of parliamentarism and Montesquieu's principle of separation of powers[35]. Also evident are the principal tenets of the Constitution of Germany's Weimar Republic – republicanism, a parliamentary system of government, a proportional electoral system, personal rights, social justice and others. Hence, the 1920 Constitution established the main parameters of democratic governance – fundamental rights and

[35] Compared to subsequent periods, knowledge of the French language and legal culture was widespread at the time.

freedoms[36] of citizens, the rule of law and a clear principle of the independence of the judiciary.

The preamble to the Constitution defined the foundations and aspirations of Estonian statehood which, subject to minor changes, have been retained in the current text adopted in 1992. The timelessness of the wording demonstrates it as an apt and a just rendition of national sentiment.

Special mention must be made of the catalogue of fundamental rights and freedoms which, in the context of the times, should be characterized as detailed and extensive. Reflecting new European trends of the time, the Constitution laid down a broad spectrum of civic rights, including freedom of association, assembly, conscience, religion and speech, the inviolability of property, and equality before the law. The people would exercise its authority by means of elections, of popular legislative initiative, and of plebiscites. Eligibility to vote was accorded to both men and women from the age of 20. In the context of the period, these principles appear highly progressive.

[36] See: Rule of Law and Political Situation in the Baltic Sea Region Before and After World War I (1917–1922). Foundation of New Countries and their Constitutional and Legal Dimensions. Study project of Baltic universities 15.01.2014–15.12.2014; Parrott, Andrew. The Baltic States from 1914 to 1923: The First World War and the Wars of Independence. In: *Baltic Defence Review* no. 8, vol. 2/2002; Siimets-Gross, Hesi. Social and Economic Fundamental Rights in Estonian Constitutions Between World Wars I and II: A Vanguard or Rearguard of Europe? – *Juridica International*, X/2005.

However, the fundamental rights and freedoms that were proclaimed did not possess a mechanism for ensuring their actual realization. More specifically, there was no public oversight (such as by an ombudsman) for their protection – the Constitution did not directly charge any particular official or institution with the corresponding duty. Judicial review of fundamental rights and freedoms had yet to evolve.

It is possible that, in addition to European models, the catalogue of rights and freedoms also drew inspiration from the Russian Empire, whose 1906 version of Fundamental Laws made provision for similar rights and freedoms. Needless to say, in true Russian fashion, these remained a paper declaration with little actual significance.

An indisputable achievement of the first Estonian Constitution was its affirmation of supreme authority being vested in the people. The principle can be seen as a reaction to the past in which for centuries the population had not enjoyed a political voice and could not participate in making decisions on matters of government. According to the Constitution, supreme authority in Estonia was vested in the people and had to be guaranteed by relevant constitutional measures.

The Constitution sought to introduce the principle of popular sovereignty. In the electoral system, provision was made for general, universal and proportional elections by secret ballot. In addition,

it set a short (three-year) interval between general elections, established proportional representation and an overall conceptual solution that caused the National Assembly to reflect the broadest spectrum of public opinion and political movements. This commendable orientation, which was espoused in good faith, as well as the absence of any electoral threshold, resulted in the fragmentation of the parliament and the failure of coalition democracy. The second National Assembly included representatives of 14 political parties. On top of this, the Constitution allowed plebiscites and included a clause according to which the Assembly would have to be dissolved if the verdict of the plebiscite overturned the Assembly's decision[37].

The foundations of what was needed to organize governance were laid down in Chapter X and Article 89 of the Constitution together with the law on elections to the National Assembly, on the popular legislative initiative and on plebiscites. As a whole, the text of the Constitution was not overly emotional or declaratory – rather, it appears pragmatic and practical. Still, subsequent experience showed an imbalance in the governance structures that resulted in political instability and frequent handovers of power.

Although the Constitution postulated the principle of the separation and balance of powers, its practical

[37] The principle was also incorporated in the 1992 Constitution, which has in essence ruled out extensive use of referendums in contemporary Estonia.

application had not been sufficiently thought through. Broad authority was conferred on the legislature, weakening the executive. The solution itself can be explained, on the one hand, by the long-held aspiration to – and realization of – popular sovereignty, and by lack of experience in administering an independent state on the other.

This drawback led to frequent government crises and caused widespread disappointment among the public in the functioning of democracy and in the reliability of government. Part of the problem was the absence of any electoral threshold (which is currently recognized in Estonia and stands at 5%). This allowed access to the parliament to electoral lists that only won a single seat. Starting from 1926, lists were required to win at least two seats to be recognized, but this did not significantly change the overall picture.

Political fragmentation resulted in a disparate legislature that was difficult to organize. Another factor that contributed to the problem was a weak parliamentary culture. The phenomenon was not unique to Estonia – most democratic states have suffered from this condition at an early stage of their development.

Overall public administration doctrine and practice was impacted by views on legality and on the relationship between the individual and the law that were current among the jurists and politicians of the time. The Russian imperial period had taught people – at least those in public administration – that

the individuals in power set the rules of the game and that you do not dispute those rules. The law must be followed and the authorities cannot be required to do anything – they can only be petitioned. Still, the fact that the Constitution established an express requirement of legality for the actions of the authorities represents a major step that deserves recognition.

The dark side of the democratic governance of that period was the continued application of many legislative instruments and practices of the Russian imperial period for years after the proclamation of independence and the entry into force of the Constitution. Thus, the capital, Tallinn, the frontier regions and railroads continued to be governed under wartime rules (martial law) and, until 1930, with the Minister of the Interior holding authority equivalent to that of the Imperial Governor General.

The Russian doctrine of martial law and the corresponding legislative instrument, which was also maintained by the Constituent Assembly, left its mark on the 1920 Constitution and allowed the use of martial law to renounce in part or in full the rights and guarantees laid down by the Constitution[38]. During martial law, decisions on citizens' rights could be taken by executive regulations instead of laws. This authority was used by the executive with particular intensity during the period of authoritarianism.

[38] Publication reference of the Estonian text: *RT*, 1930, 61, 423.

When the Constitution was drafted, heated debates took place on the bicameral setup of parliament as well as on the parliamentary – as opposed to presidential – model of government. Similar debates were held on the president's role and authority. Presidentalism was sharply opposed by the Socialists who dominated the Constituent Assembly. The influential Chair of the Committee, Jaan Poska, gave in to their pressure. The institution of president was deemed unsuitable for a parliamentary country and dispensed with. The absence of a systemic figure with authority permitting him to counterbalance other branches of government can be seen as a constitutional weakness and one of the causes of the crises of government that the system experienced.

Intense debates took place on the institution of head of state and a semi-presidential solution that had been proposed was narrowly voted out of the final text. The role would, instead, be filled by the head of the executive bearing the title of 'State Elder'. One of the reasons for this was the desire to repudiate the monarchist form of government that the institution of President resembled.

The functions of head of state were divided between the parliament (the National Assembly) and the Government. On a number of occasions, the parliament's unfettered authority and the absence of mechanisms to balance it – including the absence of a constitutional court and of judicial review –

resulted in the legislature exceeding its constitutional remit.

Positive mention must be made of the provisions that prescribed popular participation in state governance, the grant of cultural autonomy to minority ethnic groups, and the definition of local self-governing units.

Under Article 29 of the Constitution, '[t]he people exercise the authority of the state: (a) by plebiscite; (b) by popular legislative initiative; and (c) by election of the National Assembly.' A test of the plebiscite on an ordinary law took place in 1923 in the matter of religious education in schools. The bill was introduced by means of a popular legislative initiative (which required it to be supported by 25,000 people). The National Assembly voted it down, triggering a plebiscite in which the bill was adopted. The Assembly was forced to dissolve itself prematurely because its decision had been overturned by the people. This painful experience of popular government caused the political elite to steer clear of future plebiscites[39]. Yet the provision that mandated the dissolution of the National Assembly on its decision not being upheld by the plebiscite remained unaltered.

The minority ethnic groups residing in Estonia were granted an opportunity for cultural autonomy – at the time, a progressive innovation in Europe. The relevant law was adopted in 1925 and was used by Estonia's German and Jewish communities.

[39] See footnote 37.

The provisions regulating public administration prescribed a transition from the community-based model of self-government to the model of a unified public administration in which local self-government was seen as a part of overall public administration. This system, which is also currently in force, is tainted by a constitutional conflict that consists in the fact that the highest popular representation (the *Riigikogu* [National Assembly]) as well as the representative bodies of local self-governing units are appointed (legitimated) by elections that take place under the same rules and following the same principles. This creates a presumption of local self-government autonomy, which is incompatible with local self-government institutions being viewed as a local extension of central government.

At the end of the 1920s and the beginning of the 1930s, rapid development of the country, changes in Europe as well as frequent conflicts in Estonian politics[40] that highlighted constitutional issues of government stability resulted in earnest calls for a new constitution.

[40] Among these, the most significant politically were the Bolsheviks' attempted *coup d'état* of December 1924 and the War of Independence veterans' movement, which opposed the official authorities.

6. The Law to Alter the 1920 Constitution of the Estonian Republic[41], also known as the 1934 Constitution

AN ACT TO ALTER THE CONSTITUTION OF THE ESTHONIAN REPUBLIC

initiated by popular legislative initiative and adopted by the people in the plebiscite of 14, 15 and 16 October 1933.

Under Articles 87–89 of the Constitution of the Esthonian Republic, the Esthonian people resolve as follows:

Part I.

The preamble of the Constitution of the Esthonian Republic, as well as Articles 29, 36, 39, 41, 42, 43, 44, 51, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 75, 76, 80. 81, 82, 86 and the title of Chapter V are altered and given effect in the following form:

The Esthonian people, with unwavering faith and unshaken resolve to create and develop a state based on justice, law, and liberty, for the protection of internal and external peace, and as a pledge for the social progress and general welfare of present and future generations, have adopted and laid down through the Constituent Assembly, and subsequently by plebiscite, the following Constitution:

Art. 29. The authority of the state is exercised by the people: (1) by plebiscite, (2) by popular legislative initiative, (3) by election of the National Assembly and (4) by election of the State Elder.

Participation in the plebiscite, in the election of the National Assembly and in the election of the State Elder is voluntary.

[41] Publication reference of the Estonian text: *RT* 1933, 86, 628.

Art. 36. The National Assembly consists of fifty members elected by universal, equal, direct and secret ballot based on the principles of proportional representation such that it is possible for the electors to elect individual candidates.

The law on elections to the National Assembly shall be adopted as a special law.

Art. 39. After every four years, a new election to the National Assembly shall be held.

Where this is required by reasons of state, the State Elder is entitled to order a new election to the Assembly before the four years have elapsed. In such a situation, the election must be held at the latest within six months following the day on which the order was promulgated.

The beginning of the mandate of members of the Assembly is deemed to be the day on which the results of the election were announced.

Art. 41. Ordinary sessions of the National Assembly commence each year on the first Monday of October and last no longer than six months.

Where this is required by reasons of state, the State Elder is entitled to prorogue an ordinary session of the Assembly before the six months have elapsed.

Art. 42. When required in writing by the State Elder or by twenty-five members of the National Assembly, the Board of the Assembly is obligated to convoke the Assembly for an extraordinary session.

During recess or, after the lapse of the four-year mandate of the Assembly or upon an order by the State Elder to hold a new election of the Assembly until the announcement of the results of the election

to the Assembly, the Assembly may be convoked for an extraordinary session only when the State Elder requires it.

The duration of an extraordinary session of the Assembly is determined by the State Elder.

Art. 43. The National Assembly elects the Speaker and other members of the Board at its first sitting after the election. Until election of the Speaker, the sitting is presided over by the Assembly's oldest member.

Art. 44. The rules of procedure of the National Assembly are promulgated as a law.

Art. 51. Members of the National Assembly are paid a salary for performing their duties during sessions of the Assembly. The basis for and amount of the salary is fixed by a law that may only be altered for subsequent Assemblies.

Art. 53. The laws adopted by the National Assembly or by plebiscite are presented by the Board of the Assembly to the State Elder for promulgation.

The State Elder may, for reasons of state, decide not to promulgate laws that have been adopted by the Assembly, referring them back to the Assembly to be debated and decided on anew. The State Elder may decide not to promulgate laws provided for by Article 34 of the Constitution until these have been adopted by the Assembly with amendments desired by the Elder or until the Assembly, after the next election, adopts the same law.

The State Elder communicates his decision not to promulgate the law – with the relevant reasons – to the Board of the Assembly at the latest within thirty days after having received that law.

Art. 54. No law takes effect without promulgation.

Where the law itself does not prescribe other rules and another period, it takes effect on the tenth day following its publication in the State Gazette.

Art. 55. The National Assembly oversees the economic activities of state institutions and enterprises as well as the implementation of the state budget through the relevant institutions that it creates in accordance with the law.

Chapter V.

On State Elders and the Government of the Republic

Art. 57. The highest executive authority of the state is exercised by the State Elder as the representative of the people. To govern the land, the Elder has the Government of the Republic to assist him.

Art. 58. The State Elder is elected by the people by means of universal, equal, direct and secret ballot for five years.

Should no candidate obtain the plurality of the votes cast in the first ballot, a second ballot shall be held at the latest within three months. New candidates may be nominated for the second ballot. In the second ballot, the candidate who polls the most votes is deemed elected. If several candidates poll the same number of votes, the oldest candidate is deemed elected.

Any citizen who enjoys the right to vote, is at least forty years of age and has been nominated by at least ten thousand citizens who have the right to vote may be elected as the State Elder. Detailed rules for the election of the Elder shall be determined by a law.

Art. 59. The mandate of the State Elder begins with the following solemn oath taken before the National Assembly:

'I, N. N., on assuming, by the will of the people, the duties of the State Elder, solemnly promise to defend faithfully the Constitution and laws of the Esthonian Republic, to exercise the powers conferred upon me justly and impartially and, within the scope of those powers, to work for the benefit of the Esthonian state and the people with all my abilities and best understanding.'

The office of the Elder may not be held jointly with any other employment or professional function. If a member of the National Assembly is elected State Elder, he is considered to have resigned from the Assembly on taking the solemn oath.

The remuneration payable to the Elder during his mandate is fixed by a law that may be altered only with regard to the Elder to be elected at the next election.

If the office of Elder is vacant or if the Elder cannot perform his functions due to illness or other impediment, those functions shall be performed by the Prime Minister. When the office of Elder is vacant or when the impediments are of an enduring nature, election of a new Elder is undertaken as soon as possible.

Art. 60. The State Elder is in charge of the state's domestic and foreign policy, attends to its external inviolability, internal security and the observance of its laws.

In addition to other functions provided for by the Constitution, the Elder:

(1) represents the Esthonian Republic, appoints representatives of the Republic to foreign states and receives the representatives of such states;

(2) oversees the exercise of state authority following the rules determined by law;

(3) presents the state's budget of revenue and expenditure to the National Assembly for approval;

(4) appoints and dismisses military and civil officials, in so far as this function is not vested by laws in other public institutions;

(5 concludes treaties with other states on behalf of the Esthonian Republic, and lays them before the National Assembly for ratification;

(6) declares war and makes peace on the basis of corresponding resolutions of the National Assembly;

(7) declares martial law in particular regions as well as in the entirety of the land, and submits this to the National Assembly for approval;

(8) is the Supreme Commander of the defence forces;

(9) decides on petitions for mercy seeking to commute or extinguish a sentence imposed by the courts;

(10) issues regulations in accordance with the laws;

(11) presents bills to the National Assembly;

(12) in situations where this is urgently needed by the state, promulgates bills as decrees having the force of law. Decrees may not alter the laws on the plebiscite, on popular legislative initiative, on the

election of the National Assembly or on the election of the Elder. Decrees have effect until they are abrogated by the Elder or by the Assembly.

Art. 61. For decisions of the State Elder to take effect, they must be signed by the Elder and – with the exception of appointment to or release from office of the Government of the Republic or its individual members, of ordering a new election of the National Assembly before the lapse of four years, of ending an ordinary session or determining the duration of an extra-ordinary session of the Assembly, of approving the appointment to office of Supreme Court justices or other judges – also by the Prime Minister or the minister concerned, who shall be responsible for the decision before the Assembly.

Should the decision of the Elder be contrary to the Constitution or to a law, it is the duty of the Prime Minister or minister to refuse to countersign it.

Art. 62. Decisions of the State Elder are accepted for execution in the Government of the Republic upon being reported by the Prime Minister or the minister concerned.

Should the reporting minister find that the decision is contrary to the Constitution or to a law, he notifies this to the Government. If the Government, having considered the matter, accedes to the minister's opinion, it requests the Elder to withdraw or alter the decision. If the Elder abides by his decision, the Government has the duty of stating to the Elder that the decision cannot be carried out.

Art. 63. The Government of the Republic or its individual members resign their office if the National Assembly

openly declares it has no confidence in them, and the State Elder does not deem it necessary to order a new election of the Assembly.

Art. 64. The Government of the Republic is appointed to office by the State Elder.

The Government is released from office by the State Elder on his own initiative, at the proposal of the Prime Minister or based on a declaration of no confidence by the National Assembly.

The Government consists of the Prime Minister and ministers. The State Elder appoints a deputy to the Prime Minister from among the ministers.

The Prime Minister coordinates the work of the Government, presides over its meetings, may address interpellations to individual ministers concerning their actions and may propose that individual ministers or the entire Government be released from office.

Each minister is the leader of his ministry. The number of ministers, the division of responsibilities between the ministries as well as their rules of business shall be determined by a special law.

Meetings of the Government are closed to the public. Only on special solemn occasions may they, on the order of the State Elder, be declared open to the public.

Art. 65. The scope of authority of the Government of the Republic includes: carrying out the decisions of the State Elder in accordance with the Constitution, considering and deciding any matters entrusted to it under the laws, as well as any other matters concerning government of the land that have not been, by the

Constitution or laws, reserved to the Elder or to a minister as head of a ministry, or to a subordinate institution.

If the Government finds that its authority to conclusively dispose of a matter is debatable, the issue concerning the scope of the authority of the Government is disposed of by the Elder.

Art. 66. The State Elder has a State Chancery to assist him that he shares with the Government of the Republic.

Art. 67. Prosecution of the State Elder, of the Prime Minister and of ministers is allowed strictly based on the corresponding resolution of the National Assembly. Jurisdiction to hear the case is vested in the Supreme Court. The rules to govern the prosecution and the hearing of the case are determined by a law.

Art. 69. The highest judicial authority in Esthonia is exercised by the Supreme Court, composed of Supreme Court justices. Justices are appointed to office by the State Elder from among the candidates put forward by the Court.

Art. 70. Any judges, who, under the law, are not elected, are appointed by the State Elder at the proposal of the Supreme Court.

Art. 75. In so far as no special institutions have been created by law for this, governmental authority is exercised by the state locally through the self-government institutions of towns, small towns and rural municipalities.

Art. 76. Representative bodies of local self-governing units are elected by universal, equal, direct and secret ballot based on the principles of proportional representation such that it is possible for the electors to elect individual candidates.

Art. 80. Upon the ordering of mobilization, as well as upon the outbreak of war, the supreme command of the defence forces passes to the Commander-in-Chief of those forces who is appointed by the State Elder and the scope of whose authority is determined by a law.

Art. 81. On the basis of and following the rules prescribed by a special law, the State Elder is entitled to enact decrees and regulations concerning the defence forces.

Art. 82. Ordering mobilization of the Republic's defence forces is decided by the National Assembly.

The State Elder has the authority to order mobilization without awaiting the decision of the National Assembly if a foreign state has declared war on the Republic, commenced hostilities, or ordered mobilization against the Republic.

Art. 86. The Constitution is the constant guide for the actions of the National Assembly, the State Elder, the institutions of the Government and the courts.

Part II.

In order to bring the Act to Alter the Constitution of the Esthonian Republic into effect, to order as follows:

Art. 1. Alterations of the Constitution of the Esthonian Republic that have been set out in Part I of this Act shall take effect on the one-hundredth day following the adoption of the Act by plebiscite. At the same time, the preamble and Articles 29, 36, 39, 41, 42, 43, 44, 51, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 75, 76, 80. 81, 82, 86 as well as the title of Chapter V are deprived of effect, being replaced by the preamble, Articles and title of Chapter V as provided by Part I of this Act.

Art 2. Within ninety-nine days following the adoption of this Act by plebiscite, the National Assembly is obligated to bring into effect the laws that are required in order to carry out the alterations to the Constitution of the Esthonian Republic set out in Part I of this Act.

Art. 3. The election of the new National Assembly and of the State Elder shall be held at the latest within one hundred days following the day on which the alterations to the Constitution of the Esthonian Republic that have been set out in Part I of this Act take effect (Art. 1 of Part II of this Act).

Art. 4. The mandate of the hitherto National Assembly ends when the mandate of the new National Assembly mentioned in the previous Article begins.

When the alterations to the Constitution of the Esthonian Republic take effect, the incumbent State Elder is deemed to be the Prime Minister from the day on which those alterations take effect until the beginning of the mandate of the State Elder elected under Article 58 of Part I of this Act.

Original document signed by:

K. Einbund, Speaker of the *Riigikogu*
J. Loosalu, Secretary
E. Maddison, Clerical Operations Manager


Kolmapäeval, 14. märtsil 1934. a.
Kaitseseisukord kogu riigis.
Kindcal Laidoner määrati wägede ülemjuhatajaks.
üidud suleti.
vangistatud.
Kõik nende ajalehed pandi kinni.
Poliitilised koosolekud keelati.
Kogu riigis
Härra Riigivanema kõrge kaitse all
EESTI RAAMATU
400-AASTA JUUBELI AKT
pühapäeval, 27. oktoobril 1935. a.
Võrus, Eesti seltsi „Kandle“ saalis.
Algus kell 4 pär. lõunat.

Front page of the 14 March 1934 issue of the newspaper *Kaja* [Echo] reporting the introduction of martial law throughout the country. Wikipedia

State Elder Päts signs the resolution bringing the new Constitution into force. National Archives of Estonia

COMMENTARY

Change of course towards autocracy

Formally, the law altered and supplemented the Constitution in force (the 1920 Constitution). Yet the amendments were substantively so far-reaching[42] that they have come to be referred to as Estonia's second Constitution.

Proposals to change the constitutional setup of the Republic had already been voiced less than five years into the operation of the first Constitution. Starting from the 1930s, these emanated principally from two camps. One of these consisted of the parties of the governing coalition while the other represented a new, rising movement in Estonian politics – the union of the War of Independence veterans.

The first of these camps operated chiefly through government authorities and institutions including the National Assembly, while the second worked through popular movements and initiatives. There was stark opposition between the two. What they had in common was the aspiration to improve the stability of Estonian government, including bolstering the institution of the head of state and of the executive and curbing the power of the parliament.

[42] Alterations were made in the preamble and in 30 key articles.

As required by the provisions of the Constitution in force, bills drafted by the governing coalition were submitted to a plebiscite by the National Assembly. Unfortunately, they failed on two occasions. In contrast, the bill presented by the Union of War of Independence Veterans won overwhelming popular support in the plebiscite of 14–16 October 1933 and entered into force on 24 January 1934. It sought to correct the drawbacks of the first Constitution, but included other aspirations as well.

The period 1920–1933 saw 17 changes of government in Estonia. On each occasion, these were accompanied by political wrangling between different factions, resulting in incessant political turmoil and popular discontent. Another factor that influenced developments in Estonia was events in several other European nations during the interwar period. The upshot was a shift from a democratic, parliamentary form of government to autocracy.

Important parallels that should be mentioned here are those between constitutional developments of the time in Estonia and Germany. Estonian culture as well as political and legal space were characterized by close ties to Germany, so that German developments were followed intently. During the period in question, Germany had 16 governments. Frequent political crises resulted in popular desire for order and stability. As a response, President Paul von

Hindenburg concentrated power in his hands, bypassing the parliament.

In Estonia, similar steps were taken by State Elder Konstantin Päts. The general economic crisis created a political context favourable to constitutional change. Developments in Estonia and Germany proceeded in separate ways, yet retained a certain constitutional similarity after the rise to power of the National Socialists in Germany in 1932.

In order to avoid ceding power to political opponents, i.e., the union of the War of Independence veterans, Päts (the State Elder and Head of the executive) and Laidoner (the Commander-in-Chief of the Armed Forces during the War of Independence) carried out a *coup d'état* on 12 March 1934. By decree of the State Elder (an instrument adopted by sole authority of the head of the executive) martial law was declared throughout Estonia, resulting in extensive limitations of democracy and concentration of power in the hands of the Elder.

The years 1934–1940 came to be known as the silent period. Censorship was established by the state. A National Propaganda Service was created, political parties were banned, a pro-government organization – *Isamaaliit* [Pro Patria Union] – was formed and other similar steps were taken.

The constitutional order in effect during 1934–1938 was influenced significantly by two legislative

instruments. These were the Martial Law Act[43] adopted by the National Assembly on 10 July 1930 and the Act on the Organization of Government[44] adopted on 19 January 1934. These lent detailed expression to concentration of power in the hands of the executive and of the State Elder, completely side-lining the people, civil society and their representatives. To justify the measures taken and the need to rule with an iron hand, the State Elder even resorted to the expression 'the nation is sick'.

The meaning and purpose of martial law, i.e., rules to guarantee the stability and security of the state, was to ensure defence of the nation in time of war. Its application – to civilian society during peacetime – resulted in significant limitations of citizens' fundamental rights and freedoms, in ceding jurisdiction over politically sensitive offences to military courts and in other similar measures. Severe repression was launched against the oppositional War of Independence veterans' movement. Martial law, which by its nature was supposed to be temporary and help ward off real threats, was extended on multiple occasions. For all practical purposes, it remained in force until Estonia's occupation by the Soviet Union in 1940.

Government authority was concentrated in the hands of State Elder Konstantin Päts. The popular representation (National Assembly) was not

[43] Publication reference of the Estonian text: *RT* 1930, 61, 423.
[44] Publication reference of the Estonian text: *RT* 1934, 5, 36.

dissolved but its work was paralyzed for years. The principal alterations that demonstrated a shift to presidential governance can be grouped as follows:

(1) the State Elder became the head of the executive
   – the institution of State Elder was separated from that of head of the Government of the Republic. The Government (together with its head, the Prime Minister) became an appendage of the Elder, to be appointed at his pleasure and controlled by him, and was limited to carrying out his decisions;

   – in situations of urgent need of the state, which were up to the Elder to determine, he enjoyed sole authority to issue decrees having the force of laws and thus to govern the country;

   – the Elder enjoyed sole authority to determine competency disputes[45];

(2) the body representing the people, and its elections, were subjected to strict control:

   – the State Elder was given the authority to order an extraordinary election of the parliament (the National Assembly) before the end of its four-year mandate, and to prorogue its regular sessions prematurely, which essentially amounted to bypassing popular representation and to establishing complete control over parliament;

[45] A detailed list of the State Elder's powers appears in Article 60 of the Constitution.

– the National Assembly to be re-elected was formally convened but its session was suspended. The parliament was present in form but, until the entry into force of the new Constitution on 1 January 1938, possessed no substantive function or authority;

– the number of delegates to represent the people (members of the National Assembly) was reduced from 100 to 50 and the interval between general elections was increased from three to four years;

(3) judicial appointments and the composition of the judiciary were placed under the authority of the executive:

– the State Elder was given the authority to appoint all judges, including justices of the Supreme Court;

– in addition to candidates presented by the Supreme Court, the State Elder was allowed to nominate his own candidates;

– the State Elder was given the authority to appoint the Prosecutor General and any other prosecutors;

(4) the executive was given broad discretionary authority to intervene in the exercise of fundamental rights and freedoms and in the spheres of education and research. Among other things, this was expressed as limitation of autonomy in selecting and appointing the heads of institutions operating in these spheres.

In sum, the above amounted to a departure from the principles of the rule of law, the separation of powers and democratic governance.

Estonia's second Constitution was never fully applied. For instance, under its terms, the elections of the State Elder and of the sixth National Assembly were to be held on 29 and 30 April 1934. By decree of the State Elder of 19 March 1934, these were postponed until the end of martial law and actually never happened. For three-and-a-half years, the country was governed by decrees issued by sole authority of an Elder who did not possess democratic legitimacy.

Although, at the time, judicial review of the constitutionality of laws was already known in Europe – for instance, in Austria – it was limited there as well as in Estonia to a strict Kelsenian legality check. Judicial review, as well as the doctrine of separation, and mutual checks and balances on the branches of power, individuals' personal freedoms and their judicial protection in contemporary terms had – if at all – only a marginal existence in Estonia during that period. The 1934 Constitution fell under criticism from the specialized public even at the stage of its drafting and adoption.

In order to consolidate and legitimate his personal rule, on 8 January 1936 the State Elder submitted to plebiscite a proposal to convene a National Constituent Assembly. Under the terms of the

proposal, the aim of the Assembly was to elaborate and adopt the necessary alterations to the Constitution – or to elaborate and adopt a new one, should this be deemed necessary.

The National Constituent Assembly was envisaged as a bicameral body. The 80 members of its first Chamber were to be elected by the people by general, universal, direct and secret ballot according to the principle of election of individuals. The second Chamber was to consist of 40 members and would be composed of representatives of the courts, of self-government institutions, of occupational and economic self-government bodies, of the cultural self-government bodies of minority ethnic groups, of the University of Tartu, of the Defence League and of churches on the principles and following the rules determined by the State Elder. In addition, the second Chamber would have ten members (selected and appointed by the Elder) who possessed the requisite knowledge of and experience in constitutional law.

The Assembly's Chambers were to work separately. In cases of disagreement, the Assembly was to hold a plenary meeting where the issue would be put to the vote. The Assembly was given six months to elaborate the Constitution.

The plebiscite to approve the formation of the National Constituent Assembly was held on 5 February 1936. The Assembly and its task of elaborating a new constitution can, in certain

respects, be compared to the Constitutional Assembly of 1992.

In conclusion, the National Constituent Assembly convened by State Elder Päts was democratic only in part (for instance, the first Chamber only included one member of the opposition). The Assembly clearly showed the marks of directed and controlled democracy. It started its work on 18 February 1937 and approved the text of the new constitution on 28 July 1937. Adoption of the constitution by the Assembly was a violation of the Constitution in force because the latter required adoption to be by plebiscite.

7. The 1938 Constitution of the Estonian Republic[46]

Issuer:	National Constituent Assembly
Type of instrument or document:	law
Type of version:	original version
Date of entry into force:	01.01.1938
Publication reference:	RT, 03.09.1937, 71, 590

CONSTITUTION OF THE ESTONIAN REPUBLIC.

Seaduste Kogu [Code of Laws], Band I,
Edition of 1938, Part 1, Law No 1.

Pursuant to clause 1 of the Resolution of the Estonian people of 23, 24 and 25 February 1936 to convene the National Constituent Assembly, the Assembly – in its First Chamber on 19 June 1937, on 15 July 1937 and on 22 July 1937, in its Second Chamber on 8 July 1937 and on 22 July 1937 and in its plenary on 28 July 1937 – has adopted the following law, which I hereby promulgate under paragraph 1 of Article 53 of the Constitution of the Esthonian Republic.

The Estonian people, with unwavering faith and unshaken resolve to consolidate and develop the state

which has been created in accordance with the people's inextinguishable right of national self-determination,

which is based on justice, law and liberty,

which serves to protect internal and external peace and is a pledge for the social progress and general welfare of present and future generations,

which remains a Republic governed on a democratic basis, wherein the supreme authority is in the hands of the people and which is led by an elected head of state with the balanced

[46] Publication reference of the Estonian text: *RT*, 03.09.1937, 71, 590

cooperation of a government appointed by him and a bicameral body representing the people,

authorized by plebiscite the convocation of the National Constituent Assembly which, carrying out the task set by the same plebiscite, adopted the following Constitution:

I Chapter.
General Rules.

Art. 1. Estonia is an independent and sovereign Republic wherein the supreme authority of the state is vested in the people.

Art. 2. The territory of the Estonian state is an indivisible whole.

Art. 3. No one may exercise the authority of the state otherwise than in accordance with the Constitution and with laws compatible with the latter.

The Constitution is the constant guide for the actions of the President of the Republic, of the National Assembly, of the Government of the Republic and of the courts.

Art. 4. In Estonia only such laws have effect as have been enacted by her own institutions.

Universally recognized rules of international law are effective in Estonia as inseparable elements of the Estonian legal order.

No one may plead ignorance of the law as their excuse.

Art. 5. The official language of Estonia is Estonian.

Art. 6. The national colours of Estonia are blue, black and white.

The design of the national flag and of the coat-of-arms shall be determined by a law.

II Chapter.
Rights and Duties of Estonian Citizens.

Art. 7. Estonian citizenship is acquired by birth or by a subsequent legal act.

Detailed conditions for acquisition or loss of citizenship shall be determined by a law.

Art. 8. The supreme duty of every citizen is to be loyal to the Estonian state and its constitutional order.

Membership in the nation is the foundation of statutory civic and other duties that the citizen is subject to.

This membership also gives rise to the citizen's statutory rights and freedoms.

Art. 9. All citizens are equal before the law. There are no public privileges or restrictions derived from birth, religion, sex or ethnicity.

There are no classes or class titles. Titles may only be conferred on the grounds and according to the rules prescribed by a law to denote an office, a profession or a scientific degree.

Art. 10. Personal inviolability is guaranteed.

No one may be subjected to a criminal investigation except in situations and following the rules prescribed by a law.

No one may be subjected to arrest or a restriction of his personal freedoms other than in situations and following the rules prescribed by a law. No one may be kept under arrest for over seventy-two hours without a corresponding order of judicial authorities. The order must be made known to the prisoner within the following twenty-four hours.

No citizen may be transferred against his will from the jurisdiction of the court designated by the law to that of another one.

Art. 11. No one may be punished for an act that was not recognized as punishable by a law that entered into force before the act was committed.

Art. 12. The home is inviolable.

The home may not be forcibly entered and searched other than in situations and in conformity with the requirements prescribed by a law.

Art. 13. Travel and change of abode are free.

This freedom may only be restricted in situations and following the rules prescribed by a law.

Art. 14. Freedom of conscience and of religion is guaranteed.

Participation in churches and religious associations is free.

Major churches may be granted public standing by a law. There is no state church.

The practice of religion is free provided it does not interfere with public order or morals.

Creed may not excuse commission of an offence or refusal to carry out civic duties.

Art. 15. The expression of thought by spoken or printed word or writing, as well as by image or sculpted form, is free. This freedom may be restricted by a law for the protection of the security of the state, of public order, of morals and of the good name of a citizen.

There is no censorship of printed matter.

Art. 16. The confidentiality of messages and letters transferred by post, telegraph, telephone or any other commonly

used means is guaranteed. Derogations are allowed in order to combat crime in situations and following the rules prescribed by a law.

Art. 17. Citizens have the right to hold meetings on the grounds and following the rules prescribed by a law, provided they do not violate the requirements of public peace and security.

Art. 18. Citizens have the right to form cultural, scientific, charitable, occupational, political and other associations and federations on the grounds and following the rules prescribed by a law.

This right may be restricted by a law in the interests of national security, public order and morals.

Art. 19. Every citizen is entitled to maintain his or her affiliation to an ethnic group.

Detailed grounds for maintaining such affiliation shall be determined by a law.

Art. 20. Members of minority ethnic groups may create self-government institutions in the interests of culture and charity on the grounds and following the rules provided by a law.

Art. 21. The family – the foundation of the continuity and growth of the people as well as of the nation's life – is under the protection of the state.

The laws regulating marriage shall be based on the principle of equality of the rights of the spouses, in so far as this is compatible with the common good of the family, with the interests of its offspring and with provision of mutual support. Property relations between the spouses shall be determined by a law; statutory property relations may not restrict the active legal capacity of one of the spouses to dispose of his or her property.

Protection of mothers and children shall be provided for by a law. Families with numerous children shall in particular be cared for.

Art. 22. Learning is compulsory for children of school age to the extent determined by a law and is gratuitous in public elementary schools.

State and local self-governing units shall maintain the required number of public elementary schools. For the immediate pursuit of further study in accordance with national interests and the vital needs of the people, institutions of general and occupational education shall also be maintained.

Private schools and educational institutions may likewise be opened and maintained in accordance with the law.

Teaching shall take place in the official language. In schools and educational institutions opened for minority ethnic groups, teaching shall take place in their national language and in the official language according to the principles and to the extent mentioned by a law.

Teaching and instruction in schools and educational institutions must be organized and supervised by the state and must follow Estonian public policy.

The rearing of youth to become Estonian citizens who incorporate excellence of mind, morals and body and are worthy of esteem is one of the foremost duties of parents as well as of the state and of local self-governing units.

Art. 23. Science and arts and their teachings are free and under the protection of the state. The state oversees their dissemination.

Scientific institutions and institutions of higher scientific education are guaranteed autonomy within the limits laid down by law.

Art. 24. The organization of economic life must be based on the principles of justice, the aim being galvanization of creative forces, promotion of general prosperity and, through the latter, attainment of a standard of living compatible with human dignity.

Art. 25. Following the principles determined by law, citizens are free to choose their profession, to open enterprises, to work in the economic sphere and to establish economic associations and federations.

Art. 26. The right to property is guaranteed. Restrictions of this right are determined by a law.

Alienation of property without the consent of the owner may only take place based on, and in accordance with, rules laid down by a law in the general interest, and against fair compensation. Should a dispute arise the possibility of referring the matter to the court is guaranteed.

Art. 27. Work is every able-bodied citizen's honour and duty.

It is the right and duty of every citizen to procure work for himself. The state assists in facilitating work opportunities.

Work is under the protection of the state. Settlement of labour disputes, including by means of strike, shall be regulated by a law.

Art. 28. Provision of assistance to a person in need is, above all, the responsibility of members of his family.

Based on a law, assistance shall be organized under the rules of social insurance or of welfare schemes for

citizens in relation to old age, incapacity to work or need. Voluntary charity work shall be facilitated.

Persons averse to work, family members who neglect their responsibility of assistance and delinquent paupers may be placed under compulsory care on the basis of a law.

Art. 29. No public tax or duty may be imposed on anyone other than on the basis provided by a law.

No one may be allocated remuneration or pension at the expense of the state other than by following the rules laid down by law.

Art. 30. Citizens have the right to address letters and representations to authorities of the state and other public-law institutions. Juridical persons have this right within the limits of their functions. The act of addressing may not involve the elements of an offence.

Art. 31. The rules for use of foreign languages in the business of the courts and of other state institutions shall be determined by a law.

Citizens who belong to a minority ethnic group – in localities where the group forms the majority of inhabitants – may, following the principles laid down by law, use their language to conduct their business in local self-government institutions.

Art. 32. Employment positions in state and local self-government institutions and enterprises shall be filled on the grounds and following the rules provided by law with citizens who have the ability and training required for the position. Such positions may be filled by foreigners strictly on grounds mentioned in the law.

No preliminary authorisation is needed to prosecute persons employed by state and local self-government institutions and enterprises.

Art. 33. The listing of citizens' rights and duties in the present Chapter does not exclude other rights and duties which result from the spirit of, or are compatible with, the Constitution.

III Chapter.
The People.

Art. 34. The highest authority of the state is exercised by the Estonian people through citizens who have the right to vote.

Art. 35. The people exercise the authority of the state through:

(1) election of the President of the Republic according to Article 40;

(2) election of the Chamber of Deputies;

(3) election of representative assemblies of local self-governing units according to Article 123;

(4) plebiscite.

Art. 36. Every citizen who has attained the age of twenty-two years and has held Estonian citizenship for at least three years without interruption has the right to vote.

Art. 37. The following do not have the right to vote:

(1) citizens who have been declared demented or insane, (2) citizens who are under care due to being blind, deaf and dumb or spendthrift, (3) under electoral laws, certain categories of citizens permanently maintained by public assistance and (4) citizens placed under compulsory care.

The right to vote may be withdrawn by a law from certain categories of citizens sentenced by the courts.

The following do not participate in the vote: (1) citizens who, during the vote, are in custody serving a sentence imposed by a court or in application of compliance enforcement measures ordered by the judicial authorities and (2) citizens who suffer from an infectious disease and have been isolated in the corresponding treatment institutions according to rules established by means of legislation.

Citizens performing compulsory military service do not participate in the vote.

IV Chapter.
President of the Republic.

Art. 38. The President of the Republic is head of state.

He embodies the unity of state authority and represents the state. He ensures the external integrity and internal security of the state as well as the general well-being of the state and of the people and maintenance of juridical order.

Art. 39. In addition to other duties prescribed by the Constitution, the President of the Republic:

(1) appoints representatives of the Estonian Republic to foreign states and receives the representatives of such states;

(2) appoints to, and dismisses from, office high public officials;

(3) by his sole authority, appoints to and dismisses from office lead personnel of the department assisting the President;

(4) issues regulations in accordance with the law;

(5) by his sole authority, oversees the work of authorities of the state and other public-law institutions;

(6) by his sole authority, confers official decorations and orders of merit;

(7) resolves matters that he has been authorised to resolve by a law.

Art. 40. The President of the Republic is elected for six years. Any citizen who enjoys the right to vote and has attained the age of least forty-five years may be nominated as a candidate for the office of President.

Candidates are nominated by secret ballot as follows:

(1) one candidate by the Chamber of Deputies;

(2) one candidate by the National Council;

(3) one candidate by the assembly of representatives elected by the representative assemblies of local self-governing units, which consists of eighty representatives elected by representative assemblies of the rural and forty of the urban self-governing units.

From among the proposed candidates, the President is elected by the people by universal, equal, direct and secret ballot. In the ballot, the candidate securing the greatest number of votes is considered elected. If candidates obtain an equal number of votes, the oldest candidate is considered elected. The ballot must take place within twenty days after nomination of candidates.

If only one candidate has been nominated, the President of the Chamber of Deputies shall convene

and preside over a joint electoral meeting of the three bodies which have nominated the candidate. If at this meeting the nominated candidate obtains by secret ballot the votes of at least three-fifths of the legal number of the meeting's members, he is considered to have been elected President and the popular ballot is dispensed with.

Detailed rules for nomination of candidates for the office of President and for the election shall be determined by a law.

Art. 41. The President of the Republic is considered to have assumed office on pronouncement of the following solemn oath at the plenary of the National Assembly: 'I, N. N., on assuming, by the will of the people, the office of President of the Republic, solemnly promise to defend without fail the Constitution and laws of the Estonian Republic, to use the authority conferred upon me justly and impartially and do to my duty faithfully, to the best of my ability and knowledge, for the benefit of the Estonian Republic and the people.'

The mandate of the President ends when a new President assumes office.

Art. 42. Resolutions and other juridical instruments of the President of the Republic are valid if they bear the signature of the President and have been countersigned by the Prime Minister and the relevant minister. For these resolutions and instruments, the Government of the Republic is accountable politically and the countersigning ministers also officially, in particular for the compatibility of the resolution or instrument with the Constitution and laws.

Countersignatures are not required for resolutions or instruments adopted by the President of the Republic by his sole authority under the Constitution.

Art. 43. The office of President of the Republic may not be held jointly with any other employment or professional function.

If a member of the National Assembly is elected President, he is considered to have resigned from the National Assembly on assuming the office of President.

Art. 44. The remuneration payable to the President of the Republic during his term of office is fixed by a law that may be changed only with regard to the President to be elected at the next election. On retirement, the President is paid a pension that amounts to three-quarters of the President's salary.

Art. 45. The President of the Republic cannot be prosecuted in the courts during his term of office other than by resolution of the plenary of the National Assembly for offences against the highest authority of the state and for high treason. Prosecution for these offences, as well as for other private-law offences committed in relation to office, after his retirement may take place only by resolution of the plenary Assembly. In both situations, prosecution may only be brought on the initiative of the majority of the legal number of the Assembly's members. The prosecution is resolved in the plenary Assembly by a three-quarters majority of its legal number of members. Jurisdiction to hear and decide the case is vested in the Supreme Court.

Should the President be prosecuted during his term of office, the Electoral College mentioned in Article 46 appoints an Acting President until the judgment

acquitting the President or terminating the criminal investigation acquires the force of law, or until a new President assumes office. The Acting President may not order the election of a new membership of the Chamber of Deputies or formation of a new membership of the National Council.

If the court acquits the President or terminates the criminal investigation, election of a new membership of the Chamber of Deputies and formation of a new membership of the National Council are undertaken immediately. If the court finds the President guilty, the election of a new President is undertaken immediately.

Detailed rules concerning the prosecution and hearing of the case shall be determined by a law.

Art. 46. If the office of President of the Republic is vacant or if the President is prevented from performing his official duties in situations mentioned by a law, the President's functions are exercised by the Prime Minister, while the duties of the Prime Minister are discharged – during his performance of the functions of President – by the Deputy Prime Minister.

If the office of President becomes vacant prematurely, the election of a new President is undertaken immediately. Where impediments preventing the President from performing his official duties have, in situations mentioned by a law, lasted for more than six consecutive months, the Electoral College may decide that the election of a new President should be undertaken.

If the office of President becomes vacant during wartime or where impediments preventing the

President from performing his official duties have, in situations mentioned by a law, lasted for more than six consecutive months, the College immediately proceeds to elect an Acting President. Where the impediments have, consecutively, lasted for more than one month, the College may, for reasons of state, proceed to elect an Acting President even before the six months.

The College is composed of: the Prime Minister, the Commander-in-Chief or Commander of the Armed Forces, the Speaker of the Chamber of Deputies, the Chairman of the National Council and the Chief Justice of the Supreme Court. The College is convoked by the Prime Minister, either on his own initiative or when this is required by at least three members of the College, including, during wartime, the Commander-in-Chief of the Armed Forces. Detailed rules to govern the work of the College shall be determined by a law.

The mandate of the Acting President begins with his pronouncement of the solemn oath before the College and ends with the assumption of office by a new President.

When the Prime Minister exercises the functions of President, he may not order the election of a new Chamber of Deputies or formation of a new National Council.

On the assumption of office by the Acting President, the mandate of the previous President ends.

Art. 47. The President of the Republic has the Chancellor of Justice to assist him; the Chancellor is appointed to and released from office by the sole authority of the President.

The function of the Chancellor of Justice is to oversee the legality of actions of authorities of the state and of other public-law institutions. He reports to the President on his activities, on defects discovered and on instructions issued, and provides an overview of his activities to the Chamber of Deputies and the National Council for their information.

In managing his department, the Chancellor of Justice enjoys the entirety of the authority prescribed to ministers by the corresponding laws. He is entitled to take part in meetings of the Government of the Republic with the right to speak.

The detailed functions and principles governing the activity of the Chancellor of Justice shall be determined by a law.

V Chapter.

Government of the Republic.

Art. 48. Executive authority is exercised by the Government of the Republic.

In addition to other functions prescribed by the Constitution, the Government:

(1) carries out state policy in all spheres;

(2) ensures that the laws are observed;

(3) submits proposals to the President of the Republic on matters within his authority, with the exception of matters which the President decides by his sole authority;

(4) makes the necessary arrangements to carry out the President's resolutions;

(5) decides matters that it has been authorised to decide by law.

Art. 49. The Government of the Republic is composed of the Prime Minister and ministers.

To organize the different areas of government, relevant ministries are established by a law.

Detailed regulation of the exercise of government is determined by a law.

Art. 50. The Government of the Republic or its individual members are appointed to or released from office by sole authority of the President of the Republic.

Release from office of the Prime Minister entails the resignation of the entire Government.

Appointment to and release from office of individual members of the Government takes place at the proposal of the Prime Minister.

Art. 51. On assuming office, the members of the Government of the Republic pronounce a solemn oath to the President of the Republic to abide without fail by the Constitution and laws and to carry out their duties faithfully and impartially.

The Government or its individual members are considered to have assumed their office on having pronounced the solemn oath.

The Government is released from office on the assumption of office by a new Government. Individual members of the Government are released from office when the President resolves accordingly.

Art. 52. The Prime Minister represents the Government of the Republic; he leads and coordinates its activities and presides over its meetings; he may require individual ministers to account for their actions and may issue instructions to guide their work.

On a proposal of the Prime Minister, the President of the Republic appoints, from among the ministers, a Deputy Prime Minister. If the Prime Minister and the Deputy Prime Minister are unable to perform the Prime Minister's functions, these are performed by the oldest member of the Government of the Republic.

Art. 53. A minister leads his ministry, regulates matters within the ministry's area of activity and performs other functions vested in him on the grounds and within the scope determined by law.

The President of the Republic may appoint ministers without them being charged with leading a ministry.

When a minister is temporarily unable to carry out his functions because of illness or other impediment, the President – acting on a proposal of the Prime Minister – assigns those functions to another minister.

Art. 54. The Government of the Republic and its individual ministers have the authority to issue regulations on the grounds and within the scope prescribed by law.

Art. 55. Meetings of the Government of the Republic are closed to the public. On particular solemn occasions they may be declared open to the public by order of the President of the Republic.

Decisions of the Government of the Republic are made at the proposal of the relevant minister. Decisions of the Government are valid when they bear the signature of the Prime Minister, the relevant minister and the Secretary of State.

Art. 56. If the President of the Republic is present at a meeting of the Government of the Republic, he presides over it. The President may require the Government or any of

its members to report on matters within their scope of authority.

The President may summon the Government or any of its members for a conference.

Art. 57. The Government of the Republic is assisted by the State Chancery led by the Secretary of State. The Secretary works under the supervision of the Prime Minister. The Secretary is appointed and released from office by the sole authority of the President of the Republic.

In managing his department, the Secretary enjoys the entirety of the authority vested in ministers by the corresponding laws.

Detailed functions of the Secretary and of the State Chancery shall be determined by a law.

Art. 58. Prosecution of the Prime Minister and Ministers may only take place by resolution of the plenary of the National Assembly, adopted by a three-fifths majority of its legal number of members. The prosecution may be initiated by sole authority of the President of the Republic or by a majority of the legal number of members of the Chamber of Deputies or of the National Council. Jurisdiction to hear and decide the case is vested in the Supreme Court. Detailed rules concerning prosecution and hearing of the case shall be determined by a law.

On being prosecuted, the Prime Minister or minister resigns from office.

Art. 59. The Chamber of Deputies may adopt a resolution by which it openly expresses no confidence in the Government of the Republic or in any of its individual members.

A matter of no confidence may be initiated during a session of the Chamber; a written requirement to that effect must be presented by at least one fourth of the legal number of the members of the Chamber. The matter may come up for decision at the earliest on the day following the tabling of the motion, unless the Government of the Republic requires a speedier decision. No confidence is considered to have been expressed if it is supported by a majority of the legal number of the members of the Chamber.

Within three days following a vote of no confidence, the President of the Republic – provided he does not release the Government or one of its members from office or order the election of a new composition of the Chamber – may submit the matter of no confidence to the National Council, which reaches a decision on it at its next meeting.

If a majority of the legal number of members of the Council accepts the decision of the Chamber, the President releases the Government or its individual member from office, unless he considers it necessary to order election of a new composition of the Chamber and formation of a new membership of the Council. If a majority of the legal number of the Council's members does not accept the Chamber's decision, the President either releases the Government or its individual member from office or orders the election of a new membership of the Chamber.

If, in accordance with the rules of the preceding paragraphs, the President has ordered either the election of a new membership of the Chamber or formation of a new membership of the Council, and if the new membership of the Chamber, within seven

days from convening, openly expresses – in accordance with the rules of the second paragraph of this Article – no confidence in the same Government or its individual member, the President releases the Government or its individual member from office and, if the Council did not, following the rules of the preceding paragraph, accept the decision of the Chamber, also orders formation of a new membership of the Council.

VI Chapter.
National Assembly.
I Part.
General Rules.

Art. 60. The National Assembly adopts laws and performs other functions as determined by the Constitution.

The Assembly is a bicameral body representing the people. It consists of the Chamber of Deputies and the National Council.

Art. 61. The National Assembly exercises the power vested in it through the plenary of the National Assembly, the Chamber of Deputies and the National Council.

Art. 62. The internal rules of business of, and of interaction between, the National Assembly, the Chamber of Deputies, the National Council and their bodies, as well as the rights and duties of members of the Assembly at the Assembly's plenary, in the Chamber, in the Council and in their committees shall be determined in the Assembly's rules of procedure, which shall be adopted by resolution of the plenary of the National Assembly.

Relations between, and rules for interaction with, other institutions of the National Assembly, the Chamber of Deputies, the National Council and their bodies, as well

as the rights and duties of the President of the Republic and members of the Government of the Republic at the plenary of the National Assembly, in the Chamber of Deputies, in the National Council and in their committees shall be determined by a law.

Art. 63. The National Assembly, the Chamber of Deputies and the National Council have the authority to require the presence of the Prime Minister or individual ministers at their sittings to provide explanatory statements.

The Prime Minister and ministers are entitled to make explanatory statements at the plenary of the National Assembly, in the Chamber of Deputies, in the National Council and in their committees.

II Part.
Plenary of the National Assembly.

Art. 64. The plenary of the National Assembly consists of the members of the Chamber of Deputies and of the National Council. The plenary is competent to act if at least half the legal number of the members of the Assembly are convened. With the exception of situations otherwise regulated by the Constitution, the plenary adopts its resolutions by a majority of votes of the members convened.

Art. 65. The Board of the plenary of the National Assembly is composed of the Board of the Chamber of Deputies and the Board of the National Council.

The plenary of the Assembly is convoked on the initiative of the Board or when the President of the Republic requires it.

The plenary Assembly is presided over by the Speaker of the Chamber of Deputies, or, in his absence or in situations where for some reason he cannot do so, by

the Chairman of the National Council; in the absence of both or in situations where neither can preside, the plenary is presided over by other members of the Board.

Art. 66. In addition to other functions prescribed by the Constitution, the plenary of the National Assembly may also be convoked on solemn occasions – as well as to hear explanatory statements of the President or Government of the Republic.

In time of war all matters of urgency that are caused by the needs of national defence and that fall within the scope of authority of the National Assembly shall, where this is required by the President, be submitted for decision to the plenary Assembly.

III Part.

Chamber of Deputies.

Art. 67. The Chamber of Deputies has eighty members who are elected by universal, equal, direct and secret ballot in an election of individuals following the principle of plurality voting.

Every Estonian citizen who has the right to vote is entitled to participate in the election of the Chamber, provided he has had an abode or employment in the relevant constituency or the administrative territory of the self-governing unit for at least one year preceding the election; those who for reasons due to their profession have a new abode or new employment or those who are away from their domicile or employment have the right to vote in the constituency of their abode or employment.

Every Estonian citizen who has the right to vote and who has attained the age of at least twenty-five years

and has had an abode in the territory of the Estonian Republic for at least one year preceding the election, may be elected a member of the Chamber.

Detailed rules of election to the Chamber shall be determined by a law.

Art. 68. Election of a new membership of the Chamber of Deputies takes place every five years.

Where this appears necessary for reasons of state, the President of the Republic is entitled to order the election of a new Chamber of Deputies before the five-year term expires. In such a situation election of the new Chamber must take place at the latest within forty-five days from the day on which the President adopted the resolution to order election of a new Chamber.

The mandate of members of the Chamber begins from the announcement of the results of the election; the mandates of members of the previous Chamber end on the same day.

Art. 69. On assuming performance of his official duties each member of the Chamber of Deputies takes a solemn oath to remain faithful to the Estonian Republic and its constitutional order. The rules governing the taking of the oath and the wording of its text shall be determined by the law mentioned in the second paragraph of Article 62. If a member of the Chamber of Deputies refuses to take the solemn oath or takes it conditionally, his mandate ends.

Art. 70. The Chamber of Deputies elects its Speaker and other members of the Board at its first sitting after the election. Until the new President is elected, the sitting is presided over by the previous President of the Chamber.

Art. 71. Each year, the Chamber of Deputies convenes for ordinary sessions on the second Tuesday of January and of October. After a new election, the President of the Republic convokes the Chamber for an ordinary session at the latest within two weeks after announcement of the results of the election.

The Board of the Chamber may also convoke the Chamber for extraordinary sessions. The Board is obliged to convoke the Chamber when required by the President or by one fourth of the legal number of the members of the Chamber. The Chamber is obliged to include in the agenda of an extraordinary session convened on the President's requirement, and debate, only matters that the President requires.

Sessions of the Chamber of Deputies are prorogued by the President. The President may not prorogue the session beginning on the second Tuesday of January before three months have elapsed, the one beginning on the second Tuesday of October – before two months have elapsed, and the one convened after the election of a new Chamber – before two weeks have elapsed, provided that the President has not ordered new elections during these periods or that the Chamber and the National Council have not made a proposal to the President to prorogue the session earlier. These periods do not include the time when a session of the Chamber has been suspended by the President or by joint resolution of the Chamber and the Council.

The President has the authority to suspend an ordinary or extraordinary session of the Chamber once during a session for up to two weeks.

Ordinary sessions of the Chamber of Deputies together with extraordinary sessions convened on the initiative of the Board of the Chamber or when this is required by the members of the Chamber may not last for more than six months in a year.

When required by the President, individual committees of the Chamber may be convened during a recess between sessions of the Chamber.

Art. 72. During the period between expiry of the five-year mandate of the membership of the Chamber of Deputies or the proclamation of a new election to the Chamber by the President of the Republic and announcement of the results of the election, the Chamber may only be convened for sessions when required by the President, who determines the agenda and the prorogation of such sessions.

Art. 73. In time of war the President of the Republic has the authority, after consultation with the Board of the plenary of the National Assembly and with the Commander-in-Chief of the Armed Forces, to prorogue the session of the Chamber of Deputies without observing the time limits prescribed by Article 71.

In time of war, extraordinary sessions of the Chamber may only be convoked by the President or by the Board of the plenary of the National Assembly with the President's approval and an agenda determined by the President.

Art. 74. The Chamber of Deputies is competent to act when at least one half of its legal number of members are convened.

Art. 75. Meetings of the Chamber of Deputies are open to the public. The Chamber may declare a meeting closed to the public only in extraordinary situations, provided at least two thirds of the members convened agree.

Art. 76. Members of the Chamber of Deputies are not bound by their mandates.

Art. 77. Members of the Chamber of Deputies may not hold public service positions to which they would be appointed or in which they would be confirmed by the President of the Republic, the Government of the Republic, institutions of the executive branch or forensic institutions and state enterprises.

The rule of the preceding paragraph does not apply to members of the Government and persons appointed or confirmed in office at the proposal of private institutions, local self-government institutions or autonomous institutions.

A member of the Chamber must not accept public contracts or concessions for exploitation of state property.

A member of the Chamber may not, in his official capacity, conduct other persons' business in the name or interest of those persons in institutions of the executive branch.

Detailed rules for application of the present Article will be determined by the law mentioned in the second paragraph of Article 62.

Art. 78. Other than that provided for by the rules of procedure, a member of the Chamber of Deputies is not answerable for votes or political statements

made in the plenary of the National Assembly and in the Chamber as well as in committees of the Assembly or Chamber.

The Chamber has an Ethics Tribunal whose rules of formation and of business and jurisdiction, in so far as it does not relate to persons who do not belong to the Assembly, shall be determined by the rules of procedure of the Assembly.

The Board of the Chamber may refer to the Ethics Tribunal matters of honour between a member of the Chamber and a person not belonging to the Chamber, provided the matter has been initiated by a member of the Chamber in the plenary of the Assembly or in the Chamber or in their committees.

Detailed rules of procedure and jurisdiction of the Tribunal, in so far as it relates to persons who do not belong to the Assembly, shall be determined by the law mentioned in the second paragraph of Article. 62.

Art. 79. No member of the Chamber of Deputies may be arrested without the consent of the Chamber unless caught committing an offence. The arrest and the reasons for it must be notified at the latest within forty-eight hours to the Board of the Chamber, which shall submit the case to decision of the Chamber at its next sitting.

The Chamber has the power to postpone the imprisonment or any other restriction imposed on a member until a recess between its sessions or the end of the mandate.

Art. 80. Members of the Chamber of Deputies are exempt from military service for the duration of their mandate.

Art. 81. Members of the Chamber of Deputies receive a salary only for the duration of the sessions of the Chamber. In addition, they enjoy free travel or are paid a travel allowance.

The principles concerning the salary, free travel or travel allowance of the members of the Chamber shall be determined by a law which may only be modified with regard to the next membership of the Chamber.

Art. 82. At a sitting of the Chamber of Deputies, each member may address, to the Government of the Republic or to individual ministers, questions that have been submitted in writing. At a sitting of the Chamber, one fourth of the legal number of its members may address written interpellations to the Government of the Republic. An interpellation must be answered by an explanatory statement.

The Chamber may constitute committees of inquiry, which may also be convoked by the Board of the Chamber during a recess between sessions.

Art. 83. If a member of the Chamber of Deputies loses his eligibility to membership, is arrested with the consent of the Chamber, retires by passing away or by resignation or refuses to take the solemn oath or does so conditionally, a new election is held in the constituency concerned, provided the mandate of the incumbent membership of the Chamber has not less than three months to run. The new member replaces the one who retired until the end of the mandate of the membership.

IV Part.
The National Council.

Art. 84. The following are members of the National Council:

1) *ex officio*:

   a) the Commander-in-Chief or Commander of the Armed Forces;

   b) the heads of Estonia's two largest and most important churches;

   c) the rectors of two autonomous institutions of higher scientific education;

   d) the president of the bank of issue;

2) by election:

   a) three members representing rural self-governing units;

   b) one member representing urban self-governing units;

   c) sixteen members representing occupational self-government bodies, of whom five for agriculture and fisheries, five for industry, trade, commerce, shipping and the co-operative sector, three for labour, one for the urban real property sector, one for the free professions, and one for the domestic economy sector;

   d) one member representing the Defence League;

   e) one member from the sector of education and culture;

   f) one member from the sector of minority ethnic culture;

   g) one member from the public health sector;

3) by appointment:

ten members appointed by sole authority of the President of the Republic.

Former Presidents who have been in office under the present Constitution as well as former wartime Commanders-in-Chief are entitled to membership of the Council by authority of their former office.

Members of the National Council must be Estonian citizens who hold the right to vote and who: 1) are at least forty years of age, 2) have had an abode within the territory of the Estonian Republic for at least three years preceding their election or appointment, and 3) when elected or appointed, meet the requirements prescribed by Article 85.

Members of the Council by election must possess eligibility in their own institutions.

Detailed rules for the formation of the Council shall be determined by a law.

Art. 85. When electing or appointing members of the National Council, the guiding principle is that the citizens in question: 1) be persons of good reputation and esteem who are known for their civic excellence and statesmanlike thinking, 2) possess knowledge and experience of use in the Council's work.

The law on the formation of the National Council shall determine, as the basis for citizens' knowledge and experience, their length of service in their profession or in the public sphere, such that the minimum length would not be less than two and the maximum not more than ten years.

Adoption of any law to amend or supplement the part of the law on the formation of the National Council

mentioned in the preceding paragraph may take place strictly by the majority of the legal number of members of the Chamber of Deputies and of the National Council, the rule of the last paragraph of Article 95 not being applied in this case.

Art. 86. A new membership of the National Council shall be formed every five years.

Where this is required for reasons of state, the President of the Republic is entitled to order the formation of a new membership of the National Council before the five-year term expires. In such situations formation of the new membership must take place at the latest within forty-five days from the day on which the President of the Republic adopted the corresponding resolution.

The mandate of the Council's members begins on the day on which the results of formation of its new membership are announced, which is also the day on which the mandate of the previous membership ends. In a situation where formation of the new membership has been ordered by the President simultaneously with the election of a new membership of the Chamber of Deputies, the mandate of the Council's members begins and ends at the same time that the mandate of the members of the Chamber begins and ends.

Art. 87. The sessions of the National Council begin and end at the same time as sessions of the Chamber of Deputies. Rules that apply to sessions of the Chamber also apply to those of the Council.

Art. 88. No one can, at the same time, be a member of the Chamber of Deputies and of the National Council.

Art. 89. Articles 69, 70, 74, 75 and 76, as well as the third, fourth and fifth paragraph of Article 77 and Articles 78, 79, 80 and 81 are applied accordingly to the National Council and to its members.

Art. 90. At a meeting of the National Council each member is entitled to address, to the Government of the Republic or to individual ministers, questions that have been submitted in writing.

Art. 91. If a member of the National Council loses his eligibility to membership, retires by passing away or by resignation or refuses to take the solemn oath or takes it conditionally, a new member is elected or appointed in his place following the same rules that governed the election or appointment of the member who retired, provided the mandate of Council membership has not less than three months to run. The new member replaces the retired one until the end of the mandate of Council membership.

VII Chapter.
Legislation.

Art. 92. The power to initiate legislation is vested in the Government of the Republic, acting with the knowledge of the President of the Republic, and in at least one fifth of the legal number of members of the Chamber of Deputies.

Any bills which are initiated by members of the Chamber and which would cause the introduction of new items of expenditure in the state's budget of revenue and expenditure or a decrease or cancellation of an item of revenue, must be provided by the initiators with the necessary financial

calculations and must show the sources of revenue to cover the expenditure. Such bills may come up for debate in the Chamber only with the consent of the Government and with the knowledge of the President.

The power to initiate laws concerning the armed forces of the state and the duties of citizens with regard to national defence is vested solely in the Government acting with the knowledge of the President.

Following a resolution adopted by the majority of their legal number of members, the Chamber as well as the Council are entitled to address a proposal to the Government requesting initiation of a law which they consider desirable.

Art. 93. Any bills that have been initiated must first be adopted by the Chamber of Deputies.

Art. 94. The National Council must reach a decision regarding bills adopted by the Chamber of Deputies at the latest within thirty days following receipt of the bill from the Board of the Chamber. For certain categories of bills this period may be extended or reduced by the law mentioned in the second paragraph of Article 62. Such periods are deemed not to include the time during which the National Assembly is not convened, owing either to the end of its session or to recess.

Art. 95. If the National Council informs the Board of the Chamber of Deputies that it accepts the bill, that bill is deemed a law adopted by the National Assembly and is submitted for promulgation. The bill is also deemed a law adopted by the Assembly if the Council has not announced its position within the period fixed by Article 94.

If the Council introduces amendments into the bill, these are debated by the Chamber.

If the Chamber accepts the amendments proposed by the Council or if the Chamber and the Council reach agreement following the conciliation procedure prescribed by the law mentioned in the second paragraph of Article 62, the law is submitted for promulgation.

If the Chamber, regardless of the contrary position of the Council or, upon failure of the conciliation procedure, by a three-fifths majority of its legal number of members adopts the entire bill or sections thereof in the form in which it had adopted the same previously, the law is submitted for promulgation.

Art. 96. Laws are promulgated by the President of the Republic.

The President is entitled, for reasons of state, to decide not to promulgate a law adopted by the National Assembly and to return it to the Assembly for a new debate and decision. The President announces the corresponding reasoned resolution at the latest within thirty days following receipt of the law.

Where the new debate and decision results in adoption of the law without alteration by the majority of the legal number of members of the Chamber and the Council or if the Chamber adopts the law in accordance with the last paragraph of Article 95 by a three-fifths majority of its legal number of members, the President promulgates the law.

If the President – at the time when he has ordered the election of a new Chamber of Deputies and the

formation of a new National Council according to Articles 68 and 86 – decides to return to the Assembly for a new debate and decision a law which he has decided not to promulgate, the new membership of the Assembly shall debate and decide upon the law following the rules prescribed by the preceding paragraph.

Art. 97. Any bills that did not achieve final adoption by the time the mandate of the National Assembly terminates are considered to have been dropped, with the exception mentioned in the fourth paragraph of Article 96.

Art. 98. If the President of the Republic considers it necessary to ascertain the opinion of the people on an issue of importance for the state, he is entitled – with the consent of the Board of the plenary of the National Assembly – to submit the issue to the people under the rules for plebiscites. The decision of the people is taken by a majority of votes cast.

The decision of the people is binding on state bodies and these must proceed without delay to establish the arrangements dictated by it.

Under the rules of the present Article, plebiscites cannot be held to decide issues relating to alteration of the Constitution, to taxation, to national defence, to treaties or to the financial obligations of the state.

Art. 99. The President of the Republic may, during a recess of the National Assembly, issue laws by decree in situations where this is urgently required by the state. Laws enacted by decree are submitted to the Assembly by the beginning of its following session; the Assembly may adopt laws amending or repealing

these. The Assembly may do so without observing the rules for initiating legislation, provided that the Chamber of Deputies, within two weeks from the beginning of its ordinary or extraordinary session, decides to debate a bill to amend or repeal the decree.

The President may not, by decree, enact or amend:

1) the law on plebiscites;
2) the law on election of the Chamber of Deputies and on formation of the National Council;
3) the law on election of the President;
4) the rules of procedure and the law mentioned in Article 62 of the Constitution;
5) the laws mentioned in clause 7 of Article 39, in Article 101, in the second paragraph of Article 134 and in Article 138;
6) the law on the salary of the President or of members of the Assembly;
7) laws concerning prosecution of the President and of members of the Government of the Republic;
8) laws concerning the National Audit Office;
9) the law on organization of the judiciary;
10) the law on the state budget;
11) laws on foreign and domestic loans;
12) laws under which contracts may be concluded or obligations contracted to the state to cause new items of expenditure to be inserted in the state's budget of revenue and expenditure for the current financial year or future financial years;
13) laws on concessions, monopolies and state funds.

The President may not, by decree, enact or amend the state budget of revenue and expenditure or any instruments that according to the Constitution are to be adopted by the National Assembly in the form of resolutions.

Art. 100. No law enters into force without having been promulgated by the President of the Republic.

A law enters into force on the tenth day following its publication in the State Gazette unless it prescribes other rules or a different period.

VIII Chapter.
Treaties.

Art. 101. Agreements with foreign states are concluded and ratified by the President of the Republic.

Before being ratified by the President, treaties must be approved by the National Assembly. Treaties are submitted to the National Assembly for approval by the Government of the Republic. Certain groups of treaties which do not need to be approved by the National Assembly before ratification or which are to be approved according to a special procedure are determined by a law.

Art. 102. Approval of treaties is given as a corresponding resolution of the National Assembly, adopted according to the rules of Articles 94 and 95; the President of the Republic may request approval of certain treaties by the plenary of the National Assembly.

The frontiers of the state may only be altered by a treaty approved following the rules prescribed for alteration of the Constitution.

IX Chapter.
State Budget.

Art. 103. Each year, the National Assembly adopts a budget for the state's revenue and expenditure.

The budget proposal shall be submitted to the National Assembly by the Government of the Republic – acting with the knowledge of the President of the Republic – at the latest seventy days before the beginning of the financial year. The Assembly may increase the expenditure prescribed in the proposal, or include new items of expenditure, only with the consent of the Government. The Assembly may not strike off or reduce any of the proposal's items of expenditure that are fixed by a law.

Art. 104. The state's budget of revenue and expenditure shall be adopted by the Chamber of Deputies and the National Council. The Council shall give its resolution with regard to the budget adopted by the Chamber at the latest within fifteen days after receipt of the Chamber resolution.

If the Council announces its agreement with the budget adopted by the Chamber, the budget is considered to have been adopted by the National Assembly. The budget is also considered to have been adopted by the Assembly if the Council does not announce its opinion within the period mentioned in the preceding paragraph.

The Council may, by a majority of its legal number of members, amend the budget proposal adopted by the Chamber.

If the Chamber agrees with the amendments proposed by the Council or if the Chamber and the Council,

following the conciliation procedure prescribed by the law mentioned in the second paragraph of Article 62, reach agreement, the budget is considered to have been adopted.

If the Chamber, regardless of the contrary position of the Council or, upon failure of the conciliation procedure, by a majority of its legal number of members adopts the budget in the form in which it had adopted the same previously or by accepting some of the amendments introduced by the Council, the budget is considered to have been adopted.

Art.105. The law mentioned in the second paragraph of Article 62 fixes the periods within which the Chamber of Deputies and the National Council must pass the resolutions mentioned in the preceding Article (104). If the Chamber and the Council do not pass their resolutions within these periods the budget is considered to have been adopted in the form in which it had been adopted within the prescribed period by the Chamber or the Council. Where neither the Chamber nor the Council has adopted the budget within the prescribed period, expenditures may be made each month – until adoption of the budget – up to one twelfth of the budget amounts for the previous year; detailed rules in the matter shall be laid down by the law on the state budget.

Art.106. The budget adopted by the National Assembly shall be submitted to the President of the Republic for promulgation and enters into force at the beginning of the financial year.

Art.107. The raising of loans for the state takes place by resolution of the National Assembly. The corresponding proposal shall be made by the Government of the Republic acting with the knowledge of the President of the Republic.

The resolution is adopted in accordance with the rules of Articles 94 and 95. The President may require raising of loans to be decided at a plenary meeting of the Assembly.

X Chapter.
National Audit Office.

Art.108. Oversight over the economic activity of authorities of the state and state enterprises and over implementation of the state budget is exercised by the National Audit Office. The organization and detailed functions of the Office shall be determined by a law. The exercise of oversight of the army in time of war shall also be determined by a law.

Participation by the National Audit Office in oversight of use of state funds by local self-governing units and other institutions operating on a public-law basis may be provided for by a law.

Specialized grounds and rules for overseeing the economic operations of those private enterprises in which the majority of shares is held by the state shall be provided by a law.

Art.109. The National Audit Office is led by the Auditor General. The Auditor General is appointed to office by the President of the Republic in exercise of his sole authority from among the candidates proposed by the plenary of the National Assembly. The Auditor

General is released from office by the President acting either on his own initiative or on a resolution of the plenary of the National Assembly adopted by a majority of the legal number of members.

Art. 110. The National Audit Office is independent, under the law, in the exercise of its functions.

The Auditor General submits reports on the conduct and results of oversight operations to the President of the Republic, to the Chamber of Deputies and to the National Council.

Art. 111. In all matters concerning his functions, the Auditor General is entitled to attend meetings of the Government of the Republic with the right to speak. In the management of his office, the Auditor General enjoys the entirety of the authority prescribed to ministers by corresponding laws. He countersigns all resolutions of the President of the Republic concerning the National Audit Office and bears full responsibility for these.

Prosecution of the Auditor General takes place on the same grounds that apply in the case of ministers.

XI Chapter.
Courts.

Art. 112. Justice is administered by the courts, which are independent in the exercise of their functions.

Art. 113. The Supreme Court, consisting of Supreme Court justices, is the highest court.

The authority of the competent minister to organize supervision of the work and business of the courts and to require reports on their activities shall be determined by a law.

The internal oversight of judicial institutions shall be determined by a law.

Art. 114. Supreme Court justices and other judges are appointed from among candidates proposed by the Supreme Court, by the President of the Republic by his sole authority and after consultation with the relevant minister. The principles and detailed rules for the nomination and proposal of candidates shall be determined by a law.

Art. 115. Supreme Court justices are retired from office on attaining the age of seventy, other judges on attaining the age of sixty-five; the age limit for the latter may be raised by a law for specific categories of courts up to seventy years.

The age limit for professional judges who belong to specialized courts shall be determined by a law.

In the case of continuous incapacity for work, Supreme Court justices and other judges may be retired from office in accordance with a corresponding law.

Art. 116. Judges may only be dismissed from office – or transferred from one place to another against their will – by a judicial decision.

In situations where changes in the composition of the courts are caused by the law, judges may be transferred from one place to another without their consent or be retired from office in the absence of suitable vacancies; in the latter case judges retired from office are entitled, for two years, to receive the salary due to them in their last office.

The rules for prosecution of judges on account of offences related to their office are determined by a law.

Art. 117. Apart from situations mentioned in a law, judges may not hold any other salaried occupation.

Art. 118. Specialized courts may be created by a law for the purpose of dealing with cases of a certain category or belonging to a certain subject area.

Determination of the composition of specialized courts – either by nomination or election – takes place according to the principles and rules prescribed by a law. The law also determines the professional status of judges and, in the case of nomination of professional judges, the latter are subject to the rules of Articles 114–117.

Art. 119. Extraordinary courts are permitted within the limits of the law only in time of war, in regions under martial law and on board naval vessels.

Art. 120. By his sole authority, the President of the Republic may, by means of pardon, extinguish or commute sentences that have been imposed on particular persons by the courts and that have entered into effect, or may exempt these persons from the consequences of such sentences.

Sentences imposed by the court on members of the Government of the Republic and the Auditor General on account of their official actions may only be extinguished or commuted – and the persons in question may only be exempt from the consequences of such sentences – by sole authority of the President provided that a proposal to this effect has been made by the plenary of the National Assembly.

Art. 121. Initiation of and rules for proceedings before the courts to determine the constitutionality of the exercise of state authority shall be laid down by a law.

XII Chapter.
Self-Government.
I Part.
Local Self-Governing Units.

Art. 122. Organization of local administrative matters and development of local spheres of life is carried out by local self-governing units in accordance with a corresponding law.

Art. 123. The authoritative body of a local self-governing unit is its assembly of representatives who are elected by universal, equal, direct and secret ballot. The electorate consists of citizens who enjoy the right to vote and have their permanent abode or employment within the administrative territory of the unit. Organization of the second tier of local self-governing units and rules for the formation of their representative assemblies shall be determined by a law.

Where the laws provide a corresponding basis, federations and joint authorities of local self-governing units may be formed.

Art. 124. Local self-governing units have the authority to enact regulations for their administrative territory on the basis of and within the limits laid down by law.

They have the authority, in accordance with the law, to levy taxes and impose duties in order to carry out their functions.

Art. 125. Detailed organization and oversight of local self-governing units shall be determined by a law.

II Part.
Occupational Self-Government Bodies.

Art. 126. For the purpose of organizing and developing the various professions, relevant occupational self-government bodies shall be created by a law.

The organization, aims and scope of authority of, as well as methods of election to and oversight of such self-government bodies shall be determined by a law. The forms of cooperation between these bodies and with authorities of the state and other institutions shall also be determined by a law.

Art. 127. Occupational self-government bodies have the authority, on the basis of and within the limits laid down by a law, to issue orders that are mandatory for their members as well as to impose taxes on members in order to carry out their functions.

XIII Chapter.
National Defence.

Art. 128. All Estonian citizens are obliged to take part in national defence on the grounds and following the rules laid down by a law.

Art. 129. The President of the Republic is the Supreme Commander of National Defence and of the Armed Forces. In accordance with the law, he applies all resources to the defence of the nation.

In time of peace, direct command of the Armed Forces is vested in the Commander – or, in situations mentioned in the Constitution, in the Commander-in-Chief – of the Armed Forces and, in time of war, in the Commander-in-Chief. The Commander-in-Chief and the Commander of the Armed Forces are appointed

and released from office by sole authority of the President.

Art. 130. From ordering mobilization or the beginning of war until ordering the end of demobilization, the President of the Republic may issue, as decrees, laws concerning national defence and the organization and command of the Armed Forces even during sessions of the National Assembly.

Art. 131. In relation to national defence and the Armed Forces, the President of the Republic issues defence laws and regulations on the grounds mentioned by a law.

Art. 132. Mobilization and demobilization are ordered by resolution of the President of the Republic.

The President declares war on the basis of a corresponding resolution of the plenary of the National Assembly.

Without waiting for a resolution of the plenary of the Assembly, the President may decide to take military action in the case of an attack against the Republic or in cases where this is required to fulfil a treaty of alliance concluded for mutual defence.

The President shall conclude treaties of peace, which are submitted to the National Assembly for approval before ratification.

Art. 133. Starting from ordering mobilization, the budget of war expenditure and, where this is needed, the raising of domestic and foreign loans to cover the costs of the war effort shall be resolved by the President of the Republic.

Such resolutions shall be submitted to the National Assembly for information. When the financial report

on the costs of the war effort has been drawn up, it is submitted to the National Assembly.

Art. 134. Laws issued by the President of the Republic with regard to national defence and the Armed Forces as decrees, as well as any defence laws, regulations, resolutions and other instruments, must bear, in addition to the countersignature of the Prime Minister and the relevant minister, the signature of the Commander-in-Chief, or the Commander, of the Armed Forces.

Situations in which the countersigning of commands and orders issued by the President to the Armed Forces is obligatory shall be determined by a law and the rules governing the provision of countersignatures – by the President.

Art. 135. For the event of mobilization or of war, the President of the Republic appoints a Commander-in-Chief of the Armed Forces. The Commander-in-Chief is directly subordinate to the President; he is the direct commander of the entirety of the Armed Forces and directs military operations at his discretion.

The Commander-in-Chief reports, and is responsible for his actions, solely to the President of the Republic.

Art. 136. In time of war the Commander-in-Chief has the authority, in the interests of military operations, to issue instructions and orders with regard to the organization of national defence even to officials and institutions not subordinated to him.

Art. 137. The detailed scope of authority of the Commander-in-Chief and the Commander of the Armed Forces shall be determined by a law.

Art. 138. In situations mentioned by a law, the President of the Republic is entitled to appoint a Commander-in-Chief in the place of the Commander of the Armed Forces even in time of peace. In such situations, in addition to the authority of the latter, the Commander-in-Chief enjoys the authority to issue – on grounds mentioned by a law – instructions and orders in relation to internal and external security even to officials and institutions not subordinated to him.

Art. 139. The Commander-in-Chief or the Commander of the Armed Forces is entitled to attend meetings of the Government of the Republic with the right to speak.

Art. 140. In time of war the President of the Republic shall hear the opinion of the Commander-in-Chief when deciding on release from or appointment to office of the Government of the Republic or its individual members.

Art. 141. The Commander-in-Chief cannot be prosecuted while in office other than by a resolution taken by the President of the Republic in exercise of his sole authority and for offences against the highest authority of the state as well as for high treason. Prosecution of the Commander-in-Chief of the Armed Forces – following his release from that office – for the same offences, as well as for offences related to his office, as well as prosecution of the Commander of the Armed Forces, may also take place strictly on a resolution taken by the President in exercise of his sole authority. Jurisdiction to hear and decide the case is vested in the Supreme Court.

Art. 142. As Supreme Commander of National Defence, the President of the Republic is assisted in time of peace by the National Defence Council as a consultative body

whose composition and scope of authority shall be determined by a law. The members of the Council include the Prime Minister, five members of the Government of the Republic as designated by the President, the Commander-in-Chief or Commander, as well as the Chief of Staff, of the Armed Forces. The Council also includes the President of the Chamber of Deputies and the President of the National Council.

Art. 143. Citizens who are in military service have all citizens' rights and duties as laid down in the Constitution and laws, in so far as no derogations have been made by law from these rights and duties in the interests of military discipline and of particular conditions of service.

Art. 144. Should it appear necessary for reasons of state, the President of the Republic may declare, under the corresponding law, the introduction of martial law either throughout the Republic or in any part of its territory for a period not exceeding one year. Martial law comes into effect when declared, and the President has the authority to determine, by resolution, that certain categories of offences committed in the earliest three days before martial law was declared are to be pursued according to the rules enacted to apply during martial law.

The resolution by which the President declares martial law shall be submitted to the National Assembly within seven days from its making. The Assembly resolves the matter in plenary sitting. If the majority of the legal number of the members of the Assembly resolves not to affirm the President's resolution, martial law is revoked as of the announcement of the Assembly resolution.

When mobilization is ordered, martial law comes into force throughout the Republic without being declared and remains in force until announcement of the end of demobilization.

During martial law, citizens' rights mentioned in the second Chapter of the Constitution may be circumscribed on the grounds and within the limits determined by law.

Art. 145. In times of war, the mandates of the President of the Republic, of the members of the National Assembly and of the members of the representative assemblies of local self-governing units are prolonged by operation of law. In such a situation, elections shall be proclaimed at the latest when three months have elapsed from the announcement of the end of demobilization.

If martial law is proclaimed throughout the Republic, the President may, with the consent of the National Assembly, postpone elections until the end of martial law either throughout the Republic or in any parts of its territory. The Assembly must adopt the corresponding resolution by a majority of its legal number of members.

XIV Chapter.
Alteration of the Constitution.

Art. 146. The power to initiate an alteration of the Constitution is vested in the President of the Republic and the majority of the legal number of members of the Chamber of Deputies or of the National Council.

Art. 147. A bill to alter the Constitution initiated according to the preceding Article (146) shall be adopted by the

National Assembly following the rules laid down for adoption of laws, with the difference that the bill must be adopted by the majority of the legal number of members in both Chambers and, in situations provided for by the last paragraph of Article 95, by a two-thirds majority of the legal number of members of the Chamber of Deputies. After adoption of the bill by the Assembly the President of the Republic shall order the election of a new membership of the Chamber and the formation of a new membership of the National Council, which must be carried out at the latest within three months following the day on which the bill was adopted by the National Assembly.

If the new membership of the Assembly, following the rules prescribed in the preceding paragraph, adopts without alteration the bill that was adopted by the preceding National Assembly, the law to alter the Constitution is considered to have been adopted and is submitted to the President of the Republic for promulgation.

Art.148. A law to alter the Constitution, adopted by the National Assembly following the rules of the second paragraph of the preceding Article (147), is promulgated by the President of the Republic within three months after its adoption, unless the President of the Republic during this period requires the law to be submitted to a decision of the people by plebiscite.

The President of the Republic may submit to the decision of the people by plebiscite a bill initiated by himself if the new National Assembly has not adopted it following the rules of the second paragraph of Article 147 within three months after the Assembly was convened.

Art.149. If the National Assembly that has received the bill to alter the Constitution initiated by the President of the Republic has not adopted it within three months, or has rejected it, the President may call upon the people to decide the essential issue of the bill by plebiscite. If the issue is decided by the people in the affirmative by a majority of votes cast, elections for a new Chamber of Deputies and formation of a new National Council shall be proclaimed. The new Assembly shall, within six months of being convened, adopt the law amending the Constitution following the ordinary legislative procedure and in accordance with the decision of the people. The rules of the first paragraph of the preceding Article (148) shall be applied to the bill.

Art.150. A law to alter the Constitution is considered to have been adopted by the people if the number of votes cast in favour of the law exceeds the number of adverse votes.

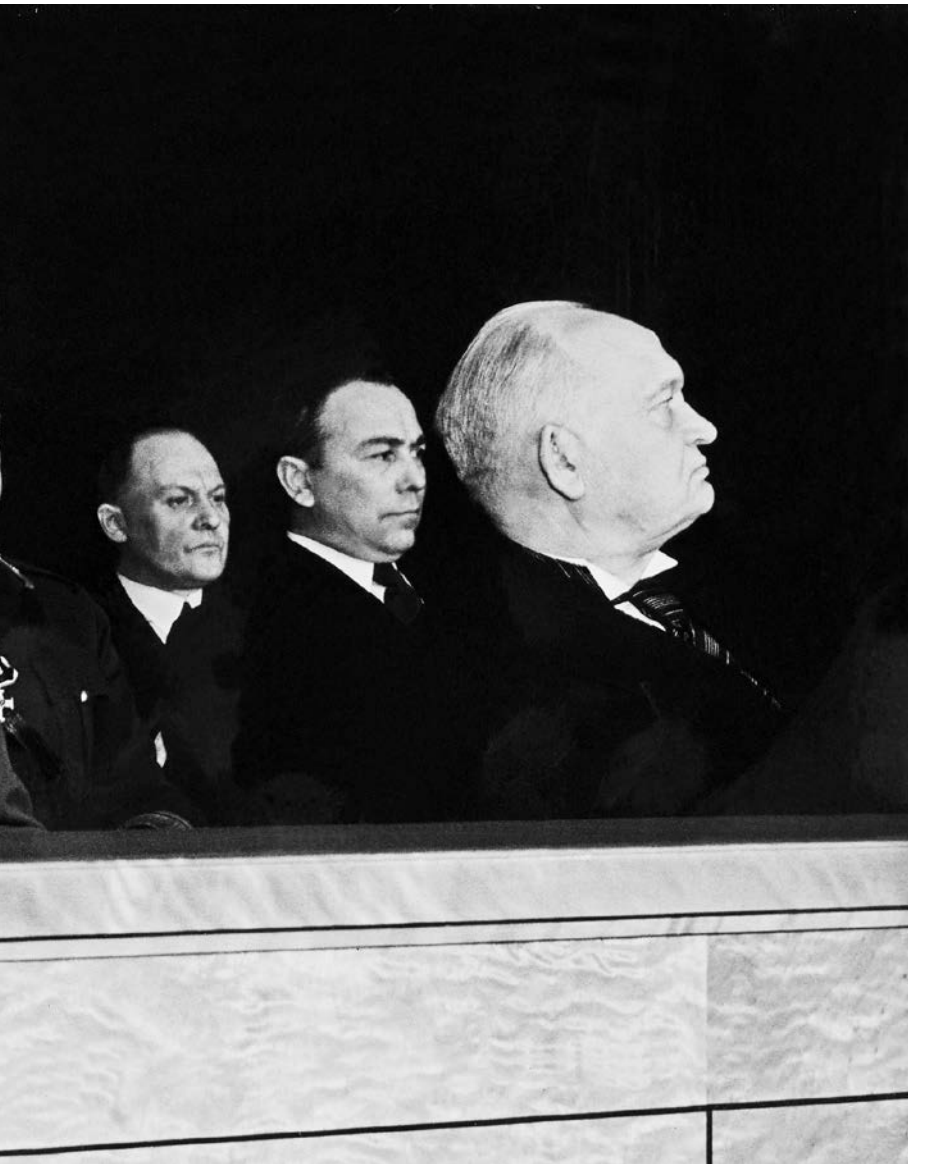
A law to alter the Constitution that has been adopted by plebiscite is promulgated by the President of the Republic without delay.

Detailed rules concerning the plebiscite shall be determined by a law.

Tallinn, 17 August 1937

K. Päts, Prime Minister acting as the State Elder

Joh. Müller, Minister for the Judiciary



State Elder Päts and Commander-in-Chief Laidoner in 1938.
National Archives of Estonia

COMMENTARY

Towards the Demise of Statehood

The shift from democracy to autocracy in Estonia started at the beginning of the 1930s. Constitutionally speaking, the legitimacy of government during the years 1934–1938 is doubtful.

On 2 October 1934, State Elder Päts suspended the extraordinary session of the National Assembly due to the declaration of martial law. By his resolution, the State Elder formally interrupted but in essence ended the work of the parliament – it would not convene again. Legally, the parliamentary mandate was terminated only in 1937. During transition to the new constitution of 1938, the National Constituent Assembly operated as a bicameral National Assembly, which was something the 1934 Constitution – which was in effect at the time – did not provide for. Until the new constitution's entry into force, the old one should have been followed.

A significant defect of the 1920 Constitution had been the skewed relationship between the parliament and the executive in favour of the former. The amendments of 1934 represented a swing to the other extreme, allowing the entirety of government authority to be concentrated in the hands of the State Elder as head of the executive. It was for this reason that the years 1934–1938 have been referred to in public debate as the period of constitutional crisis

and transition, which was to end with the institution of a balanced democratic system of government.

The Constitution that entered into force on 1 January 1938 legalized the practice of government that had established itself during the preceding years. The politics of Konstantin Päts represented right-wing national unity views that were supported by popular movements initiated by himself as well as by a variety of mass events orchestrated by the National Propaganda Service.

The bill for the new 1938 Constitution was presented to the National Constituent Assembly (the then parliament) by State Elder Päts. Preparatory drafting work lasted several years and was carried out according to Päts's directions by committees formed by himself. Although there were real debates and differences of opinion concerning the text, the fact that the new Constitution's approach to the general structure of government and the competences of the governing bodies followed the directions of the State Elder made its basic thrust similar to that of the 1934 Constitution[47].

The fact that the new constitution substantively preserved authoritarian tendencies – dressed up as a presidential system – is demonstrated by a number of significant details. The constitution opens with a preamble, general rules, the rights and duties of Estonian citizens, followed by a chapter on the

[47] See introductory comments by Uluots and Klement to the English translation of the 1938 Constitution (reference at footnote 6).

people, as is characteristic of – and appropriate in – a democracy. A clear shift to authoritarianism becomes evident in the order in which the highest government bodies are presented: first, the Head of State , then the Government and after that, the National Assembly.

The President as head of state was defined in the constitution as embodiment of the unity of the state's authority. This definition and status is, as a rule, characteristic of monarchies. Contemporary monarchies have and generally recognize limitations to the monarch's powers (which are mainly related to representative and procedural functions). The new Estonian constitution, however, took a different view.

Instead of nominal authority, the constitution vested the head of state with real power. In addition to representing the state, the President had, among other things, the authority to suspend the session of the popular representative body – the National Assembly – to convoke it for extraordinary sessions, to dissolve the Assembly and to order new elections, as well as to refuse to promulgate laws adopted by the National Assembly. The parliament, on the other hand, was not given any comparable or counter-balancing means to influence the work of the President and of the Government. In essence, the new Constitution provided for the Government's *de facto* independence of the institution representing the people. The role of the Government was to be an administrative body directed by the President.

The Constitution cut back on several methods of democracy that had been known and practised in Estonia. Thus, popular legislative initiative was abolished, and the President was given sole authority to determine whether to hold a plebiscite. Although the rhetoric that surrounded adoption of the Constitution touted it as ensuring a structure of government that would better serve the interests of the people, in reality it cemented the autocratic system of government and division of competencies that had evolved in practice.

On its face, the constitution appeared to be democratic. It made provision for all or most of the fundamental rights and freedoms known at that time, and included the principal provisions characteristic of democratic systems based on the rule of law. However, the entire text, including democratic methods and political freedoms, and their application, must be viewed through the prism of martial law that continued to apply[48]. The state of martial law gave the State Elder and the Government a considerable margin of discretion concerning the actual application of the constitution.

Under the constitution, the President was only entitled to legislate by decrees issued under his sole authority 'where this is urgently required by the state' and between sessions of the National Assembly.

[48] Initially, martial law was introduced based on Russian/imperial rules. Later, it was maintained under the Martial Law Act, substantially during the entire first period of independence.

In reality, the President made ordinary, regular and practically unlimited use of these extraordinary powers. The head of state was entitled, within his sphere of authority, to issue legislative instruments based on 'considerations or needs of the state'. What those considerations or needs were was up to the President to determine. Use of such authority meant that the President effectively bypassed the parliament and rendered it a nominal force.

The President's sole authority to direct recruitment to positions in public service gave him ample opportunity to ensure the loyalty of public service appointees and decide appointments to important positions. This served to shape a corporate public service apparatus that was beholden to the President.

The unlimited nature of presidential powers was evidenced by the fact that the President was also the Supreme Commander of National Defence and of the Armed Forces[49], and had the power to make treaties and ratify them.

[49] On 12 March 1934 (in the course of the *coup d'état*) State Elder Päts, by his resolution, declared martial law throughout the country. The presence and extent of the threat to the Republic was assessed by the State Elder alone and was not approved by the National Assembly, as was required under the law. On 11 April 1938, the Head of State issued a decree promulgating the new Martial Law Act, whose application was extended until the end of the period of independence. After the takeover of government in June 1940, the very same Act was used by successive Ministers of the Interior in the government of Johannes Vares to persecute and repress persons and organizations deemed undesirable.

Creation of an authoritarian power structure aside, the constitution also introduced several innovations. The most important among these were:

- a bicameral parliament (the National Assembly) consisting of an elected Chamber of Deputies and an appointed Council of State;
- introduction of the function of Acting President;
- the President was entitled to participate in and preside over meetings of the Government and to require the Government or individual members to report on matters within their sphere of authority;
- creation of the position of Chancellor of Justice to assist the President;
- provision was made to create rules under which to decide on the constitutionality of the exercise of government authority[50];
- recognition of territorial as well as occupational self-government institutions.

In constitutional terms, the most notable innovation in the new constitution was the introduction of a bicameral parliament. The step sought to emulate the practice of several other states and was intended to stabilize the elected popular representation and to ensure scrutiny and continuity of governance. The system was to guard against populism, an ill often

[50] Although provision was made for the rules, they were never applied in practice.

known to accompany (popular) democracy. At the same time, the new rules clearly aimed to bolster (presidential) government. Bicameralism was a new and unique phenomenon in the practice of Estonian parliamentarism, although the principle had already been employed in the case of the National Constituent Assembly.

The first chamber of parliament (the lower house) or the Chamber of Deputies was to have 80 members. It would be re-elected with a five-year interval by the people by general, universal, direct and secret ballot following the principle of majoritarian elections in which voters can choose individual candidates. The age threshold to stand for election (passive right to vote) was set at 25 years.

The second chamber of parliament (the upper house)
– the Council of State – would consist of Estonian citizens of at least 40 years of age. These would be found[51]:

– by reason of their office – the Commander-in-Chief of the Armed Forces, the heads of two largest churches, the rectors of two largest universities, the President of the Bank of Estonia;

– by election - three members from rural and one from urban self-governing units, sixteen members from occupational self-government bodies, one

[51] Under Article 85, members of the Council of State had to be '…persons of good reputation and esteem who are known for their civic excellence and statesmanlike thinking [and] possess knowledge and experience of use in the Council's work'.

member from the Defence League, one member from the education and culture sector, one member from minority ethnic groups, one member from the public health sector;

- by appointment on the President's sole authority
- the Head of State 10 members;
- by authority of their former office – individuals who had served as President of the Republic or Commander-in-Chief of the Armed Forces.

The term of office of the National Council was five years, following which it could be 'formed' anew. It is significant to note the provision of Article 86, which gave the President the authority '[w]here reasons of state require this … to order the formation of a new membership of the Council of State before the five-year term expires'. What those reasons were that required a new Council was up to the President to decide. The Council had the authority to assess legislation adopted by the Chamber of Deputies and either to approve it or return it to the Chamber for a new debate.

Laws were to be promulgated by the President of the Republic. He, too, had the authority to return the bill for a new debate to the Chamber of Deputies[52]. The President was entitled to initiate plebiscites and, where this was urgently needed by the state during a recess of the National Assembly, to issue decrees

[52] The so-called suspensive veto is employed in the current model of Estonian constitutional review as well.

that had the force of law. His authority was, however, limited by the clause exempting constitutional laws from enactment or amendment by decree.

The introduction of the function of Acting President does not, in itself, amount to a significant constitutional innovation. Its mention in this context is justified by the fact that the delegation of authority that this allowed was used, after the demise of statehood, to ensure the *de jure* continuity of the Estonian state in exile, as well as in the subsequent restoration of statehood on the basis of legal continuity[53].

What may be deemed a significant innovation was reform of the system of local self-government practised hitherto. Until 1934, Estonia had a two-tier system, in which the governments of the rural and urban municipalities represented the first tier, while the second consisted of those of the counties. In the 1938 Constitution, Article 122 defined local self-government essentially as a local branch of the central executive. The reform reflected a departure from the 1920 Constitution's principle of autonomous local self-government.

An innovation introduced by the constitution was vesting the occupational chambers created during the preceding years with a constitutional role as 'occupational self-government bodies.' The chambers

[53] It is unlikely this possibility was considered at the time the constitution was drafted.

as well as the bodies were supposed to operate under a law to govern their activities, but the relevant rules were not fully implemented due to the turbulent period at the start of World War II.

In constitutional terms, the introduction of the position of Chancellor of Justice to assist the President represented an important innovation. Its idea sprang from the office of parliamentary ombudsman known in the Scandinavian countries. The position, intended to ensure review of the legality of executive action, was not independent – it was placed under the authority of the President and served to advise him.

During the short period that the office of Chancellor of Justice operated, its function was, for the most part, that of the chief legal advisor to the President and the Government, who also performed the task of preliminary scrutiny of legislation[54]. The Chancellor's duties included dealing with citizens' representations and complaints and presiding over the corresponding activities. The Chancellor of the period did not possess the function of ombudsman (as the latter is known in contemporary Scandinavia and elsewhere), which it does in contemporary Estonia.

[54] With respect to legislative acts, the competences of the contemporary Estonian office of the Chancellor of Justice consist in scrutinizing legislation that has entered into force for constitutionality, in bringing constitutionality proceedings against such legislation before the Supreme Court and in fulfilling the classic functions of ombudsman (the people's attorney).

As for the third branch of government – the judiciary – the constitution, for the first time, expressly provided for supervisory authority of a member of the executive (a minister) over the courts: 'to organize supervision of the work and business of the courts and to require reports on their activities' (Article 113). This is another reflection of the authoritarian thrust of the constitution, which sought to control the judiciary and concentrate power in the hands of the executive. As such, it represented a clear departure from the principle of the separation, independence, counterbalance and reciprocal control of powers.

At the same time, Article 121 of the constitution enabled adoption of a law to govern the '… initiation of and rules for proceedings before the courts to determine the constitutionality of the exercise of state authority'. This provision may be seen as establishing constitutional jurisdiction, widely known and used in contemporary democracies. Unfortunately, practical interpretation and realization of the provision could not progress beyond its initial stages and it was not applied in its current sense.

To regulate the details of implementation of the amendments and innovations to government structures that were enacted by the new constitution, a law was adopted to govern the transition period, which entered into force together with the constitution.

On 11 April 1938, State Elder Päts issued a decree by which he brought into effect the new[55] Martial Law Act. The Act vested extensive powers over public officials in the head of state, in the commander-in-chief of the armed Forces and in the head of internal defence, allowing them 'to restrict citizens' constitutional rights if needed'[56]. This delegation of authority by the Act highlights the chasm between the (democratic) text of the constitution and the authoritarian nature of its application.

The gradual concentration and consolidation of power in the hands of head of state Päts and his close supporters – Johan Laidoner (Commander-in-Chief of the Armed Forces) and Kaarel Eenpalu (Minister of the Interior) – established a crucial precondition for silent surrender and for loss of Estonian statehood. In addition, it has been noted that the Head of State and the Commander-in-Chief had been caught in a web of aggressive Soviet influence operations and their business ventures had become economically dependent on Soviet Russia.

To sum up the above – during the period from 1918 to 1938, i.e., during barely a generation, Estonia went through a dizzying period of economic growth. The population was comfortable and people's socio-political sensitivity was slumbering. Economic

[55] Publication reference of the Estonian text: RT 1938, 40, 365.

[56] A detailed list of the options open to the head of internal defence to limit fundamental rights and freedoms and regulate the life of civilian society is provided by § 20 of the law.

success created fertile conditions for a personality cult to develop. Signs – albeit moderate – of these developments were evident in the actions of President Päts and of his coterie of supporters. Self-aggrandizement reached the heights of the President inaugurating a statue of himself. It appears that economic progress ensured neither the equivalent political maturity of the population nor wise restraint on the part of its leader.

It is likely that the conflict between the great powers that was unfolding in Europe would, in one way or another, have resulted in the subjugation of small nations. That said, a free and democratic political process would nevertheless have ensured Estonia an additional opportunity to make the decision of silent surrender more broadly considered. Even limited resistance would have possessed huge symbolic value and would have significantly undermined the subsequent claim by Soviet Russia that Estonia joined the Soviet Union voluntarily[57].

One may ask whether it would have been possible to avoid decline if the principles of separation and balance of powers had been followed and a strong constitutional court had been established. Maybe this is not the case, yet at least the dignified appearance and face of the nation would have been preserved.

[57] See the opinion of the Russian Federation on the effect of the Treaty of Tartu (footnote 22).

PART II

LOSS OF STATEHOOD. GOVERNANCE ARRANGEMENTS IN ESTONIA DURING OCCUPATIONS

DEMISE OF ESTONIAN STATEHOOD

The demise of Estonian statehood was a creeping development that started well before it reached the stage of overt action and was finally formalized. The principal factors that shaped it were the political situation in Estonia and European geopolitical processes of the time.

The chief internal factors that contributed to the loss of statehood included the departure from democratic values and the rise of authoritarian tendencies in Estonian politics, the concentration of power in the hands of a small group of individuals as well as the fact that the opposition had been deprived of any real influence on decisions. A further facilitating factor was the fixation of the political elite on the dogmas of neutrality and pacifism that had proved successful in the initial years of independence but which now meant that, at a decisive moment, the nation was – in geopolitical terms – left standing alone.

By resolution of 1 September 1939, the President and the Prime Minister proclaimed Estonia to be strictly neutral in the war that had broken out between foreign states. Among other things, this development has been linked to corrupt economic ties between the country's top leadership and Russian capital, which made them susceptible to political influence by Soviet Russia.

Soviet (Stalinist) Russia conducted targeted Communist propaganda and subversion campaigns in Estonia as well as in other former vassal territories of the Russian Empire. The appealing oratorical façade of Communist rhetoric swept Estonia's naïve leftist intellectuals and labour movement leaders off their feet and resulted in collaborationism and short-sighted adherence to the Soviet cause.

The decisive foreign-policy factor was the gradual drifting of Europe's great powers – the Stalinist Soviet Union and Nazi Germany with their respective allies – towards military confrontation and the concomitant division of spheres of influence. The fate of the Estonian Republic was decided by the Molotov-Ribbentrop Pact of 23 August 1939 and its secret protocols. As is now known, these instruments[58] served to carve up Europe into spheres of influence, and determined that Estonia and the other Baltic states would remain in the sphere of influence of the Soviet Union. They precipitated the constitutional events that would shortly be manifested in Estonia.

In practical terms, the demise of Estonia's sovereignty was sealed by the Pact of Mutual Assistance[59] between the Estonian Republic and the Soviet Union (also known as the Treaty on Military Bases) concluded on 28 September 1939. By that treaty, Estonia ceded control of approximately 10% of its territory and essentially became a military protectorate of the Soviet Union.

Estonian military leadership succumbed to pressure and, without putting up any resistance, ordered Estonia's forces to

[58] Treaty of Non-Aggression Between Germany and the USSR (1939).

[59] Ironically, the parties affirmed their adherence to the Treaty of Tartu concluded on 2 February 1920. Yet, under the Pact, up to 100,000 members of Soviet armed forces with support staff and family entered Estonia. This was much more than was agreed.

lay down their arms. It is a sad historical fact that the nation's political and military leaders of the time did not allow its soldiers and officers the possibility of confronting the enemy and dying in combat in defence of the homeland under the Estonian flag.

On 16 June 1940, the Soviet Union presented Estonia with an ultimatum, demanding a change of government and the unhindered entry of Soviet forces. On the next day, 17 June 1940, the Estonian Republic was occupied and its Constitution was *de facto* deprived of effect[60]. By Administrative Decree no. 55 of 21 June 1940 the President, exercising his sole authority, dismissed the Government that had been appointed on 12 October 1939. There was no need for approval from the Government or the parliament.

These developments led to silent (unresisting) capitulation with the ensuing 'voluntary'[61] accession to the Soviet Union. Alongside the political processes required for the takeover of government, unprecedented repression was carried out against the Estonian people and its leaders[62].

The Soviet Union and its current successor, the Russian Federation, have subsequently used Estonia's silent capitulation in 1940 to advance the propaganda claim that the loss of independent Estonian statehood and the country's takeover under threat of the use of force constituted voluntary accession to the Soviet Union.

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60 The occupation of the Estonian Republic was recognized *expressis verbis* by the European Court of Human Rights in the 2006 cases of Kolk (23052/04) and Kislyiy (24018/04) as well as Penart (14685/04) against Estonia.

61 In the parlance of Soviet Russia and its local collaborators.

62 See: Estonia 1940–1945. Estonian International Commission for the Investigation of Crimes Against Humanity. Tallinn, 2006.

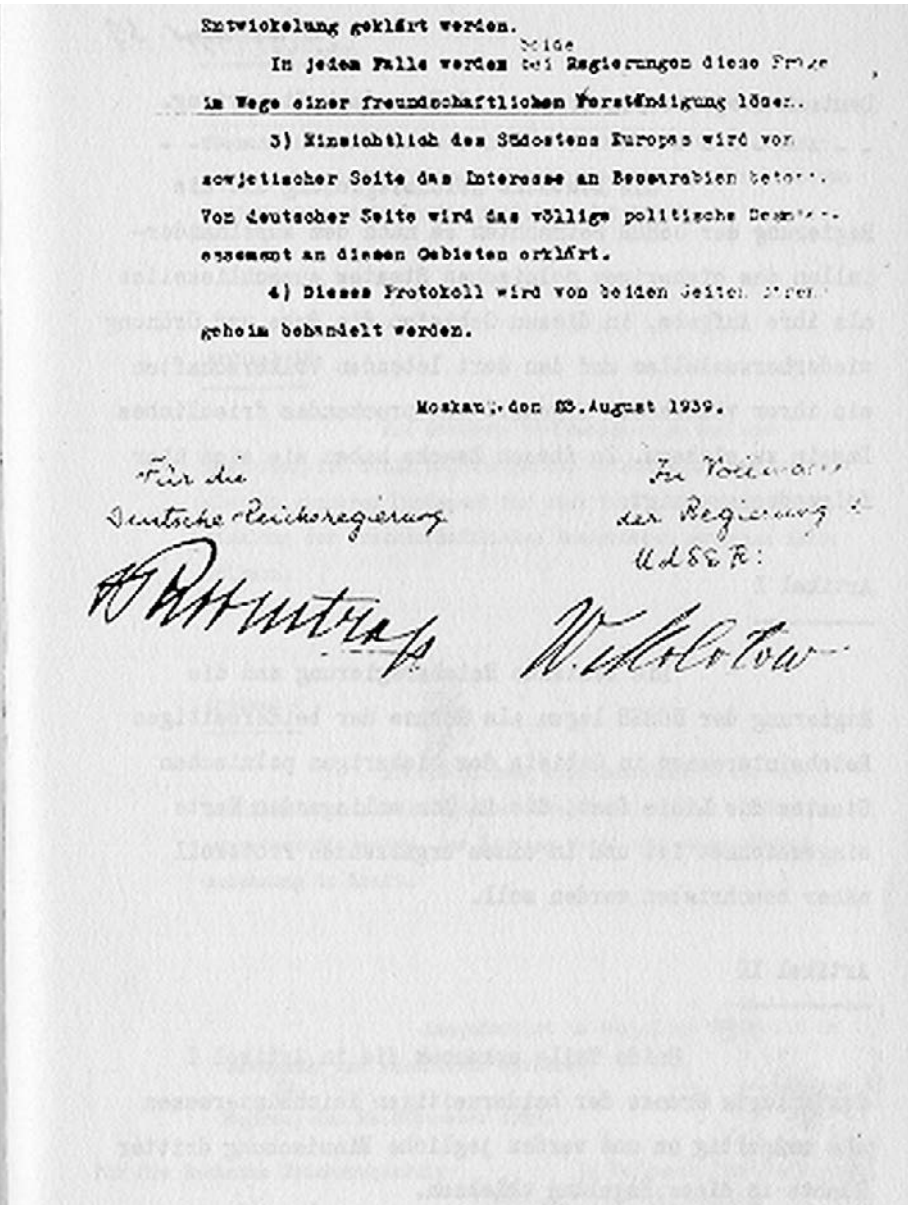
Geheimes Zusatzprotokoll.

Aus Anlass der Unterzeichnung des Nichtangriffsvertrages zwischen dem Deutschen Reich und der Union der Sozialistischen Sowjetrepubliken haben die unterzeichneten Bevollmächtigten der beiden Teile in streng vertraulicher Aussprache die Frage der Abgrenzung der beiderseitigen Interessensphären in Osteuropa erörtert. Diese Aussprache hat zu folgendem Ergebnis geführt:

1. Für den Fall einer territorial-politischen Umgestaltung in den zu den baltischen Staaten (Finnland, Estland, Lettland, Litauen) gehörenden Gebieten bildet die nördliche Grenze Litauens zugleich die Grenze der Interessensphären Deutschlands und der UdSSR. Hierbei wird das Interesse Litauens am Wilnaer Gebiet beiderseits anerkannt.

2. Für den Fall einer territorial-politischen Umgestaltung der zum polnischen Staate gehörenden Gebiete werden die Interessensphären Deutschlands und der UdSSR ungefähr durch die Linie der Flüsse Narew, Weichsel und San abgegrenzt.

Die Frage, ob die beiderseitigen Interessen die Erhaltung eines unabhängigen polnischen Staates erwünscht erscheinen lassen und wie dieser Staat abzugrenzen wäre, kann endgültig erst im Laufe der weiteren politischen



Entwicklung geklärt werden.

In jedem Falle werden beide Regierungen diese Frage im Wege einer freundschaftlichen Verständigung lösen.

3) Hinsichtlich des Südostens Europas wird von sowjetischer Seite das Interesse an Bessarabien betont. Von deutscher Seite wird das völlige politische Desinteressement an diesen Gebieten erklärt.

4) Dieses Protokoll wird von beiden Seiten streng geheim behandelt werden.

Moskau, den 23. August 1939.

Für die Deutsche Reichsregierung

In Vollmacht der Regierung der UdSSR:

Secret protocol of 23 August 1939, an annex to the Molotov-Ribbentrop Pact. Wikipedia

Soviet troops entering Estonia in the autumn of 1939.
National Archives of Estonia


EESTI SAMMUB ÕHES SOTSIALIST

Seventh sitting of I session of the second Chamber of Deputies.
The delegation of the Red Army and Navy in the National Assembly,
22.07.1940. National Archives of Estonia. Photo: V. Termin

To create an appearance of lawful takeover of political authority, Soviet Russia used the assistance of local collaborationists aided by Moscow-directed propaganda operations to arrange the election of a new Chamber of Deputies. This took place in contravention of the constitution of the Estonian Republic that was still in force. The aim of the election was 'to ensure a Chamber of Deputies characterized by unified political convictions'[63]. The aim was achieved – by eliminating candidates representing the opposition (Estonian republicans).

After the 14–15 July 1940 election of the Chamber of Deputies, on 21 July 1940 the newly elected Chamber adopted a declaration on Estonia's governance and proclaimed the rule of the Soviets to have effect in Estonia. Estonia was renamed a Soviet Socialist Republic[64]. Needless to say, the decision was *ultra vires* and contrary to the constitution in force.

On 22 July 1940, the Chamber of Deputies, without having been vested with the corresponding authority by the people as should have been the case under the constitution, adopted a declaration on Estonia's accession to the Soviet Union. On 6 August of the same year, the Supreme Soviet of the Soviet Union formalized Estonia's incorporation into the Union.

On 25 August 1940, the Chamber of Deputies of the Estonian SSR approved the Constitution of the Estonian Soviet Socialist Republic that had been drafted at warp speed (19 days after the

63 *1940. aasta Eestis. Dokumente ja materjale* [Estonia in the year 1940. Documents and materials – transl.], Olion 1990, pp. 111ff.

64 Publication reference of the Estonian text: *RT* 1940, 74, 733.

country's accession to the Soviet Union was approved) based on the model of the Stalinist 1936 Constitution of the USSR.

During the initial period of Soviet rule (1940–1941), the nation witnessed a wave of political arrests, repressions and deportations that turned the population against the Communist regime of Soviet Russia[65]. The hitherto constitutional order of the Estonian Republic was dismantled illegally under threat of military action. The Republic ceased to exist de facto but continued *de jure*[66].

Legal continuity of the Estonian state became the main ideological axis for preserving and restoring Estonia's statehood. Continuity was maintained, albeit with certain objective difficulties, through the entire period of occupations by means of the Estonian citizenry and of the Government in exile. Constitutional continuity would later serve as the basis for restoring Estonian independence[67].

The thesis of legal continuity drew support from the non-recognition policy of influential Western powers, above all the United States of America, and from partial continuation of the work of Estonian Republic's missions abroad. An important role in raising awareness of, and keeping up, the Republic's legal

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65 See: Paavle, Indrek. Fate of the Estonian Elite in 1940–1941. In: Estonia 1940–1945: Reports of the Estonian International Commission for the Investigation of Crimes Against Humanity. Tallinn, 2006.

66 See: Kerikmäe, Tanel and Vallikivi, Hannes. State Continuity in the Light of Estonian Treaties Concluded before World War II. – *Juridica International*, V/2000.

67 In his letter of 2 January 1990, the Prime Minister of the Government in exile, Heinrich Mark, wrote that '[t]he Government of the Estonian Republic in exile […] maintains the juridical continuity of the Estonian Republic, to pass it on to the people of Estonia when it is free to decide on its affairs'. On 7 October 1992, he issued an administrative decree by which he ended the operation of the Government of the Republic in exile (see: https://web.archive.org).

continuity was served by the numerous expatriate Estonian communities in many countries (the USA, Canada, Australia and elsewhere).

Governance during the 1941–1944 German Occupation

In the summer of 1941, war broke out between hitherto allies the Soviet Union and Germany. In Estonia, the Soviet occupation of 1940–1941 was followed by the German occupation of 1941–1944.

The suffering inflicted on the people during the year of Soviet rule and the crimes perpetrated by the Soviet authorities against the Estonian state and its people engendered a deep-seated animosity to things Soviet and Russian and caused the population to place high expectations on German rule, which it was hoped would enable a return to normal life. Contrary to those expectations, however, Hitler's Germany was not interested in Estonian self-government.

By Hitler's decision of 29 November 1941, government authority in the occupied Estonian territories was vested in a German civil administration starting from 5 December 1941. Instead of becoming an autonomous constitutional institution, the Estonian self-government body under German occupation (the Directorate) served as an auxiliary structure assisting the German occupying power.

When Germany retreated from Estonia in 1944, an attempt was made to restore Estonia's statehood. To coordinate this, a National Committee of the Estonian Republic was formed. The Committee informed the people that what had happened in Estonia starting from 21 June 1940 was unconstitutional and legally void. On 18 September 1944, Jüri Uluots, the Estonian

Prime Minister serving as Acting President, appointed the Government of the Republic, which was led by Otto Tief. On 22 September 1944, the Government fled advancing Soviet forces and went into exile.

Among those who made it to exile in Sweden were Acting President Jüri Uluots, Foreign Minister August Rei, Minister of the Judiciary Johannes Klesment and State Secretary Helmut Maandi. Most of the country's other leaders had either already been repressed by the Soviet authorities or had perished in the maelstrom of war.

Estonia's legal continuity was kept alive by the citizens who had escaped abroad and by the Government in exile maintained by surviving political leaders. The National Committee and the various associations of Estonians in exile became the vehicle that carried on and sought to advance the cause of Estonian statehood.


FRIHET ÅT ESTLAND
FREEDOM FOR ESTONI

ESTO Days in Stockholm (1980). National Archives of Estonia

1944–1991: Soviet Legal Order in Estonia

During the period of Soviet rule, two constitutions were brought into effect in Estonia, neither of which allowed the Estonian people and its representatives to have even the smallest substantive participatory or decision-making role. Estonia remained occupied and annexed for half a century and was subject to Soviet Russia's (the Soviet Union's) constitution and legal order[68].

The first constitution of the Estonian SSR[69] was adopted on 25 August 1940 by a Chamber of Deputies convened by a sham election. It was a marginally modified copy of the Stalinist 1936 Constitution of the Soviet Union. The instrument was adopted two weeks after Estonia had been occupied and annexed.

Soviet rule and the Constitution of the Estonian SSR abolished private property and prescribed a transition to the socialist economic system. The constitution affirmed that, politically, Estonia would follow Article 14 of the Constitution of the Soviet Union, which deprived the territory of its independent (sovereign) authority[70].

The second Communist constitution was brought into effect in Estonia in 1978 by the Supreme Soviet of the Estonian SSR. This was a modified version of the Soviet Union's constitution adopted in 1977. To all intents and purposes, it essentially maintained a Soviet-style constitutional order.

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[68] For Estonians as well as for all other peoples subjugated by the Soviets this was a hard time that saw brutal Stalinist repression followed by a slight thaw under Khruschchev, the slow stagnation of the Brezhnev era and finally, at the end of the 1980s, the collapse of the Union in spite of Gorbachev's unsuccessful attempts to revive it.

[69] Publication reference of the Estonian text: *RT*, 111, 25.08.1940.

[70] See: Misiunas and Taagepera, footnote 7.

The operation of Soviet rule and of Soviet law was characterized by patterns that were difficult to discern for democracies in the free world and often incomprehensible for the lay observer in Western countries. Principal among these were:

- a chasm between appearances and reality;
- the concentration of power in, and its exercise by, a small clique of (Communist) party members – the *nomenklatura*;
- a massive repressive apparatus (the KGB, militia, military) to prop up the one-party system.

In sum – the constitutional law of the Soviet Union was marked by a stark contrast between words (starting from the Constitution) and deeds, which the system tried to deny or smooth over by the Party's massive propaganda effort and an omnipresent repressive surveillance by the security forces.

PART III

RESTORATION OF STATEHOOD. CURRENT CONSTITUTIONAL ORDER

INTRODUCTORY REMARKS

The attainment – and, later, restoration – of independence was a gradual and politically charged process. The decisions and steps required to reinstate Estonian statehood had to be taken in consideration of the political setting and opportunities, as well as with a view to a potentially explosive domestic situation[71].

The circumstances in society at the time of restoration of statehood were perhaps even more complicated than at the time of its creation. A way had to be found to ensure cooperation between starkly different interests. The most important groups that had to be reckoned with were the expatriate community of exiled lawful citizens, Estonian residents who held Estonian citizenship by descent and supporters of the Soviet Union with their local collaborators.

[71] See: Taagepera, Rein. Estonia: Return to Independence. Routledge, 1993; Frankowski, Stanislaw and Stephan, Paul B. III. Legal Reform in Post-Communist Europe: The View from Within. Dordrecht, Martinus Nijhoff Publishers, 1995; Eivind Smith (ed.). The constitution as an instrument of change. Stockholm, SNS Publishing, 2003.

In addition to the *pouvoir constituant*, factors that had to be considered included the large number of Soviet troops present on Estonian soil as well as the top local officials of the Communist Party and other Soviet structures who wielded *de facto* political power. Although some of the latter were oriented to innovation and national independence, they were few and far between. Another element to be borne in mind was the reactions – support or rejection[72] – by Estonia's closest neighbours and by the rest of the world, in particular the major international actors.

The political and constitutional decisions during 1988–1992 were born in a highly charged political atmosphere and in a situation that was economically dire. The environment in which the decisions had to be taken was highly complex and fraught with many potential conflicts. This partly explains the larger number of instruments (compared to when Estonia's statehood was first asserted) needed to prepare restoration of independence, as well as their terse and sometimes contradictory wording. The stakeholders of the period, all of whom attempted to realize their aspirations and protect their interests, included adherents of the legal continuity of Estonian statehood as well as local Soviet representative bodies. There were also overt and covert actions by the Soviet Union's central authorities and of their security agencies.

The first constitutional instruments of the Estonian legal order were drafted principally by individual leaders of that period, by high government officials and top attorneys. The process

[72] Countries had different views on the subject. The most influential of the great powers, the USA, never recognized the occupation and annexation of the Estonian Republic.

mostly involved officials and experts, with no broad popular movements to consider. When constitutional arrangements started to be debated during restoration of independence – in particular, when the fourth constitution was prepared and drafted – societal participation was significantly more extensive and included the civic movements of the time, in addition to leading intellectual figures and government officials. Although creation of the constitution during the movement to regain independence cannot be said to amount to participatory constitution-making, it certainly possessed many of the latter's characteristics.

In hindsight, eminent Estonian politicians and jurists have almost unanimously concluded that the (political) model of statehood laid down in the constitution was a resounding success – although, in terms of legal drafting, it could have been improved further in several respects. The successful outcome of the endeavour is demonstrated by the fact that the constitution has survived for more than 30 years without a single major crisis, and has only required a few inevitable additions of a practical nature. The lessons of history had been learned.

The years 1988–1992 were characterized by heated but peaceful political debates and confrontations. One of the central constitutional issues was whether the Estonian state should be created from scratch or by restoring its past statehood on the principle of continuity.

The adherents of the 'new state' theory, i.e., of the idea of 'the third Republic' proposed to rename the Estonian SSR 'the Estonian Republic' and to democratize and modernize it. Unfortunately, this would have meant recognizing the legitimacy of government during the Soviet period with all its consequences.

Proponents of the second approach wanted to restore the Estonian Republic based on its legal continuity. This would have meant *ex ante* that the annexation and occupation of the Estonian Republic was unlawful and that Estonian statehood had been maintained *de jure* based on the citizenry and territory of the Estonian Republic.

The idea of the third Republic was largely supported by the *Rahvarinne* [Popular Front] movement, by advocates of what was referred to at the time as 'improved and democratic socialism with a "human face"' and by a majority of the representatives of the Soviet authorities. Many of these supporters sincerely believed this to be the best solution. Yet there were also those who tried to channel the social processes of the time into existing structures, i.e., to avoid substantive reforms, or limit these to minor adjustments sufficient to ensure survival through adverse times and then later to continue in the former direction. There was talk of a 'new Union treaty', of 'developed socialism' and of 'autarkic Estonia'. Taking this direction would have legitimated the occupation and annexation and would have amounted to making the Soviet Union the cradle of the Republic of Estonia.

Adherents of this view were motivated by the pragmatic realization that Soviet-style socialism and Communist ideology had become economically and ideologically bankrupt and, as such, had placed the population's economic welfare – as well as the survival and culture of Estonians as a people – in jeopardy. A broader context for realization was offered by the policies of *perestroika* that had been initiated by the new-generation leader of the Soviet Union, Mikhail Gorbachev, who sought to reform Soviet-style socialism.


Eesti-Latvija-Liet
ENESEMÄÄRAMISÕI
MOLOTOV-RIBBEN-
TROPI
SOBING AVALIKUKS!

Political rally at *Hirvepark* (in central Tallinn) in 1987 on the 48th anniversary of the Molotov-Ribbentrop Pact to denounce its secret protocols. National Archives of Estonia. Photo: E. Norman

It would be a gross oversimplification to suggest that the debates and aspirations of those days were futile and ideologically misguided. Rather, they should be seen as a valuable learning process that facilitated analysis of the situation and consideration of the decisions that had to be made, and resulted in political growth and development of the nation.

To conclude – what was initially sought was not rejection of the hitherto Soviet socialist system but rather its innovation and improvement. It must be realized, however, that figuratively speaking 'slamming the door' on the Soviet Union was simply not an option at the time, and could have had disastrous results. This was something that prudent and level-headed Estonians were perfectly aware of.

The legal continuity movement represented the ideals of Estonia's heritage and statehood and was founded on a solid basis of constitutional and international law. Its fundamental premise was the understanding that once a nation has defined and established itself as a state, it does not have to do so again[73]. In addition, the demise of Estonian statehood in 1940 took place as a hostile takeover of the Estonian state in violation of the constitution in force and of international law, under foreign pressure and the threat of use of military force.

The road to the demise of Estonian statehood had been paved by the 23 August 1939 Molotov-Ribbentrop Pact and its secret

[73] Among other things, accepting the principle of restitution meant entitlement to the property and status that was held by the Estonian Republic in international organizations prior to its occupation. Both proved highly useful in the course of the restoration of statehood.

protocols[74]. The demand to publish and repeal these illegal arrangements, which had remained a closely kept secret during the Soviet period, became one of the principal points of departure on the way to restoration of statehood. The corresponding political movement was initiated by the Estonian National Independence Party, one of the groups standing for Estonian heritage and independence.

The view of legal continuity was embodied by the movement of Estonian Citizens' Committees that had started in Estonia as well as abroad. The representative body of the movement – the Congress of Estonia – was elected by Estonian citizens. The Congress was preceded by an unprecedented own-initiative mass movement to register and organize lawful citizens of the Estonian Republic. On 24 February 1990, 557,613 registered Estonian citizens elected 499 members of the Congress.

Actual (administrative) government authority in Estonia during the transitional period (1988–1992) was held by the representative and executive bodies of the Estonian SSR. Their activities were directed and their staff had been selected by the Communist Party; both were still closely monitored by the security forces. That said, however, the degree of pressure and control had lessened significantly due to the pre-collapse situation in the Soviet Union.

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[74] A detailed historical factology of developments in relation to the Pact in Estonia is provided in the overview [in Estonian] *1940. aasta Eestis. Dokumente ja materjale* [Estonia in the year 1940. Documents and materials – transl.], Olion 1990 – which was compiled under the Resolution of 12 November 1989 of the Supreme Soviet of the Estonian SSR entitled *Ajaloolis-õiguslikust hinnangust Eestis 1940. aastal toimunud sündmuste kohta* [On Historical and Legal Assessment of Events that took place in Estonia in 1940 – transl.].

Many of the local Soviet-era leaders were ethnic Estonians. A number had either held moderate views from the beginning or had gravitated to these due to the changing situation – or even changed sides – and several became enthusiastic initiators of innovations.

The last regular election to the Supreme Soviet of the Estonian SSR (the XII Supreme Soviet) was held on 18 March 1990. It was the first Soviet-era election in Estonia that was more or less free, with a voter turnout of 78.2% (of Estonian residents entitled to vote[75]).

The third and probably the most important factor in the restoration of independence and statehood were the popular movements. The national heritage movement, the movement opposing phosphorite mining in Estonia, the Night-Time Song Festival and the Singing Revolution, the Baltic Chain and other similar actions represented peaceful demonstrations with mass participation. Their impact was such that the 'popular authority' in power could hardly ignore them.

The *nomenklatura* of the Communist Party was not prepared to face (and control, i.e., put down) these phenomena, nor – apparently – were these mentioned in KGB manuals either. Using violence against hundreds of thousands of singers was too much even for the Soviet repressive apparatus.

In conclusion – the representative bodies of both camps were constituted democratically and legitimately, and reflected the interests and expectations of the people. This created good preconditions for a peaceful restoration of Estonian statehood.

[75] In addition to voters who were Estonian citizens by descent, the election was open to other residents of Estonia, including members of the Soviet armed forces.

8. Declaration of the Supreme Soviet of the Estonian SSR of 16 November 1988 on the Sovereignty of Estonian SSR)

DECLARATION OF THE SUPREME SOVIET OF THE ESTONIAN SOVIET SOCIALIST REPUBLIC ON THE SOVEREIGNTY OF THE ESTONIAN SSR

The Estonian people has tilled its land and nurtured its culture on the shores of the Baltic Sea for more than five thousand years. In 1940, the ethnically homogeneous and sovereign Estonian Republic became a constituent part of the Soviet Union, in relation to which provision was made for the preservation of guarantees of sovereignty and for the thriving of the Estonian people. Domestic politics during the Stalinist era and the stagnation period ignored these guarantees and representations. As a result, a demographic situation unfavourable to Estonians as the principal ethnic group has arisen in Estonia, the natural environment in many localities of the Republic is in a disastrous state, and continued destabilization of the economy has a negative impact on the standard of living of the entire population.

The Supreme Soviet of the Estonian SSR sees but one solution to this dire situation: Estonia's further development must take place in conditions of sovereignty. The sovereignty of the Estonian SSR means that the highest authority in its territory belongs to Estonia itself in the form of the highest rule-making, governing and judicial bodies. The sovereignty of the Estonian SSR is integral and indivisible. According to the foregoing, the future of the Republic in the Union of Soviet Socialist Republics should be determined by a Union Treaty.

The Supreme Soviet of the Estonian SSR does not accept the amendments and additions to the Constitution of the USSR that the Presidium of the Supreme Soviet of the USSR has tabled for consideration and that rule out the constitutional

right of the Estonian SSR to self-determination. Based on the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights of 16 December 1966, which have been ratified by the USSR, as well as on other rules of international law, the Supreme Soviet of the Estonian SSR, as the highest body of the Republic that represents the authority of the people, declares its laws to be supreme in the territory of the Republic.

In the future, any amendments or additions to the Constitution of the USSR shall enter into force in the territory of the Estonian SSR on their approval by the Supreme Soviet of the Estonian SSR and on the making of corresponding amendments and additions to the Constitution of the Estonian SSR.

The Supreme Soviet of the Estonian SSR calls on everyone who has tied their future to Estonia to come together to construct a democratic and socialist Estonian society.

The juridical and factual realization of sovereignty means, among other things, that the people of Estonia will not, in the future, accept any law that would discriminate against representatives of any other ethnic group residing in the Estonian SSR.

A. RÜÜTEL, Chairman of the Presidium of
the Supreme Soviet of the Estonian SSR,

V. VAHT, Secretary of the Presidium
of the Supreme Soviet of the Estonian SSR,

Tallinn, 16 November 1988.

COMMENTARY

The Declaration of the Supreme Soviet of the Estonian Soviet Socialist Republic of 16 November 1988 on the Sovereignty of the Estonian SSR together with its implementing law entitled *Muudatuste ja täienduste tegemise kohta Eesti NSV konstitutsioonis (põhiseaduses)* [On making amendments and additions to the Constitution (Fundamental Law) of the Estonian SSR][76] signified the legal beginning of the process by which Estonians restored their independence. Political activity among the population had already been gathering momentum for some time. The date on which the declaration was adopted is celebrated as the Day of Rebirth[77].

In the political situation that surrounded its adoption and in the context of its legal effect, the Declaration was, in terms of its substance and effect, a pre-constitutional instrument. It proclaimed the sovereignty of Estonia (the Estonian SSR) as integral and indivisible and placed the laws of the Estonian SSR above those of the USSR. It also proclaimed that any amendments or additions to the constitution of the USSR would enter into force in the territory

[76] The text of the law has not been reproduced here because it does not have any substantive significance from the point of view of Estonia's statehood, and was never implemented.

[77] The day is now celebrated as a day of national importance. Strictly speaking, one could object to the concept of 'rebirth', which would also seem to contradict the idea of legal continuity. Still, conceptual precision should be allowed to take a back seat to the symbolic importance and figurative significance of the Declaration.

of the Estonian SSR upon their approval by the Supreme Soviet of the Estonian SSR.

The Declaration is comparable to the 1917 Resolution of the Provisional Provincial Assembly on the Highest Authority. On both occasions, the nation was legally part of a disintegrating empire and both instruments served to declare the issuing body the highest (sovereign) authority of the land. It constitutes a clear manifestation of volition and of purpose. At the same time, similarly to the Assembly, which did not resolve to secede from the Russian Empire, the Supreme Soviet did not resolve to leave the Soviet Union.

Although there are similarities between the status of the Provisional Provincial Assembly and of the Supreme Soviet, they also have important differences. Most significantly – there was no Estonian state before the formation of the Assembly, whereas that state was in existence when the Supreme Soviet was formed. At first, it existed in reality, then under de facto occupation, continuing *de jure* in exile. Hence – what was established by one body was restored by the other.

Both representative bodies of their time saw sovereignty as an opportunity for the people to take important decisions into their own hands. This was stated in so many words. At the same time, both bodies interpreted the sovereignty that they declared as a sort of autonomy, instead of independent statehood.

In the Declaration of 1988, the aspiration to autonomy is implied by the desire for a union treaty[78] as well as by the intention to modernize the (hitherto socialist) governance arrangements[79]. Still, the decision represented an unprecedented development in the political context of the time, and thus triggered a sequence of events that was described at the time as 'the war of laws'.

Formally speaking, Soviet republics – including the Estonian SSR – were sovereign entities that, under the constitution of the Soviet Union, even enjoyed the right to leave the Union. Of course, the 'right' did not amount to more than a declaration and represented a mere appearance that was never intended to be used. For this reason, it was deeply disturbing for the Soviet leadership to see the notion of 'sovereignty' used in political documents in what approximated its true meaning, regardless of the fact that the Declaration did not bring up the issue of Estonia's occupation and annexation.

A reaction from the central authorities of the Soviet Union was only to be expected, and came on 26 November 1988 in the form of the Resolution of the Supreme Soviet of the USSR on the incompatibility of the declaration of sovereignty by

[78] The initial union treaty was the instrument used in December 1924 to create the Soviet Union.

[79] Estonia's reaction should be seen in the context of proposed amendments and additions to the constitution of the USSR that had been tabled by the Presidium of the Supreme Soviet of the USSR.

the Estonian SSR with the constitution of the USSR and with the laws of the Soviet Union.

Still, the wheels of socio-political change had been set in motion and it was no longer possible to stop them – although the leadership of the Soviet Union would persist in believing the opposite for several years.

The Supreme Soviet – from the point of view of the legal continuity of Estonian statehood – represented a local government body of a foreign power that had deprived Estonia of its sovereignty and occupied the country. Since the Soviet authorities as such, including the Supreme Soviet of the Estonian SSR, were formally complicit in the system that had led to the demise of Estonia's statehood and to repression against the Estonian people, popular mistrust of the body was widespread and understandable – as was the question concerning its legitimacy in the process of restoring Estonia's sovereignty and statehood[80].

The sovereignty declaration proposed the idea of concluding a union treaty with the central authorities of the Soviet Union. The proposal has been interpreted as equivalent to ceding Estonia's desired, nascent sovereignty to the Soviet Union. In formal terms

[80] At the same time, one cannot disregard the extensive organizational and legal preparations for transitioning to independent statehood that the Supreme Soviet performed during the years 1990–1992. An exhaustive list of the declarations, resolutions and laws adopted during this period is presented in the collection (in Estonian) *Dokumente, materjale ja meenutusi Eesti Vabariigi Ülemnõukogu tegevusest aastatel 1990–1992* [Documents, materials and recollections of the work of the Supreme Soviet of the Republic of Estonia during the years 1990–1992 – transl.], Tartu, 2012.

and with the benefit of hindsight, this interpretation appears justified. Yet one should not disregard the situation in 1988 and the possibilities that had to be considered – including the possibility of brutal repression. Fortunately, the consequences were limited to the 'war of laws' – although, of course, this would only become clear later. As for the occupying forces, it was only on 31 August 1994 that Soviet troops finally left Estonian soil.

A year later, on 12 November 1989, the political readiness of the de facto authorities – the Supreme Soviet of the Estonian SSR as the body representing Soviet rule – to proceed to the restoration of Estonia's constitutional government was shown by the Supreme Soviet's resolution entitled *Ajaloolis-õiguslikust hinnangust Eesti 1940. aastal toimunud sündmuste suhtes* [On Historical and Legal Assessment of the Events that Took Place in Estonia in 1940 – transl.][81]. The same orientation was adopted by the plenary meeting of the people's deputies of all levels of representation of the Estonian SSR in its declaration of 2 February 1990 on Estonia's independent statehood. The judicial protection of citizens' and legal persons' constitutional rights proposed in that declaration reflected the aspirations of the time. The principle would later be affirmed as Article 15 of the 1992 Constitution.

[81] Publication reference of the Estonian text: *ENSV ÜVT* [Official Gazette of the Supreme Soviet and Government of the Estonian SSR – transl.] 1989, 34, 519.

The Baltic Chain. National Archives of Estonia. Photo: H. Leppikson

The readiness of the local Soviet representative bodies to engage in democratization and restoration of independent statehood was neither a sham nor an elitist project. It was a step that the people in power felt themselves compelled to take by the sweeping changes in society that allowed a mass of hitherto repressed emotionally laden beliefs to surface and led to its active manifestation in popular movements and events. The triggering ones and perhaps the most influential of these were the demonstration at *Hirvepark* (a park next to Toome Hill in central Tallinn) that called for publication of the Molotov-Ribbentrop pact, the so-called phosphorite war[82] and, perhaps the best-known of all – the Singing Revolution and the Baltic Chain.

The Baltic Chain was a 620-kilometre human chain stretching from Tallinn, Estonia to Vilnius, Lithuania on 23 August 1989. The event was unique and unprecedented, involved a large number of people and secured widespread media coverage around the world as a demonstration of a peaceful bid for independence by the Baltic nations. It was impossible for the authorities to ignore[83].

Throughout the entire period, a series of civic initiatives and movements burgeoned.

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[82] Mass movement to stop the Soviet Union's plans for large-scale phosphorite mining in Estonia.

[83] The Singing Revolution (http://singingrevolution.com).

9.1 Declaration of the Congress of Estonia of 11 March 1990 on the Restoration of Lawful Governing Authority in the Territory of the Republic of Estonia[84].

DECLARATION OF THE CONGRESS OF ESTONIA
of 11 March 1990

on the Restoration of Lawful Governing Authority in the Territory of the Republic of Estonia

The Congress of Estonia, expressing the firm volition of the citizenry of the Republic of Estonia, drawing support from continued non-recognition, by democratic countries of the world, of the forcible annexation of the Republic of Estonia, which was an internationally recognized independent and sovereign state, and based on the fact that constitutional relations between the Republic of Estonia and the USSR continue to be founded on the 1920 Treaty of Tartu, declares:

– On 17 June 1940, under the threat of military attack, the USSR launched the still ongoing aggression against the Republic of Estonia and occupied and annexed the Republic, thus violating the obligations assumed under applicable treaties.

– The decisions that altered the constitutional order of the Republic of Estonia, proclaimed the Estonian Soviet Socialist Republic and effected the latter's accession to the USSR – adopted by the Chamber of Deputies that was illegally elected under the control of the occupying power – are unlawful and therefore invalid.

[84] The documents of the Congress of Estonia have not been included in the repository of official documents of the Republic of Estonia (the State Gazette). The Declaration of 11 March 1990 appears in the publication *Eesti Kongressi materjalid* [Materials of the Congress of Estonia – transl.], 1990.

– To this day, the Republic of Estonia remains a state which is occupied and annexed by the USSR and in which there is no lawful governing authority. The authorities of the Estonian SSR are administrative bodies of the occupying power, whilst the actual highest governing authority in Estonia is held by that power – the USSR.

– The sovereign and independent Republic of Estonia must be restored by declaring the annexation void, by pulling out the occupying troops and by handing the highest governing authority over to a constitutional representation of the Republic's people. Restoration must be based on the continuity of the Republic's citizenship and on the Republic's applicable constitution.

– Neighbourly relations must be restored between the Republic of Estonia and the USSR based on the equality of rights, mutual recognition of interests and mutually beneficial cooperation, according to the spirit and letter of the Treaty of Tartu.

Tallinn, 11 March 1990

9.2 Resolution of the Supreme Soviet of the Estonian SSR of 30 March 1990 on Estonia's Statehood.

RESOLUTION OF THE SUPREME SOVIET OF THE ESTONIAN SSR

of 30 March 1990 on Estonia's Statehood

The Supreme Soviet of the Estonian SSR affirms that the occupation of the Republic of Estonia by the USSR on 17 June 1940 did not interrupt the *de jure* existence of the Republic. The Republic's territory continues to be occupied to this day.

The Supreme Soviet of the Estonian SSR, having regard to the manifestly expressed volition of the Estonian people to restore the independence of the Republic of Estonia and its lawful governing authority, recognizes the unlawfulness, in Estonia, of the governing authority of the USSR from the moment of its imposition and proclaims the restoration of the Republic of Estonia (*restitutio ad integrum*); proclaims a transition period that shall conclude with the formation of the Republic's constitutional governing bodies. For the transition period, the Supreme Soviet shall elaborate provisional rules for government together with legal guarantees for all residents regardless of their ethnicity.

This Resolution enters into effect from the time of its adoption.

A. RÜÜTEL, Chairman of the Supreme Soviet
of the Estonian SSR

Tallinn, 30 March 1990


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The Congress of Estonia meeting in the *Estonia* Concert Hall.
Tallinn City Museum. Photo: H. Leppikson


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A sitting of the Supreme Soviet (I session, 1990).
National Archives of Estonia. Photo: E. Norman, E. Tarkpea

9.3 Declaration of the Supreme Soviet of the Estonian SSR of 30 March 1990 on Cooperation between the Supreme Soviet of the Estonian SSR and the Congress of Estonia[85].

Declaration of the Supreme Soviet of the Estonian SSR on Cooperation between the Supreme Soviet of the Estonian SSR and the Congress of Estonia

The Supreme Soviet of the Estonian SSR recognizes the Congress of Estonia as the representative body of the citizenry of the Estonian Republic and as restorer of the governing authorities of that Republic.

The Supreme Soviet of the Estonian SSR is prepared to cooperate with the Congress of Estonia and with the Estonian Committee in order to restore the Estonian Republic on the basis of legal continuity.

A. RÜÜTEL, Chairman of the Supreme Soviet
of the Estonian SSR

Tallinn, 30 March 1990

[85] Publication reference of the Estonian text: *ÜVT* 1990, 22, 179.

COMMENTARY

These three documents reflect a political and constitutional watershed in the movement seeking restoration of Estonia's independence. The two main political camps expressly stated their views on the situation, declared their aims and agreed to work together to restore Estonian statehood. Political wisdom and a clear-headed assessment of the situation helped them choose cooperation over confrontation.

The restoration of statehood in Estonia was unique in that it was achieved by cooperation between the Supreme Soviet (the body representing actual Soviet (administrative) authority), the Congress of Estonia (the representation of Estonian citizens by descent) and the Estonian Government in exile.

Progressive officials of the Estonian SSR and leading figures of the *Rahvarinne* [Popular Front] movement also participated in the work of the Congress. During that period, these two movements – the Citizens' Committees and progressive-minded Estonian SSR officials – clearly established themselves as *pouvoirs constituants*[86].

[86] These forces enjoyed broad popular support. A survey conducted by sociologists of the University of Tartu in February 1990 showed that the approval ratings of the Popular Front and of the Estonian Citizens Committees were respectively 94% and 88%. Approximately 60% of respondents considered restitution to be the right option, while 40% favoured creation of a new state.

The Congress of Estonia expressly stated in its declaration that the ideology and aspirations of the movement of the Estonian Committee and of the Citizens' Committees was based on the legal continuity of the Estonian Republic and of its citizenry, as well as on the illegality, in Estonia, of Soviet rule and of its measures from the very beginning (*ex tunc*). The Congress sought annulment of the annexation, removal of occupying forces and the handover of power to a popular representation formed in accordance with the constitution. An express reference was made to the Treaty of Tartu as the basis for relations between the Estonian Republic and the USSR. The illegality of Soviet rule *ex tunc* meant, among other things, that it was – constitutionally and logically – justified to consider that the 1938 Constitution remained in force.

The Estonian Government in exile, which had maintained the continuity of authority established under the 1938 Constitution that was still in force, saw its function as preservation of the juridical continuity[87] of the Estonian Republic and was prepared to transfer its authority to the Estonian people when they were able to determine their affairs freely.

[87] See: Mälksoo, Lauri. Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR. M. Nijhoff Publishers, 2003; Elsuwege, Peter Van. State Continuity and its Consequences: The Case of Baltic States. *Leiden Journal of International Law*. Cambridge Journals, 2003, 16; Ziemele, Ineta. State Continuity and Nationality: The Baltic States and Russia. M. Nijhoff Publishers, 2005.

There were both personal and ideological conflicts and tensions between the principal stakeholders of the independence movement. At the same time, there was a clear perception of shared responsibility and the intention to seize the historic opportunity that presented itself and find a way out of the constitutional limbo. These helped the camps work out the tensions between them in the interest of their common cause. The legal continuity movement provided the cause with a solid logical foundation while Soviet progressives provided organizational support and helped with arrangements to put an end to stagnation and attain the shared objective.

During this period, real administrative authority over Estonian territory and population was held by the Supreme Soviet and the government of the Estonian SSR. The progressive faction within the Communist Party that still held sway in society perceived the decay of the Soviet Union and was ready for change. It was actively looking for ways to improve or take control of the situation. It should also be mentioned that the armed forces of Soviet repressive apparatus, as well as tactical units of the regime's security, border guard and law enforcement agencies were very much present. Although abstaining from direct intervention, they were prepared to do so, as was shown by the violent actions and victims in Vilnius and Riga.

10. Law of 8 May 1990 of the Supreme Soviet of the Estonian SSR on Estonia's National Symbols[88]

LAW OF THE SUPREME SOVIET OF THE ESTONIAN SSR

of 8 May 1990
on Estonia's National Symbols

The Supreme Soviet of the Estonian SSR, acting with the aim of restoring the independent Estonian state and having regard to its Resolution of 30 March 1990 on Estonia's statehood, resolves:

1. To repeal the name 'Estonian Soviet Socialist Republic' and to adopt, as the official name, 'The Republic of Estonia'.
2. To cease using the coat-of-arms, flag and anthem of the Estonian SSR as the national symbols.
3. To apply the following Articles of the 1938 Constitution of the Estonian Republic:

   Art. 1. Estonia is an independent and sovereign Republic wherein the supreme authority of the state is vested in the people.

   Art. 2. The territory of the Estonian state is an indivisible whole.

   Art. 4. In Estonia only such laws have effect that have been enacted by her own institutions.

   Universally recognized rules of international law are effective in Estonia as inseparable elements of the Estonian legal order.

   No one may plead ignorance of the law as their excuse.

[88] Publication reference of the Estonian text: *EV ÜVT* 1990, 14, 239.

Art. 5. The official language of Estonia is Estonian.

Art. 6. The national colours of Estonia are blue, black and white.

4. During the transition period, the use of seals and forms showing the coat-of-arms of the Estonian SSR is also allowed.

5. This law enters into force from the time of its adoption.

A. RÜÜTEL, Chairman of the Supreme Soviet
of the Estonian SSR

Tallinn, 8 May 1990

The law represented the transition period's first practical constitutional step towards restoring lawful constitutional order in Estonian territory.

The instrument's regulatory scope by far exceeded its title. In addition to changing – or, rather, restoring – Estonia's national symbols, it also brought into effect the first articles of the 1938 Constitution of the Estonian Republic.

The law renounced the national symbols (the coat of arms, flag and anthem) that had been used during the Soviet period.

Constitutionally speaking, the Supreme Council's changing of the name 'Estonian SSR' to 'Republic of Estonia' is of dubious value. The lawful Estonian Republic existed *de jure* in exile, and had not (yet) transferred its competences to a constitutional authority in Estonia. Moreover, the Supreme Soviet itself had recognized the principle of legal continuity in its earlier decisions.

Equally dubious, in constitutional terms, is the value of the Supreme Soviet's enactment of Articles 1, 2, 4, 5 and 6 of the 1938 Constitution of the Estonian Republic[89]. Enacting a rule (i.e., bringing it into

[89] The law (s. 3) uses the term *rakendada* [apply/implement – transl.]. Applying/implementing something means its use in practice. One cannot apply/implement something that is not in force. The wording appears to consciously avoid the term *jõustamine* [enactment/imbuing with legal force – transl.], which would have been clearly wrong in constitutional terms.

application) means imbuing it with legal force. There is no doubt that, as for formal constitutional authority to do so – or for juridical legitimacy for that matter – the Supreme Soviet of the Estonian SSR possessed none whatsoever. The decision also created needless legal confusion with the doctrine of legal continuity that the Supreme Soviet had itself accepted as recently as on 30 March.

The only rational explanation for this inconsistency, which would be plainly incomprehensible in normal circumstances, was the political turbulence, chaos and political rivalries of the time, probably compounded by a lack of experience in matters of constitutional law. The desire to move forward and give effect to popular aspirations resulted in a constitutional error. Fortunately, the error was a symbolic one and did not lead to conflicts between political movements or complicate practical steps. These defects should not detract from the social significance of the law in the context of restoring Estonia's statehood.

Whether the law was adopted with the ulterior motive of 'channelling processes into structures'[90] or reflected a sincere, albeit constitutionally questionable, wish to restore Estonia's statehood, or

[90] The expression, as used at the time, refers to attempts by the Soviet old guard to channel political processes that risked running wild into official channels or movements controlled by the Communist Party or Soviet authorities, including those led or supported by various representative bodies such as employee collectives, trade unions, the Popular Front and others.

were simply an expression of doctrinally inadequate populism, of the desire to lead the change, or merely an instance of rushed decision-making[91] arising from political rivalry is unclear and, ultimately, unimportant. Manifestly, the instrument constitutes an example of the confusion, tensions and low-quality decision-making that characterized the period. The law should still be seen as a decision of major symbolic importance and public impact in its time and setting; as such, it rallied the people to the cause of Estonian statehood and served its purpose.

On 14 May 1990 the President of the USSR, Mikhail Gorbachev, signed a decree that revoked the resolution of 30 March 1990 of the Supreme Soviet of the Estonian SSR on Estonia's independent statehood.

[91] Another mark of rivalry and haste is the fact that such an important constitutional instrument was brought into effect from the time of its adoption.

11. Law of the Republic of Estonia of 16 May 1990 on the Foundations of Provisional Rules for the Governing of Estonia[92]

LAW OF THE REPUBLIC OF ESTONIA
of 16 May 1990

on the Foundations of Provisional Rules for the Governing of Estonia

The Supreme Soviet of the Estonian SSR, based on the Resolution of 30 March 1990 on Estonia's Statehood, resolves:

1. To end the subordination of governing, executive, judicial and prosecutorial bodies of the Republic of Estonia to the corresponding bodies of the USSR and to separate these bodies from the relevant systems of the USSR.
2. To base the relations between the Republic of Estonia and the USSR on the applicability of the Treaty of Tartu concluded between the Republic and the Soviet Federative Socialist Republic of Russia on 2 February 1920.
3. During the transition period, the highest legislative authority in Estonia shall be exercised by the Supreme Soviet of the Republic of Estonia and executive and regulatory authority by the Government of the Republic of Estonia. Local self-government units shall have the corresponding local councils as their governing bodies. The Supreme Soviet is entitled, should this be necessary, to declare an emergency situation in the Republic.

[92] Publication reference of the Estonian text: *EV ÜVT* [Official Gazette of the Supreme Soviet and Government of the Republic of Estonia – transl.] 1990, 14, 239.

4. All legislative instruments that have hitherto been in operation in the Estonian territory retain their effect until abrogated or amended by the Supreme Soviet of the Republic of Estonia or by the Government of the Republic of Estonia, or unless they are contrary to this law or any subsequent legislative instruments of the Republic of Estonia.
5. The administration of justice in Estonia is carried out by independent Estonian courts that have been separated from the judicial authorities of the USSR and that, when administering justice, follow section 4 of this law. Any permanent residents of Estonia who have been convicted by Estonian courts serve their sentences strictly in the territory of the Republic of Estonia.
6. Economic disputes between enterprises, institutions and organizations are disposed of by the National Arbitral Court of the Republic of Estonia.
7. The appointment of the Prosecutor of the Republic of Estonia is approved by the Supreme Soviet of the Republic of Estonia at the proposal of its Chairman. The prosecutors of counties and towns are appointed to office by the Prosecutor of the Republic of Estonia and approved by the Supreme Soviet.
8. The Republic of Estonia guarantees – to all its residents – the social, economic and cultural rights and civil freedoms that they hold by virtue of generally recognized international rules. Political rights and freedoms of the residents of the Republic of Estonia shall be determined by a separate instrument in accordance with generally recognized principles of international law. The status of members of the military forces of the USSR and of the members of their families shall be determined by agreements to be concluded between the Republic of Estonia and the USSR. Resettlement

guarantees of citizens of the USSR who wish to leave the Republic of Estonia shall be determined by agreements to be concluded between the Republic of Estonia and the relevant Republic of the Union or the relevant independent state.

9. The Republic of Estonia guarantees all its residents the freedom of religion, including the freedom to observe their faith, to receive and impart religious teachings, to belong to a church or a religious organization and to observe its customs.
10. All state bodies, enterprises, institutions, organizations and individuals operating in the Republic of Estonia are obligated to comply with the laws and other legislative instruments that are in effect in Estonia by virtue of this law.
11. This law enters into effect from the time of its adoption.

A. RÜÜTEL, Chairman of the Supreme Soviet
of the Republic of Estonia

Tallinn, 16 May 1990.

COMMENTARY

The instrument evokes certain parallels to Provisional Rules for Governing the Estonian Republic, adopted by Resolution of the Constituent Assembly on 4 June 1919[93]. Nevertheless, the Supreme Soviet's resolution lacks the regulatory depth that allowed the Constituent Assembly's resolution to be regarded as Estonia's first constitution. None of the commentators have deemed the Supreme Soviet's resolution worthy of such a comparison.

The principal difference between the two instruments lies in their orientation. The aim of the 1919 Provisional Rules was to establish a new constitutional situation. It amounted to an exercise in national self-determination. The purpose of the 1990 instrument was to change the de facto constitutional situation in order to effect a partial departure from the legal space created by Soviet occupation.

Although it did not state this explicitly, the instrument ended the constitutional order of the Estonian SSR and repealed the 1978 Constitution. The text is highly specific and reflects the spirit of the time. On the same date, the Supreme Soviet also adopted a resolution on its work programme during the transition period. The law as well as the resolution show a manifest resolve to leave the legal space of the Soviet Union. Following the Supreme Soviet's

[93] See Section 3 above.

resolution of 30 March 1990 on the restoration of the Estonian Republic by way of *restitutio ad integrum*, there would in fact not have been any other way, given the socio-political situation that had developed.

One may ask why were two instruments that were substantially identical (the law and the resolution[94]) adopted on the same date. The explanation may lie in the rapidly changing situation, the stress of the time, a lack of coordination and the fact that the legal system and doctrine had not had time to develop to match the new reality.

The law does not mention the Congress of Estonia or any cooperation with it. The need for cooperation is recognized in the resolution (subparagraph VI) that says that during the transition period both the Supreme Soviet and the Congress of Estonia will operate as separate representative bodies. With this, the body representing Soviet rule – the Supreme Soviet – recognized the legal authority of the Congress of Estonia concerning the practical constitutional steps required to restore Estonia's independent statehood. Viewed from the perspective of the doctrine of legal continuity, the situation should have been the opposite, or at least recognition should have been mutual.

[94] A law is an instance of generally applicable legislation, while a resolution represents a legal act of individual application.

The resolution can be seen as an attempt by the Supreme Soviet, the holder of actual government authority, to position itself as the leading force behind the change. On the one hand, it reflects the desire of the local political elite to democratize existing structures of authority, and on the other, their realistic assessment of the situation in society and of future prospects.

On 6 August 1990, the Supreme Soviet declared the presence of the Soviet Union's armed forces in Estonian territory to be contrary to international law. By the law of 7 August 1990, the national flag (the blue-black-and-white tricolour) and the coat of arms that had been used during the first period of independence were adopted, the Resolution of 16 November 1988 on the Union Treaty was revoked and the decision was made to take the 1920 Treaty of Tartu as the point of departure in relations between the Republic of Estonia and the Soviet Union. On 25 January 1991, the US Congress passed a resolution supporting the independence aspirations of the Baltic states.

12. Resolution of the Supreme Soviet of the Republic of Estonia of 20 August 1991 on Estonia's Independent Statehood[95]

RESOLUTION OF THE SUPREME SOVIET OF THE REPUBLIC OF ESTONIA of 20 August 1991 on Estonia's Independent Statehood

Based on the continuity of the Republic of Estonia as a subject of international law,

Based on the manifestation of volition clearly expressed by the population of Estonia in the referendum of 3 March 1991 to restore the independent statehood of the Republic of Estonia,

Having regard to the Resolution of the Supreme Soviet of the Estonian SSR of 30 March 1990 on Estonian statehood as well as the Supreme Soviet's Declaration on Cooperation between the Supreme Soviet of the Estonian SSR and the Congress of Estonia,

Having regard to the fact that the *coup d'état* that has taken place in the USSR poses serious threat to democratic processes that are taking place in Estonia and has made it impossible to restore the independent statehood of the Republic of Estonia by means of bilateral negotiations with the USSR, the Supreme Soviet resolves:

1. To affirm the independent statehood of the Republic of Estonia and to seek reinstatement of the Republic's diplomatic relations.

[95] Publication reference of the Estonian text: *RT* 1991, 25, 312.

2. In order to elaborate and submit to referendum a constitution of the Republic of Estonia, to form a Constitutional Assembly whose membership shall be composed by delegation by the highest legislative authority of government in the Republic of Estonia – the Supreme Soviet of the Republic of Estonia – and by the Congress of Estonia as the representative body of the citizenry of the Estonian Republic.
3. To hold, within the year 1992, an election to the parliament of the Republic of Estonia in accordance with the new Constitution.

A. RÜÜTEL, Chairman on the Supreme Soviet
of the Republic of Estonia

Tallinn, 20 August 1991

COMMENTARY

On 16 January 1991, the leaders of the Soviet Union, sensing the void of legitimacy that the population had suddenly become aware of, made the decision to hold an all-Union referendum on 17 March of the same year on whether to preserve the Soviet Union. Estonia and the other Baltic states found themselves cornered and decided to hold their own referendums. Had they not done so, the basic tenets of their political initiatives and achievements – including the restoration of statehood on the basis of legal continuity – would have been in jeopardy. Both the *status quo* as well as progressive developments had to be bolstered by popular support.

Since the election of the last Supreme Soviet of the Estonian SSR could be regarded as more or less free, the body in question, which held actual power and represented the part of Estonia's population that had a Soviet background, by and large possessed the legitimacy to make the corresponding decision.

Estonia's Supreme Soviet decided to hold its referendum on 3 March 1991. The question put to the voters was: 'Do you wish the independence and sovereignty of the Estonian Republic to be restored?' All permanent residents of Estonia were entitled to vote. The number of voters who participated was 948,130, of whom 737,964 (77.8%) voted in favour. The people had spoken.

I session of XII Supreme Soviet of the Republic of Estonia.
The Board (from the left): Viktor Andreyev, Ülo Nugis, Marju Lauristin.
National Archives of Estonia. Photo: E. Norman

The session of the Supreme Soviet of the Republic of Estonia on 20 and 21 August 1991. National Archives of Estonia. Photo: T. Veermäe

When assessing the events and constitutional decisions of the time, it must be borne in mind that the restoration of Estonia's statehood took place at a time when the territory was still part of the Soviet Union. The Union, although in the process of disintegration, still possessed formidable administrative and military power, which was sufficient to put down, by force, any opposition to the ruling regime. This had been done before, including in formally independent states such as in Hungary (in 1956) and in Czechoslovakia (in 1968), as well as within the Union. The leaders of the Estonian independence movement knew this and had to take it into account.

The decay and disintegration of the Soviet Union had been perceptible and visible for some time already. They had been accompanied by the rise of national independence movements. The opportunity to realize the volition of Estonia's people was gifted to the nation by the military *coup d'état* – the so-called putsch of August 1991 – that paralyzed the central authorities of the Soviet Union and caused general turmoil and a power vacuum.

Power vacuums or interregnums have been successfully used in Estonian history on two occasions – at the time of the crumbling of empires and inception of Estonian statehood at the beginning of the 20th century and, for the second time, on 20 August 1991.

The *coup d'état* attempted on 19 August 1991 created a situation in which the intervention of Soviet armed forces in the actions of the independence

movements was a real possibility. The Soviet troops located in Estonia abstained from such intervention thanks to the equanimity of their commanding officers. Yet, a large convoy of armour was dispatched towards the capital, Tallinn, from Pskov, a Russian city near the Estonian border, to assist with taking control of the government. In keeping with the tried and tested Soviet playbook, the first step was to be the seizing of Tallinn TV tower as the national telecommunications centre.

Substantively speaking, the political decision to fully restore Estonian statehood (*restitutio in integrum*) had already been made on 30 March 1990. Based on that decision, independence – for which preparations had already been made – was declared on 20 August 1991. The corresponding resolution was carried by 69 of the 105 members of the Supreme Soviet.

In retrospect, the operative part of the Supreme Soviet's resolution – clause 1, by which it resolved 'to confirm the independence of the Estonian Republic' – appears constitutionally problematic. It is doubtful whether, in the context of legal continuity and of the continued effect of the 1938 Constitution, the Supreme Soviet of the Estonian SSR had the competence to 'confirm' the independent statehood of the Estonian Republic.

The wording and constitutional logic of the resolution must be assessed in the context of preceding decisions and the internal political situation of the period. In historical, constitutional

and political terms, what matters is that the decision yielded the desired and long-awaited result.

The resolution to restore Estonia's independent statehood was accompanied by several other significant decisions on constitutional matters such as:

- inviting the international community to recognize the restoration of Estonian independence and to re-establish diplomatic relations96;
- establishing a Constitutional Assembly based on two representative bodies – the Supreme Soviet and the Estonian Congress – to draw up a new constitution;
- the holding of a referendum to bring the new constitution into effect;
- the holding of an election to the new parliament (the *Riigikogu*).

The formation, convening and work of the Constitutional Assembly cleared the path to conclusive realization of the hitherto cooperation and aspirations of the two important popular movements. Relatively speedy international recognition was ensured by the constitutionally correct and peaceful manner in which Estonia's independent statehood was restored.

[96] On 22 August 1991, the Republic of Iceland was the first state to recognize the Republic of Estonia; it was followed on 24 August 1991 by the Russian Soviet Federative Socialist Republic; on 27 August 1991, the European Community adopted a declaration by which it 'warmly welcomed the restoration of the independence and sovereignty of the Baltic States which they lost in 1940'. On 6 September 1991, Estonia was recognized by the State Council of the Soviet Union. On 17 September 1991, Estonia was admitted to the UN.

13. The 1992 Constitution[97]

THE CONSTITUTION OF THE REPUBLIC OF ESTONIA

REVISED TRANSLATION

Passed 28.06.1992
RT 1992, 26, 349
Entry into force 03.07.1992

With unwavering faith and a steadfast will to strengthen and develop the state, which is established on the inextinguishable right of the people of Estonia to national self-determination and which was proclaimed on 24 February 1918,which is founded on liberty, justice and law, which is for the defence of internal and external peace, and is a pledge to present and future generations for their social progress and general welfare, which shall guarantee the preservation of the Estonian nation, language and culture through the ages, the people of Estonia, on the basis of § 1 of the Constitution which entered into force in 1938, and by a referendum held on 28 June 1992, adopted the following Constitution.
[RT I 2007, 33, 210 – entry into force 21.07.2007]

Chapter I GENERAL PROVISIONS

§ 1. Estonia is an independent and sovereign democratic republic wherein the supreme power of the state is vested in the people.

The independence and sovereignty of Estonia are timeless and inalienable.

§ 2. The land, territorial waters and airspace of the Estonian state are an inseparable and indivisible whole.

[97] Publication reference of the Estonian text: *RT* 1992, 26, 349.

Estonia is politically a unitary state wherein the administrative division of its territory shall be provided by a law.

§ 3. State power shall be exercised solely on the basis of the Constitution and laws that are in conformity therewith. Generally recognised principles and rules of international law are an inseparable part of the Estonian legal system.

Laws shall be published pursuant to a prescribed procedure. Only published laws can have obligatory force.

§ 4. The activities of the Riigikogu[1], the President of the Republic, the Government of the Republic and the courts shall be organised on the principle of separation and balance of powers.

§ 5. The natural wealth and resources of Estonia are national riches which must be used sustainably.

§ 6. The official language of Estonia is Estonian.

§ 7. The national colours of Estonia are blue, black and white. The design of the national flag and of the national coat of arms shall be provided by a law.

Chapter II FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES

§ 8. Every child with a parent who is an Estonian citizen has the right to Estonian citizenship by birth. Everyone who has lost Estonian citizenship as a minor has the right to its restoration.

No one shall be deprived of Estonian citizenship acquired by birth.

No one shall be deprived of Estonian citizenship because of his or her beliefs.

The conditions and procedure for the acquisition, loss and restoration of Estonian citizenship shall be provided by a law on citizenship.

§ 9. The rights, freedoms and duties of everyone and each person, as set out in the Constitution, are equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia.

The rights, freedoms and duties set out in the Constitution extend to legal persons in so far as this is in accordance with the general aims of legal persons and with the essence of such rights, freedoms and duties.

§ 10. The rights, freedoms and duties set out in this Chapter shall not preclude other rights, freedoms and duties which arise from the spirit of the Constitution or are in accordance therewith, and are in conformity with the principles of human dignity and of a social and democratic state governed by the rule of law.

§ 11. Rights and freedoms may be restricted only in accordance with the Constitution. Such restrictions must be necessary in a democratic society and must not distort the essence of the rights and freedoms restricted.

§ 12. Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other beliefs, property or social status, or on other grounds.

The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall also be prohibited and punishable by law.

§ 13. Everyone has the right to the protection of the state and of the law. The Estonian state shall also protect its citizens abroad.

The law shall protect everyone from the arbitrary exercise of state power.

§ 14. The guarantee of rights and freedoms is the duty of the legislature, executive and judiciary, and of the municipalities.

§ 15. Everyone whose rights and freedoms are violated has the right of recourse to the courts. Everyone has the right, while his or her case is before a court, to request for any relevant law, other legal act or action to be declared unconstitutional.

The courts shall observe the Constitution and shall declare unconstitutional any law, other legal act or action that violates the rights and freedoms provided for in the Constitution or is otherwise in conflict with the Constitution.

§ 16. Everyone has the right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.

§ 17. No one's honour or good name shall be defamed.

§ 18. No one shall be subjected to torture or to cruel or degrading treatment or punishment.

No one shall be subjected to medical or scientific experiments against his or her free will.

§ 19. Everyone has the right to free self-realisation.

In exercising his or her rights and freedoms and fulfilling his or her duties, everyone must respect and consider the rights and freedoms of others, and must observe the law.

§ 20. Everyone has the right to liberty and security of person.

No one shall be deprived of his or her liberty except in the cases and pursuant to a procedure provided by a law:

1) to execute a judgment of conviction or detention ordered by a court;

2) in the case of non-compliance with an order of a court or to secure the fulfilment of an obligation provided by the law;

3) to prevent a criminal or administrative offence, to bring a person who is reasonably suspected of such an offence before a competent state authority, or to prevent his or her fleeing;

4) to place a minor under educational supervision or to bring him or her before a competent state authority to determine whether to impose such supervision;

5) to detain a person suffering from an infectious disease, a person of unsound mind, an alcoholic or a drug addict, if such person is dangerous to himself or herself or to others;

6) to prevent unlawful entry into Estonia or to expel a person from Estonia or to extradite a person to a foreign state.

No one shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation.

§ 21. Everyone who is deprived of liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the

deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. A person suspected of a criminal offence shall also be promptly given the opportunity to choose and meet with defence counsel. The right of a person suspected of a criminal offence to notify those closest to him or her of the deprivation of liberty may be restricted only in the cases and pursuant to a procedure provided by a law to prevent a criminal offence, or in the interests of ascertaining the truth in criminal proceedings.

No one shall be held in custody for more than forty-eight hours without the specific permission of a court. The decision of the court shall be promptly communicated to the person in custody in a language and manner which he or she understands.

§ 22. No one shall be deemed guilty of a criminal offence until a judgment of conviction by a court against him or her enters into force.

No one shall be required to prove his or her innocence in criminal proceedings.

No one shall be compelled to testify against himself or herself, or against those closest to him or her.

§ 23. No one shall be convicted of an act which did not constitute a criminal offence under the law in force at the time the act was committed.

No one shall be sentenced to a heavier penalty than the one that was applicable at the time the offence was committed. If, subsequent to the commission of an offence, the law provides for a lighter penalty, the lighter penalty shall be applied.

No one shall be tried or punished again for an act for which he or she has been finally convicted or acquitted in accordance with the law.

§ 24. No one shall be transferred, against his or her free will, from the jurisdiction of a court specified by the law to the jurisdiction of another court.

Everyone has the right to be present at the hearing of his or her case.

Court sessions shall be public. A court may, in the cases and pursuant to a procedure provided by a law, declare that a session or a part thereof be closed to protect a state secret or trade secret, morals or the private and family life of persons, or where the interests of a minor, a victim or the administration of justice so require.

Judgment shall be pronounced publicly, except in cases where the interests of a minor, a spouse or a victim require otherwise.

Everyone has the right of appeal to a higher court against the judgment rendered in his or her case, pursuant to a procedure provided by a law.

§ 25. Everyone has the right to compensation for moral and material damage caused by the unlawful action of any person.

§ 26. Everyone has the right to the inviolability of private and family life. State agencies, municipalities and their officials shall not interfere with the family or private life of any person, except in the cases and pursuant to a procedure provided by a law to protect health, morals, public order, or the rights and freedoms of others, to prevent a criminal offence or to apprehend a criminal offender.

§ 27. The family, being fundamental to the preservation and growth of the nation and as the foundation of society, shall be under the protection of the state.

Spouses have equal rights.

Parents have the right and the duty to raise and care for their children.

The protection of parents and children shall be provided by a law.

The family has a duty to care for its members in need.

§ 28. Everyone has the right to the protection of health.

Estonian citizens have the right to assistance from the state in the case of old age, incapacity for work, loss of a provider or need. The categories and extent of assistance, and the conditions and procedure for the receipt of assistance shall be provided by a law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by a law.

The state shall promote voluntary and municipal welfare services.

Families with many children and persons with disabilities shall be under the special care of the state and municipalities.

§ 29. Estonian citizens have the right to freely choose their area of activity, occupation and employment. Conditions and procedures for the exercise of this right may be provided by a law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by a law.

No one shall be compelled to perform work or service against his or her free will, except mandatory service in the defence forces or alternative service, work to prevent

the spread of an infectious disease, work in the case of a natural disaster or a catastrophe, and work which a convicted person must perform on the basis of and pursuant to a procedure established by a law.

The state shall organise vocational training and shall assist persons who seek employment in finding work.

Working conditions shall be under state supervision.

Everyone may freely belong to unions and associations of employees and employers. Unions and associations of employees and employers may uphold their rights and lawful interests by means which are not prohibited by the law. The conditions and procedure for the exercise of the right to strike shall be provided by a law.

The procedure for resolution of labour disputes shall be provided by a law.

§ 30. Posts in state agencies and municipalities shall be filled by Estonian citizens, on the basis of and pursuant to a procedure established by a law. In accordance with the law, these posts may, as an exception, be filled by citizens of foreign states or stateless persons.

The right of some categories of public servants to engage in enterprise and to form for-profit associations (§ 31), as well as the right to belong to political parties and some types of non-profit associations (§ 48) may be restricted by a law.

§ 31. Estonian citizens have the right to engage in enterprise and to form for-profit undertakings and organisations. Conditions and procedures for the exercise of this right may be provided by a law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by a law.

§ 32. The property of every person is inviolable and shall be equally protected. Property may be expropriated without the consent of the owner only in the public interest, in the cases and pursuant to a procedure provided by a law, and for fair and immediate compensation. Everyone whose property is expropriated without his or her consent has the right of recourse to the courts and to contest the expropriation, the compensation or the amount thereof.

Everyone has the right to freely possess, use, and dispose of his or her property. Restrictions shall be provided by a law. Property shall not be used contrary to the public interest.

Categories of property which, in the public interest, may be acquired in Estonia only by Estonian citizens, some categories of legal persons, municipalities or the Estonian state may be provided by a law.

The right of inheritance shall be guaranteed.

§ 33. The home is inviolable. No one's dwelling, premises or workplace shall be forcibly entered or searched, except in the cases and pursuant to a procedure provided by a law, to protect public order, health or the rights and freedoms of others, to prevent a criminal offence, to apprehend a criminal offender, or to ascertain the truth in criminal proceedings.

§ 34. Everyone who is lawfully in Estonia has the right to liberty of movement and to choose his or her residence. The right to liberty of movement may be restricted in the cases and pursuant to a procedure provided by a law to protect the rights and freedoms of others, in the interests of national defence, in the case of a natural disaster or a catastrophe, to prevent the spread of an infectious disease, to protect the natural environment, to prevent

the leaving of a minor or a person of unsound mind without supervision, or to secure the conduct of proceedings in a criminal case.

§ 35. Everyone has the right to leave Estonia. This right may be restricted in the cases and pursuant to a procedure provided by a law to secure the conduct of court or pre-trial proceedings, or to execute a court judgment.

§ 36. No Estonian citizen shall be expelled from Estonia or prevented from entering Estonia.

No Estonian citizen shall be extradited to a foreign state, except in the cases prescribed by an international treaty and pursuant to the procedure provided by such treaty and by a law. Extradition shall be decided by the Government of the Republic. Everyone who is subject to an extradition order has the right to contest extradition in an Estonian court.

Every Estonian has the right to settle in Estonia.

§ 37. Everyone has the right to education. Education shall be compulsory for school-age children to the extent specified by a law, and shall be free of charge in state and municipal general education schools.

In order to make education accessible, the state and municipalities shall maintain the requisite number of educational institutions. Other educational institutions, including private schools, may also be established and maintained on the basis of a law.

Parents shall have the final decision in the choice of education for their children.

Everyone has the right to be taught in Estonian. The language of instruction in national minority educational institutions shall be chosen by the educational institution.

The provision of education shall be supervised by the state.

§ 38. Science and art and their teaching shall be free.

Universities and research institutions shall be autonomous within the limits prescribed by the law.

§ 39. Authors have the inalienable right to their creative works. The state shall protect the rights of authors.

§ 40. Everyone has freedom of conscience, religion and thought.

Everyone may freely belong to churches and religious societies. There shall be no state church.

Everyone has the freedom to practice his or her religion, both alone and in community with others, in public or in private, unless this is detrimental to public order, health or morals.

§ 41. Everyone has the right to remain faithful to his or her opinions and beliefs. No one shall be compelled to change them.

Beliefs cannot excuse a violation of the law.

No one can be held legally liable because of his or her beliefs.

§ 42. State agencies, municipalities and their officials shall not gather or store information about the beliefs of an Estonian citizen against his or her free will.

§ 43. Everyone has the right to confidentiality of messages sent or received by him or her by post, telegraph, telephone or other commonly used means. Exceptions may be made with the permission of a court to prevent a criminal offence, or to ascertain the truth in criminal

proceedings, in the cases and pursuant to a procedure provided by a law.

§ 44. Everyone has the right to freely receive information disseminated for public use.

All state agencies, municipalities and their officials have a duty to provide information about their activities, pursuant to a procedure provided by a law, to Estonian citizens at their request, except information the disclosure of which is prohibited by a law, and information intended exclusively for internal use.

Estonian citizens have the right to access information about themselves held in state agencies and municipalities and in state and municipal archives, pursuant to a procedure provided by a law. This right may be restricted on the basis of a law to protect the rights and freedoms of others or the confidentiality of a child's filiation, and in the interests of preventing a criminal offence, apprehending a criminal offender or ascertaining the truth in criminal proceedings.

Citizens of foreign states and stateless persons who are in Estonia have the rights specified in paragraphs two and three of this section equally with Estonian citizens, unless otherwise provided by a law.

§ 45. Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by a law to protect public order, morals, or the rights and freedoms, health, honour and good name of others. This right may also be restricted by a law for state and municipal public servants, to protect a state secret or trade secret or information received in confidence, which has become known to them by reason of their office, or

the family and private life of others, as well as in the interests of the administration of justice.

There shall be no censorship.

§ 46. Everyone has the right to address state agencies, municipalities and their officials with letters and petitions. The procedure for responding shall be provided by a law.

§ 47. Everyone has the right, without prior permission, to assemble peacefully and to conduct meetings. This right may be restricted in the cases and pursuant to a procedure provided by a law to ensure national security, public order, morals, traffic safety and the safety of participants in the meeting, or to prevent the spread of an infectious disease.

§ 48. Everyone has the right to form non-profit organisations and associations. Only Estonian citizens may belong to political parties.

The establishment of organisations and associations which possess weapons, are militarily organised or perform military exercises requires prior permission, for which the conditions and procedure of issuance shall be provided by a law.

Associations, organisations and political parties the aims or activities of which are directed at a violent change of the constitutional order of Estonia, or are otherwise in conflict with the law providing for criminal liability, shall be prohibited.

Only a court may terminate or suspend the activities of, or impose a fine on, an organisation, association or political party for a violation of the law.

§ 49. Everyone has the right to preserve his or her national identity.

§ 50. National minorities have the right, in the interests of their national culture, to establish self-governing agencies under conditions and pursuant to a procedure provided by a law on cultural autonomy for national minorities.

§ 51. Everyone has the right to address state agencies, municipalities and their officials in Estonian and to receive responses in Estonian.

In localities where at least one-half of the permanent residents belong to a national minority, everyone has the right to receive responses from state agencies, municipalities and their officials also in the language of the national minority.

§ 52. The official language of state agencies and municipalities shall be Estonian.

In localities where the language of the majority of the residents is not Estonian, municipalities may, to the extent and pursuant to a procedure provided by a law, use the language of the majority of the permanent residents of the locality as an internal working language.

The use of foreign languages, including the languages of national minorities, in state agencies and in court and pre-trial proceedings shall be provided by a law.

§ 53. Everyone has a duty to preserve the living and natural environment and to compensate for damage he or she causes to the environment. The procedure for compensation shall be provided by a law.

§ 54. Estonian citizens have a duty to be loyal to the constitutional order and to defend the independence of Estonia.

If no other means are available, every Estonian citizen has the right to initiate resistance against a violent change of the constitutional order.

§ 55. Citizens of foreign states and stateless persons who are in Estonia have a duty to respect the constitutional order of Estonia.

Chapter III THE PEOPLE

§ 56. Supreme power shall be exercised by the people through citizens with the right to vote:

1) by electing the Riigikogu;

2) through referendums.

§ 57. Estonian citizens who have attained eighteen years of age have the right to vote.

Estonian citizens who have been divested of legal capacity by a court shall not have the right to vote.

§ 58. Participation in voting may be restricted by a law for Estonian citizens who have been convicted by a court and are serving a sentence in a penal institution.

Chapter IV THE RIIGIKOGU

§ 59. Legislative power shall be vested in the Riigikogu.

§ 60. The Riigikogu shall be comprised of one hundred and one members. Members of the Riigikogu shall be elected in free elections on the principle of proportional representation. Elections shall be general, uniform and direct. Voting shall be secret.

Every Estonian citizen who has attained twenty-one years of age and has the right to vote may be a candidate for the Riigikogu.

Regular elections of the Riigikogu shall be held on the first Sunday in March of the fourth year following the preceding Riigikogu election year.

Extraordinary elections of the Riigikogu shall be held in the cases prescribed in §§ 89, 97, 105 and 119 of the Constitution not earlier than twenty and not later than forty days after the elections are declared.

The procedure for election of the Riigikogu shall be provided by a law on election of the Riigikogu.

§ 61. The mandates of the members of the Riigikogu shall commence on the day the results of the elections are announced. The mandates of the members of the preceding Riigikogu shall terminate on the same day.

Before assuming his or her duties, a member of the Riigikogu shall take an oath of office to remain loyal to the Republic of Estonia and its constitutional order.

§ 62. A member of the Riigikogu shall not be bound by his or her mandate, nor bear legal liability for votes cast or political statements made in the Riigikogu or in any of its bodies.

§ 63. A member of the Riigikogu shall not hold any other public office.

A member of the Riigikogu shall be exempt from the duty to perform mandatory service in the defence forces during his or her mandate.

§ 64. The mandate of a member of the Riigikogu shall be suspended upon his or her appointment as a member of the Government of the Republic, and shall be restored upon release from his or her duties as a member of the Government.

The mandate of a member of the Riigikogu shall terminate prematurely:

1) upon his or her assumption of another public office;
2) upon the entry into force of a conviction by a court against him or her;
3) upon his or her resignation, pursuant to a procedure provided by a law;
4) if the Supreme Court decides that he or she is permanently incapable of performing his or her duties;
5) upon his or her death.

Upon the suspension or premature termination of the mandate of a member of the Riigikogu, he or she shall be replaced by an alternate member, pursuant to a procedure provided by a law. An alternate member has all the rights and duties of a member of the Riigikogu.

The mandate of the alternate member shall terminate upon the restoration of the mandate of the member of the Riigikogu.

§ 65. The Riigikogu shall:

1) adopt laws and resolutions;
2) decide on the holding of referendums;
3) elect the President of the Republic, in accordance with § 79 of the Constitution;
4) ratify and denounce international treaties, in accordance with § 121 of the Constitution;
5) authorise a candidate for Prime Minister to form the Government of the Republic;
6) adopt the state budget and approve the report on its implementation;

7) on the proposal of the President of the Republic, appoint the Chief Justice of the Supreme Court, the Chairman of the Supervisory Board of Eesti Pank[2], the Auditor General and the Chancellor of Justice to office;
[RT I, 27.04.2011 – entry into force 22.07.2011]

8) on the proposal of the Chief Justice of the Supreme Court, appoint justices of the Supreme Court to office;

9) appoint members of the Supervisory Board of Eesti Pank;

10) on the proposal of the Government of the Republic, decide on borrowing by the state and on the assumption of other pecuniary obligations by the state;

11) issue statements, declarations and appeals to the people of Estonia, other states and international organisations;

12) establish state decorations, and military and diplomatic ranks;

13) decide on the expression of no confidence in the Government of the Republic, the Prime Minister or a minister;

14) declare a state of emergency in the state, in accordance with § 129 of the Constitution;

15) on the proposal of the President of the Republic, declare a state of war, and order mobilisation and demobilisation;

16) resolve other affairs of state which the Constitution does not assign to the President of the Republic, the Government of the Republic, other state bodies or municipalities for decision.

§ 66. The first sitting of a new Riigikogu shall be held within ten days after the announcement of the results of the elections of the Riigikogu. The Riigikogu shall be convened for its first sitting by the President of the Republic.

§ 67. Regular sessions of the Riigikogu shall take place from the second Monday of January to the third Thursday of June, and from the second Monday of September to the third Thursday of December.

§ 68. Extraordinary sessions of the Riigikogu shall be convened by the President of the Riigikogu, on the proposal of the President of the Republic, the Government of the Republic, or not less than one-fifth of all members of the Riigikogu.

§ 69. The Riigikogu shall elect from among its members the President of the Riigikogu and two Vice-Presidents who shall organise the work of the Riigikogu pursuant to a law on the rules of procedure of the Riigikogu and a law on the internal rules of the Riigikogu.

§ 70. The quorum for the Riigikogu shall be provided by a law on the rules of procedure of the Riigikogu. In an extraordinary session, the Riigikogu shall have a quorum if more than one-half of all members of the Riigikogu are present.

§ 71. The Riigikogu shall form committees.

Members of the Riigikogu have the right to form parliamentary groups.

The procedure for the formation of committees and parliamentary groups, and their rights, shall be provided by a law on the rules of procedure of the Riigikogu.

§ 72. Sittings of the Riigikogu shall be public, unless the Riigikogu decides otherwise by a two-thirds majority.

Voting in the Riigikogu shall be public. Voting by secret ballot shall be held in the cases prescribed by the Constitution or by a law on the rules of procedure of the Riigikogu only upon the election or appointment of officials.

§ 73. Documents adopted by the Riigikogu shall be adopted by a majority of votes in favour, unless otherwise prescribed by the Constitution.

§ 74. Members of the Riigikogu have the right to address questions to the Government of the Republic and its members, to the Chairman of the Supervisory Board of Eesti Pank, the Governor of Eesti Pank, the Auditor General and the Chancellor of Justice.
[RT I, 27.04.2011 – entry into force 22.07.2011]

The questions shall be answered at a sitting of the Riigikogu within twenty session days.

§ 75. The remuneration of members of the Riigikogu and restrictions on the receipt of other employment income shall be provided by a law, which may be amended in respect of the next Riigikogu.

§ 76. Members of the Riigikogu shall have immunity. A member can be prosecuted under criminal law only on the proposal of the Chancellor of Justice, and with the consent of the majority of all members of the Riigikogu.

Chapter V THE PRESIDENT OF THE REPUBLIC

§ 77. The President of the Republic shall be the head of state of Estonia.

§ 78. The President of the Republic shall:

1) represent the Republic of Estonia in international relations;

2) appoint and recall diplomatic agents of the Republic of Estonia, on the proposal of the Government of the Republic, and receive the credentials of diplomatic agents accredited to Estonia;

3) declare regular elections of the Riigikogu and, in accordance with §§ 89, 97, 105 and 119 of the Constitution, extraordinary elections of the Riigikogu;

4) convene the new Riigikogu, in accordance with § 66 of the Constitution, and open its first sitting;

5) propose to the President of the Riigikogu to convene an extraordinary session of the Riigikogu, in accordance with § 68 of the Constitution;

6) promulgate laws, in accordance with §§ 105 and 107 of the Constitution, and sign instruments of ratification;

7) issue decrees, in accordance with §§ 109 and 110 of the Constitution;

8) initiate amendment of the Constitution;

9) designate the candidate for Prime Minister, in accordance with § 89 of the Constitution;

10) appoint to and release from office members of the Government, in accordance with §§ 89, 90, and 92 of the Constitution;

11) make proposals to the Riigikogu for appointments to the offices of Chief Justice of the Supreme Court, Chairman of the Supervisory Board of Eesti Pank, Auditor General and Chancellor of Justice; [RT I 27.04.2011 – entry into force 22.07.2011]

12) on the proposal of the Supervisory Board of Eesti Pank, appoint the Governor of Eesti Pank to office;

13) on the proposal of the Supreme Court, appoint judges;

14) [repealed – RT 1 27.04.2011 – entry into force 22.07.2011]

15) confer state decorations, and military and diplomatic ranks;

16) be the supreme commander of the national defence of Estonia;

17) make proposals to the Riigikogu to declare a state of war, to order mobilisation and demobilisation, and, in accordance with § 129 of the Constitution, to declare a state of emergency;

18) declare, in the case of aggression against Estonia, a state of war and order mobilisation, in accordance with § 128 of the Constitution;
[RT I 27.04.2011 – entry into force 22.07.2011]

19) by way of clemency, release convicted persons from serving a sentence or commute their sentences, at their request;

20) initiate the prosecution under criminal law of the Chancellor of Justice, in accordance with § 145 of the Constitution.

§ 79. The President of the Republic shall be elected by the Riigikogu or, in the case provided by paragraph four of this article, by the electoral body.

The right to nominate a candidate for President of the Republic shall rest with not less than one-fifth of all members of the Riigikogu.

An Estonian citizen by birth who has attained forty years of age may be nominated as a candidate for President of the Republic.

The President of the Republic shall be elected by secret ballot. Each member of the Riigikogu shall have one vote. The candidate in favour of whom a two-thirds majority of all members of the Riigikogu votes shall be declared elected. If no candidate receives the required majority, a new round of voting shall be held on the next day. Before the second round of voting, a new nomination of candidates shall be held. If no candidate receives the required majority in the second round of voting, a third round of voting shall be held on the same day between the two candidates who receive the greatest number of votes in the second round. If the President of the Republic is still not elected in the third round of voting, the President of the Riigikogu shall, within one month, convene the electoral body to elect the President of the Republic.

The electoral body shall be comprised of the members of the Riigikogu and representatives of the municipal councils. Each municipal council shall elect at least one representative to the electoral body, who must be an Estonian citizen.

The Riigikogu shall present the two candidates who receive the greatest number of votes in the Riigikogu to

the electoral body as candidates for President. The right to nominate a candidate for President shall also rest with not less than twenty-one members of the electoral body.

The electoral body shall elect the President of the Republic by the majority of the electoral body members who participate in the voting. If no candidate is elected in the first round, a second round of voting shall be held on the same day between the two candidates who receive the greatest number of votes.

The specific procedure for the election of the President of the Republic shall be provided by a law on election of the President of the Republic.

§ 80. The President of the Republic shall be elected to office for a term of five years. No one shall be elected to the office of President of the Republic for more than two consecutive terms.

The regular election of the President of the Republic shall be held not earlier than sixty and not later than ten days before the end of the term of office of the President of the Republic.

§ 81. The President of the Republic shall assume office by swearing the following oath of office to the people of Estonia before the Riigikogu: "In assuming the office of President of the Republic, I (given name and surname), solemnly swear to steadfastly defend the Constitution and the laws of the Republic of Estonia, to exercise the power entrusted to me in a just and impartial manner, and to perform my duties faithfully with all of my abilities and to the best of my understanding, for the benefit of the people of Estonia and the Republic of Estonia."

§ 82. The mandate of the President of the Republic shall terminate upon:

1) his or her resignation from office;

2) the entry into force of a judgment of conviction by a court against him or her;

3) his or her death;

4) the assumption of office of the new President of the Republic.

§ 83. If the President of the Republic is permanently incapable of performing his or her duties as decided by the Supreme Court, or if he or she is temporarily unable to perform them in the cases specified by a law, or if his or her mandate has terminated prematurely, his or her duties shall temporarily transfer to the President of the Riigikogu.

During the time that the President of the Riigikogu is performing the duties of the President of the Republic, his or her mandate as a member of the Riigikogu shall be suspended.

The President of the Riigikogu, acting as President of the Republic, shall not have the right, without the consent of the Supreme Court, to declare extraordinary elections to the Riigikogu or to refuse to promulgate laws.

If the President of the Republic is unable to perform his or her official duties for longer than three consecutive months, or if his or her mandate has terminated prematurely, the Riigikogu shall elect a new President of the Republic within fourteen days, in accordance with § 79 of the Constitution.

§ 84. Upon assuming office, the mandate and duties of the President of the Republic in all elected and appointed offices shall terminate, and he or she shall suspend his or her membership in a political party for the duration of his or her term of office.

§ 85. The President of the Republic can be prosecuted under criminal law only on the proposal of the Chancellor of Justice, and with the consent of the majority of all members of the Riigikogu.

Chapter VI THE GOVERNMENT OF THE REPUBLIC

§ 86. Executive power shall be vested in the Government of the Republic.

§ 87. The Government of the Republic shall:

1) execute the domestic and foreign policies of the state;
2) direct and co-ordinate the activities of government agencies;
3) organise the implementation of laws, resolutions of the Riigikogu and acts of the President of the Republic;
4) introduce bills, and submit international treaties to the Riigikogu for ratification and denunciation;
5) prepare the draft of the state budget and submit it to the Riigikogu, administer the implementation of the state budget and present a report on the implementation of the state budget to the Riigikogu;
6) issue regulations and orders on the basis of and for the implementation of laws;
7) conduct relations with other states;

8) in the case of a natural disaster or a catastrophe, or to prevent the spread of an infectious disease, declare an emergency situation throughout the state or in a part thereof;

9) perform other duties which the Constitution and the laws assign to the Government of the Republic for decision.

§ 88. The Government of the Republic shall be comprised of the Prime Minister and ministers.

§ 89. The President of the Republic shall, within fourteen days after the resignation of the Government of the Republic, designate a candidate for Prime Minister whom the President of the Republic shall task with forming a new government.

The candidate for Prime Minister shall, within fourteen days after being tasked with forming a new government, present the bases for the formation of the future government to the Riigikogu, after which the Riigikogu shall decide, without debate and by a public vote, whether to authorise the candidate for Prime Minister to form a government.

The candidate for Prime Minister who is authorised by the Riigikogu to form a government shall, within seven days, present the members of the government to the President of the Republic, who shall appoint the government to office within three days.

If the candidate for Prime Minister designated by the President of the Republic does not receive a majority of votes in favour from the Riigikogu, or is unable or declines to form a government, the President of the Republic has the right to present a second candidate for Prime Minister within seven days.

If the President of the Republic does not present a second candidate for Prime Minister within seven days or declines to do so, or if the second candidate is unable to obtain a mandate from the Riigikogu under the conditions and time limits in paragraphs two and three of this article, or is unable or declines to form a government, then the right to nominate a candidate for Prime Minister shall transfer to the Riigikogu.

The Riigikogu shall nominate a candidate for Prime Minister who shall present the members of government to the President of the Republic. If the members of government are not presented to the President of the Republic within fourteen days after the transfer to the Riigikogu of the right to nominate a candidate for Prime Minister, the President of the Republic shall declare extraordinary elections of the Riigikogu.

§ 90. Changes to the appointed membership of the Government of the Republic shall be made by the President of the Republic, on the proposal of the Prime Minister.

§ 91. The Government shall assume office by taking an oath of office before the Riigikogu.

§ 92. The Government of the Republic shall resign upon:

1) the convening of a new Riigikogu;

2) the resignation or death of the Prime Minister;

3) the expression of no confidence in the Government of the Republic or the Prime Minister by the Riigikogu.

The President of the Republic shall release the Government of the Republic from office upon the assumption of office of the new Government.

§ 93. The Prime Minister shall represent the Government of the Republic and shall direct its activities.

The Prime Minister shall appoint two ministers who have the right to substitute for the Prime Minister during his or her absence. The procedure for substitution shall be determined by the Prime Minister.

§ 94. Corresponding ministries shall be established on the basis of a law for the administration of the areas of government.

A minister shall head a ministry, shall manage issues within its area of government, shall issue regulations and orders on the basis and for the implementation of laws, and shall perform other duties assigned to him or her on the bases and pursuant to a procedure provided by a law.

If a minister is temporarily unable to perform the duties of his or her office due to illness or other hindrances, the Prime Minister shall assign the duties of the minister to another minister for this time.

The President of the Republic may, on the proposal of the Prime Minister, appoint ministers to office who do not head ministries.

§ 95. Government Office, which shall be headed by the State Secretary, shall serve the Government of the Republic.

The State Secretary shall be appointed to and released from office by the Prime Minister.

The State Secretary shall participate in sessions of the Government with the right to speak.

The State Secretary, as the head of Government Office, has the same rights that are granted by the law to a minister in heading a ministry.

§ 96. Sessions of the Government of the Republic shall be closed, unless the Government decides otherwise.

The Government shall make its decisions on the proposal of the Prime Minister or the relevant minister.

Government regulations shall be valid if they bear the signatures of the Prime Minister, the relevant minister and the State Secretary.

§ 97. The Riigikogu may express no confidence in the Government of the Republic, the Prime Minister or a minister by a resolution for which the majority of all members of the Riigikogu vote in favour.

An expression of no confidence may be initiated by not less than one-fifth of all members of the Riigikogu by the presentation of a written motion at a sitting of the Riigikogu.

An expression of no confidence may be decided not earlier than on the second day after its initiation, unless the Government requires a more expeditious decision.

If no confidence is expressed in the Government or the Prime Minister, the President of the Republic may, on the proposal of the Government and within three days, declare extraordinary elections of the Riigikogu.

If no confidence is expressed in a minister, the President of the Riigikogu shall notify the President of the Republic, who shall release the minister from office.

An expression of no confidence on the same ground may be initiated not earlier than three months after the previous vote of no confidence.

§ 98. The Government of the Republic may bind the adoption of a bill it introduces to the Riigikogu to the issue of confidence.

Voting cannot take place earlier than on the second day after the bill is bound to the issue of confidence. If the Riigikogu does not adopt the bill, the Government shall resign.

§ 99. Members of the Government of the Republic shall not hold any other public office, nor belong to the management board or supervisory board of a for-profit enterprise.

§ 100. Members of the Government of the Republic may participate in sittings of the Riigikogu and of its committees with the right to speak.

§ 101. Members of the Government of the Republic can be prosecuted under criminal law only on the proposal of the Chancellor of Justice, and with the consent of the majority of all members of the Riigikogu.

The mandate of a member of the Government shall terminate upon the entry into force of a conviction by a court against him or her.

Chapter VII LEGISLATION

§ 102. Laws shall be adopted in accordance with the Constitution.

§ 103. The following have the right to initiate laws:

1) members of the Riigikogu;
2) Riigikogu parliamentary groups;
3) Riigikogu committees;
4) the Government of the Republic;
5) the President of the Republic, for amendment of the Constitution.

The Riigikogu has the right, on the basis of a resolution made by the majority of all members, to propose to the Government of the Republic to initiate a bill desired by the Riigikogu.

§ 104. The procedure for the adoption of laws shall be provided by a law on the rules of procedure of the Riigikogu.

The following laws can be adopted and amended only by the majority of all members of the Riigikogu:

1) law on citizenship;

2) law on election of the Riigikogu;

3) law on election of the President of the Republic;

4) law on elections in municipalities;

5) law on referendums;

6) law on the rules of procedure of the Riigikogu and on the internal rules of the Riigikogu;

7) law on remuneration of the President of the Republic and of members of the Riigikogu;

8) law on the Government of the Republic;

9) law on judicial proceedings against the President of the Republic or members of the Government of the Republic;

10) law on cultural autonomy for national minorities;

11) law on the state budget;

12) law on Eesti Pank;

13) law on the National Audit Office;

14) law on the administration of the courts and laws on court procedure;

15) laws pertaining to foreign and domestic borrowing, and to pecuniary obligations of the state;

16) law on a state of emergency;

17) law on peace-time national defence and law on wartime national defence.

§ 105. The Riigikogu has the right to submit a bill or other affairs of state to a referendum.

The decision of the people shall be made by the majority of the participants in the voting.

A law which is adopted by a referendum shall be promptly promulgated by the President of the Republic. The decision of the referendum shall be binding on all state bodies.

If a bill which is submitted to a referendum does not receive a majority of votes in favour, the President of the Republic shall declare extraordinary elections of the Riigikogu.

§ 106. Issues regarding the budget, taxation, financial obligations of the state, ratification and denunciation of international treaties, the declaration or termination of a state of emergency, or national defence cannot be submitted to a referendum.

The procedure for holding referendums shall be provided by a law on referendums.

§ 107. Laws shall be promulgated by the President of the Republic.

The President of the Republic may refrain from promulgating a law adopted by the Riigikogu and, within fourteen days after its receipt, return the law, together with his or her reasoned decision, to the Riigikogu for a new debate and decision. If the Riigikogu adopts the law which is returned to it by the President of the Republic again, unamended, the

President of the Republic shall promulgate the law or shall propose to the Supreme Court to declare the law unconstitutional. If the Supreme Court declares the law to be in conformity with the Constitution, the President of the Republic shall promulgate the law.

§ 108. A law shall enter into force on the tenth day after its publication in the Riigi Teataja[3], unless otherwise provided for in the law.

§ 109. If the Riigikogu is unable to convene, the President of the Republic may, in matters of national urgency, issue decrees that have the force of law, and which shall bear the counter-signatures of the President of the Riigikogu and the Prime Minister.

When the Riigikogu convenes, the President of the Republic shall present the decrees to the Riigikogu, which shall promptly adopt a law for their confirmation or repeal.

§ 110. The Constitution, the laws set out in § 104 of the Constitution, laws which establish state taxes, and the state budget cannot be enacted, amended or repealed by a decree of the President of the Republic.

Chapter VIII FINANCE AND THE STATE BUDGET

§ 111. Eesti Pank has the sole right to issue Estonian currency. Eesti Pank shall regulate currency circulation and shall uphold the stability of the national currency.

§ 112. Eesti Pank shall act on the basis of a law and shall report to the Riigikogu.

§ 113. State taxes, duties, fees, fines and compulsory insurance payments shall be provided by a law.

§ 114. The procedures for the possession, use and disposal of state assets shall be provided by a law.

§ 115. The Riigikogu shall adopt the budget of all state revenue and expenditure for each year in the form of a law.

The Government of the Republic shall submit a draft state budget to the Riigikogu not later than three months before the beginning of the budgetary year.

On the proposal of the Government, the Riigikogu may adopt a supplementary budget during the budgetary year.

§ 116. If a proposed amendment to the state budget or to its draft has the effect of decreasing estimated revenue, increasing expenditure or reallocating expenditure, the initiator shall append financial calculations that demonstrate the sources of revenue necessary to cover the expenditure.

The Riigikogu shall not delete or reduce expenditure in the state budget or in its draft which is prescribed by other laws.

§ 117. The procedure for the drafting and adoption of the state budget shall be provided by a law.

§ 118. The state budget adopted by the Riigikogu shall enter into force at the beginning of the budgetary year. If the Riigikogu does not adopt the state budget by the beginning of the budgetary year, expenditure of up to one-twelfth of the expenditure of the preceding budgetary year may be made each month.

§ 119. If the Riigikogu has not adopted the state budget within two months after the beginning of the budgetary year, the President of the Republic shall declare extraordinary elections of the Riigikogu.

Chapter IX FOREIGN RELATIONS AND INTERNATIONAL TREATIES

§ 120. The procedure for the conduct of relations of the Republic of Estonia with other states and with international organisations shall be provided by a law.

§ 121. The Riigikogu shall ratify and denounce treaties of the Republic of Estonia:

1) which alter state boundaries;

2) the implementation of which requires the adoption, amendment or repeal of Estonian laws;

3) by which the Republic of Estonia joins international organisations or unions;

4) by which the Republic of Estonia assumes military or pecuniary obligations;

5) in which ratification is prescribed.

§ 122. The land boundary of Estonia shall be determined by the Tartu Peace Treaty of 2 February 1920 and by other international border treaties. The sea and air boundaries of Estonia shall be determined on the basis of international conventions.

The ratification of treaties which alter the state boundaries of Estonia requires a two-thirds majority of all members of the Riigikogu.

§ 123. The Republic of Estonia shall not enter into international treaties that are in conflict with the Constitution.

If laws or other acts of Estonia are in conflict with international treaties ratified by the Riigikogu, the provisions of the international treaty shall be applied.

Chapter X NATIONAL DEFENCE

§ 124. Estonian citizens have a duty to participate in national defence on the bases and pursuant to a procedure provided by a law.

Persons who refuse to perform mandatory service in the defence forces for religious or moral reasons have a duty to perform alternative service pursuant to a procedure prescribed by a law.

Persons in the defence forces and alternative service have all constitutional rights, freedoms and duties, unless otherwise prescribed by a law in the interests of the special nature of the service. The rights and freedoms prescribed in paragraphs 3 and 4 of § 8, §§ 11-18, paragraph 3 of § 20, §§ 21-28, § 32, § 33, §§ 36-43, paragraphs 1 and 2 of § 44 and §§ 49-51 of the Constitution shall not be restricted. The legal status of persons in the defence forces and alternative service shall be provided by a law.

§ 125. Persons in active service shall not hold other elected or appointed office, or participate in the activities of any political party.

§ 126. The organisation of national defence shall be provided by a law on peace-time national defence and a law on war-time national defence.

The organisation of the Estonian defence forces and national defence organisations shall be provided by a law.

§ 127. The President of the Republic shall be the supreme commander of national defence.

The National Defence Council shall be an advisory body to the President of the Republic, the composition and tasks of which shall be provided by a law.
[RT I, 27.04.2011 – entry into force 22.07.2011]

§ 128. The Riigikogu shall, on the proposal of the President of the Republic, declare a state of war, shall order mobilisation and demobilisation, and shall decide on the deployment of the defence forces in the fulfilment of the international obligations of the Estonian state.

In the case of aggression against the Republic of Estonia, the President of the Republic shall declare a state of war and shall order mobilisation without waiting for a resolution of the Riigikogu.
[RT I, 27.04.2011 – entry into force 22.07.2011]

§ 129. In the case of a threat to the constitutional order of Estonia, the Riigikogu may, on the proposal of the President of the Republic or the Government of the Republic, by the majority of all members, declare a state of emergency throughout the state, but for not longer than three months.

Rules governing a state of emergency shall be provided by a law.

§ 130. During a state of emergency or a state of war, in the interests of national security and public order, the rights and freedoms of persons may be restricted, and obligations may be imposed on them, under conditions and pursuant to a procedure prescribed by a law. The rights and freedoms provided for in § 8, §§ 11-18, paragraph 3 of § 20, § 22, § 23, paragraphs 2 and 4 of § 24, § 25, § 27, § 28, paragraph 2 of § 36, § 40, § 41, § 49 and paragraph 1 of § 51 of the Constitution shall not be restricted.

§ 131. During a state of emergency or a state of war, the Riigikogu, the President of the Republic, and the representative bodies of municipalities shall not be elected, nor shall their mandates be terminated.

The mandates of the Riigikogu, the President of the Republic and the representative bodies of municipalities shall extend if the mandates should terminate during a state of emergency or a state of war or within three months after the termination of a state of emergency or a state of war. In these cases, new elections shall be declared within three months after the termination of the state of emergency or the state of war.

Chapter XI THE NATIONAL AUDIT OFFICE

§ 132. The National Audit Office shall be, in its activities, an independent state body responsible for auditing.

§ 133. The National Audit Office shall audit:

1) the economic activities of state agencies, state enter prises and other public organisations;

2) the use and preservation of state assets;

3) the use and disposal of state assets that have been transferred into the possession of municipalities;

4) the economic activities of enterprises in which the state holds more than one-half of the votes by way of parts or shares, or the loans or contractual obligations of which are guaranteed by the state.

§ 134. The National Audit Office shall be headed by the Auditor General who shall be appointed to and released from office by the Riigikogu, on the proposal of the President of the Republic.

The term of office of the Auditor General shall be five years.

§ 135. The Auditor General shall present an overview on the use and preservation of state assets during the preceding budgetary year to the Riigikogu at the same

time as the report on the implementation of the state budget is debated in the Riigikogu.

§ 136. The Auditor General may participate in sessions of the Government of the Republic in which issues related to his or her duties are discussed, with the right to speak.

The Auditor General, as the head of his or her office, has the same rights that are granted by the law to a minister as head of a ministry.

§ 137. The organisation of the National Audit Office shall be provided by a law.

§ 138. The Auditor General can be prosecuted under criminal law only on the proposal of the Chancellor of Justice, and with the consent of the majority of all members of the Riigikogu.

Chapter XII THE CHANCELLOR OF JUSTICE

§ 139. The Chancellor of Justice shall be, in his or her activities, an independent official who shall review the acts of general application of the legislature and the executive and of municipalities for conformity with the Constitution and laws.

The Chancellor of Justice shall analyse proposals made to him or her concerning the amendment of laws, the adoption of new laws, and the activities of state agencies, and, if necessary, shall present a report to the Riigikogu.

The Chancellor of Justice shall, in the cases prescribed by §§ 76, 85, 101, 138, 153 of the Constitution, make a proposal to the Riigikogu to prosecute a member of the Riigikogu, the President of the Republic, a member of the Government of the Republic, the Auditor General, the Chief Justice of the Supreme Court or a justice of the Supreme Court under criminal law.

§ 140. The Chancellor of Justice shall be appointed to office by the Riigikogu, on the proposal of the President of the Republic for a term of seven years.

The Chancellor of Justice can be removed from office only by a court judgment.

§ 141. The Chancellor of Justice, in heading his or her office, has the same rights that are granted by the law to a minister for heading a ministry.

The Chancellor of Justice may participate in sittings of the Riigikogu and sessions of the Government of the Republic with the right to speak.

§ 142. If the Chancellor of Justice finds that an act of general application adopted by the legislature or the executive or by a municipality is in conflict with the Constitution or a law, he or she shall propose to the body which adopted the act to bring the act into conformity with the Constitution or the law within twenty days.

If the act is not brought into conformity with the Constitution or the law within twenty days, the Chancellor of Justice shall propose to the Supreme Court to declare the act invalid.

§ 143. The Chancellor of Justice shall present an annual report to the Riigikogu on the conformity of the acts of general application adopted by the legislature and the executive and by municipalities with the Constitution and laws.

§ 144. The legal status of the Chancellor of Justice and the organisation of his or her office shall be provided by a law.

§ 145. The Chancellor of Justice can be prosecuted under criminal law only on the proposal of the President of the Republic, and with the consent of the majority of all members of the Riigikogu.

Chapter XIII THE JUDICIARY

§ 146. Justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and laws.

§ 147. Judges shall be appointed for life. The grounds and procedure for the release of judges from office shall be provided by a law.

A judge can be removed from office only by a court judgment.

Judges shall not hold any other elected or appointed office, except in the cases prescribed by a law.

Guarantees for the independence of judges, and their legal status, shall be provided by a law.

§ 148. The court system shall consist of:

1) district and city courts, and administrative courts;

2) circuit courts of appeal;

3) the Supreme Court.

The creation of specialised courts with specific jurisdiction shall be provided by a law.

The formation of extraordinary courts shall be prohibited.

§ 149. District and city courts, and administrative courts shall be courts of first instance.

Circuit courts of appeal shall be courts of second instance and shall review decisions of the courts of first instance by way of appeal proceedings.

The Supreme Court shall be the highest court in the state and shall review court decisions by way of cassation proceedings. The Supreme Court shall also be the court of constitutional review.

Rules regarding the administration of the courts and rules of court procedure shall be established by a law.

§ 150. The Chief Justice of the Supreme Court shall be appointed to office by the Riigikogu, on the proposal of the President of the Republic.

Justices of the Supreme Court shall be appointed to office by the Riigikogu, on the proposal of the Chief Justice of the Supreme Court.

Other judges shall be appointed to office by the President of the Republic, on the proposal of the Supreme Court.

§ 151. The rules of court procedure regarding representation, defence, state prosecution and supervision of legality shall be provided by a law.

§ 152. When adjudicating a matter, a court shall not apply any law or other legal act that is in conflict with the Constitution.

The Supreme Court shall declare invalid any law or other legal act that is in conflict with the letter and spirit of the Constitution.

§ 153. A judge can be prosecuted under criminal law during his or her term of office only on the proposal of the Supreme Court, and with the consent of the President of the Republic.

The Chief Justice and justices of the Supreme Court can be prosecuted under criminal law only on the proposal of the Chancellor of Justice, and with the consent of the majority of all members of the Riigikogu.

Chapter XIV LOCAL SELF-GOVERNMENT

§ 154. All local issues shall be decided and organised by municipalities, which shall act independently on the basis of laws.

Obligations may be imposed on a municipality only on the basis of a law or by agreement with the municipality. Expenditure related to obligations of the state imposed by the law on a municipality shall be funded from the state budget.

§ 155. Municipalities shall be rural municipalities and towns.

Other local self-government units may be formed on the bases and pursuant to a procedure provided by a law.

§ 156. The representative body of a municipality shall be the council which shall be elected in free elections for a term of four years. The term of the mandate of a council may be shortened by a law in relation to a merger or division of municipalities or the inability of a council to act. Elections shall be general, uniform and direct. Voting shall be secret.
[RT I 2003, 29, 174 - entry into force 17.10.2005]

In elections of municipal councils, persons who reside permanently in the territory of the municipality and have attained sixteen years of age have the right to vote, under conditions prescribed by a law.
[RT I, 15.05.2015, 1 – entry into force 13.08.2015]

§ 157. Municipalities shall have independent budgets for which the bases and procedure for formation shall be provided by a law.

Municipalities have the right, on the basis of a law, to establish and collect taxes, and to impose duties.

§ 158. The boundaries of municipalities shall not be altered without hearing the opinion of the municipalities concerned.

§ 159. Municipalities have the right to form associations and joint agencies with other municipalities.

§ 160. The organisation of municipalities and supervision of their activities shall be provided by a law.

Chapter XV AMENDMENT OF THE CONSTITUTION

§ 161. The right to initiate amendment of the Constitution shall rest with not less than one-fifth of all members of the Riigikogu and with the President of the Republic.

Amendment of the Constitution cannot be initiated, nor can the Constitution be amended, during a state of emergency or a state of war.

§ 162. Chapter I "General Provisions" and Chapter XV "Amendment of the Constitution" of the Constitution can be amended only by a referendum.

§ 163. The Constitution can be amended by a law which has been adopted by:

1) a referendum;

2) two successive compositions of the Riigikogu;

3) the Riigikogu, as a matter of urgency.

A bill to amend the Constitution shall be debated in three readings in the Riigikogu, whereby the interval between the first and second readings shall be not less than three months, and the interval between the second and third readings shall be not less than one month. The manner in which the Constitution is to be amended shall be decided at the third reading.

§ 164. A three-fifths majority of all members of the Riigikogu is required to submit a bill to amend the Constitution to a referendum. The referendum shall be held not earlier than three months after the adoption of such resolution by the Riigikogu.

§ 165. In order to amend the Constitution by two successive compositions of the Riigikogu, a bill to amend the Constitution must receive the support of the majority of all members of the Riigikogu.

If the bill to amend the Constitution which received the support of the majority of all members of the preceding Riigikogu is adopted by the succeeding Riigikogu, unamended, at its first reading and with a three-fifths majority of all members of the Riigikogu, then the law to amend the Constitution is adopted.

§ 166. A resolution to consider a bill to amend the Constitution as a matter of urgency shall be adopted by a four-fifths majority of the Riigikogu. In this case, the law to amend the Constitution shall be adopted by a two-thirds majority of all members of the Riigikogu.

§ 167. A law to amend the Constitution shall be promulgated by the President of the Republic and shall enter into force on the date specified therein, but not earlier than three months after the date of promulgation.

§ 168. Amendment of the Constitution regarding the same issue cannot be initiated within one year after the rejection of a corresponding bill by a referendum or by the Riigikogu.

[1] Riigikogu = the parliament of Estonia.

[2] Eesti Pank = the Bank of Estonia.

[3] Riigi Teataja = State Gazette.

The Constitutional Assembly at work.
National Archives of Estonia. Photo: T. Veermäe

A group of members of the Constitutional Assembly at Toompea in July 1992. National Archives of Estonia. Photo: T. Veermäe

COMMENTARY

The bill of the Constitution was prepared and adopted by the Constitutional Assembly. The decision to convene the Assembly was made by Resolution of the Supreme Soviet of the Republic of Estonia of 20 August 1991. The Assembly was formed on a parity basis from representatives of the Supreme Soviet and of the Congress of Estonia, 30 delegates from each. During seven months, it held 30 sittings to draft the text of the new constitution, and of the law to implement it[98].

The first sitting of the Assembly took place on 13 September 1991 and the last on 10 April 1992. The working material presented to the Assembly included a total of five draft bills. Of these, the Assembly selected that of Jüri Adams as the basis for its work. The other drafts – of which the one prepared by Jüri Raidla influenced the final outcome the most – were also used in the course of the Assembly's work. The resulting bill was elaborated by representatives of the people, with the advice of legal experts.

Formally, until the new constitution entered into force, the pre-occupation constitution continued to have effect[99]. Because of this, there were debates on whether to (re)enact and reapply the 1938 Constitution. If at all, this would only have been possible in part and selectively, because several of

[98] Taagepera, Rein. Estonia's Constitutional Assembly, 1991–1992. Journal of Baltic Studies, vol. 25, no. 3.

[99] The Constitution of 1938 had never been formally repealed.

the institutions (for instance, the occupational self-government bodies) that it vested with constitutional functions had become obsolete – which would have made it impossible to form the second chamber of the National Assembly. Also, reinstating the institution of the head of state with its 1938 competences and making it fit the new reality would have been problematic. In addition, significant changes had taken place in society that had to be taken into consideration.

These circumstances were properly weighed and led to the understanding that there was no point for the nation to retrace 50 years of history, only to start working its way back into contemporary reality – especially now that history had gifted it a unique opportunity to make a fresh constitutional start.[100]

The outcome of the Assembly's work was approved on 28 June 1992 by a referendum of the citizens of the Estonian Republic entitled to vote. Of 669,080 citizens eligible to participate in the vote, 406,867 voted for the constitution with 36,147 opposing it.[101] The constitution and its implementing law had received popular approval and entered into force of 3 July 1992.[102]

The constitution adopted on having regained independence reflects the experience of previous

[100] There were also countries, for instance Latvia, that chose the path of re-enacting their old, pre-war constitution.

[101] Publication reference of the Estonian text: RT 1992, 26, 348.

[102] The Constitution of the Republic of Estonia Implementation Act (publication reference of the Estonian text: *RT* I 1992, 26, 350; English translation available at https://www.riigiteataja.ee/en/eli/530102013012/consolide).

constitutions and, in particular, of their application, as well as developments that had taken place in European legal space since 1938[103]. In terms of the structure of government and of the relationship between its different branches, a relatively good system of checks and balances was achieved. Estonia had re-established a well-balanced parliamentary organization of governance and public authority.

Every constitution contains a statement of the ideas, values and aims that it has been created to uphold and that the state must serve. These appear in the preamble and in Chapter I of the 1992 Constitution. Generally recognized principles and rules of international law were expressly integrated into the Estonian legal system[104]. The success of the system is demonstrated, among other things, by the fact that, subject to minor additions and amendments, the Constitution has continued to serve the nation from the regaining of independence to date. In temporal terms, this represents a period longer than that of initial independence, during which, in essence, three constitutions were adopted. It shows that Estonia's constitutional arrangements are stable and the constitution has established effective checks and balances between different branches of government. Several collections of comments (in Estonian) have been published to elucidate the meaning of the

[103] See: Zielonka, Jan. Democratic consolidation in Eastern Europe: Institutional engineering. Oxford University Press, 2001.

[104] On 26 September 1991, the Republic of Estonia acceded to 28 multilateral treaties whose depositary is the General Secretary of the United Nations. Since then, that number has grown by an order of magnitude.

constitution's provisions and to facilitate their application.

Among the most important constitutional changes was the decision to dispense with the bicameral parliament and the presidential system of government. To ensure the broadest popular representation possible, a proportional electoral system was chosen. To guarantee the constitutionality of the exercise of government authority, a system of judicial constitutional review was established. True to the tradition of parliamentary governance systems, the functions of the head of state – the President of the Republic – were limited to representing the state and to performing constitutional procedures.

Exceptionally, the first president after the restoration of independence (Lennart Meri) was elected by the people. Subsequent presidents – for a term of five years – would be elected by the parliament (the *Riigikogu*) or, should the procedure fail, by an electoral college consisting of representatives of the *Riigikogu* and of municipal councils. Constitutional issues related to the procedure for the presidential election and of the President's competences continue to be the subject of public debate.

The fundamental rights and freedoms recognized at the time when the constitution was being drafted had also been proclaimed in Estonia's previous constitutions. Yet, because of lack of a robust judicial review procedure that modern democracies use to guarantee constitutionality, they had predominantly remained political declarations rather than enforceable, judicially protected rights. It was the 1992

Constitution that introduced the procedure in the Estonian legal order.

Paragraph 1 of Article 15 of the constitution affirms: 'Everyone whose rights and freedoms are violated has the right of recourse to the courts. Everyone has the right, while his or her case is before a court, to request for any relevant law, other legal act or action to be declared unconstitutional.'

Chapter II of the Constitution, drafted following the model of the European Convention on Human Rights and Fundamental Freedoms, includes an exhaustive list of modern fundamental rights and freedoms. The Constitution is directly applicable.[105]

The role of the Chancellor of Justice, an office established by the 1938 Constitution, had previously essentially amounted to that of the President's general counsel. In the 1992 Constitution, the office was transformed into an independent constitutional authority whose tasks include overseeing the constitutionality of legislation and the duties of ombudsman; the Chancellor was also vested with the power to bring constitutional review petitions before the Supreme Court.

Under the 1992 Constitution, the duty of constitutional review is incumbent on the courts as well as on the Chancellor of Justice and the President.

[105] For a concise and systematic presentation of the first 15 years of constitutional review by the Supreme Court, see the collection of articles: Suumann, Gea (ed.). 15 Years of Constitutional Review in the Supreme Court of Estonia: Articles and systematized extracts of constitutional review judgments and rulings of the Supreme Court *en banc* and the Constitutional Review Chamber in 1993–2008. Juura, Tartu, 2009.

Paragraph 3 of Article 149 declares that Estonia's highest court (the Supreme Court) 'shall also be the court of constitutional review'. The Supreme Court started considering constitutional review petitions in 1993[106].

When the new constitutional arrangements were brought into force, provision was made for a procedure to cleanse the apparatus of government of members of Soviet repressive bodies in order to ensure public trust in the new authorities.[107] For this, section 6 of the law to implement the Constitution prescribed what might be termed a mild form of lustration, worded as follows:

Until 31 December 2000, a candidate for the post of President of the Republic, for the *Riigikogu* or for the municipal council, or a person who seeks the post of Prime Minister, minister, Chief Justice of the Supreme Court, justice of the Supreme Court, judge, Chancellor of Justice, Auditor General, Governor of *Eesti Pank*, Commander or Commander-in-Chief of the Defence Forces, or any other elected or appointed post in a state or municipal body, shall take a written oath of conscience that he or she has not been in the service or an operative of a security organisation, or of an intelligence or counterintelligence service of

[106] See: Roosma, Peeter. Development of Constitutional Review in Estonia. In: *Revue de Justice Constitutionelle Est-Européenne*. 2001, pp. 283–323.

[107] The electoral slogan of the political movement that came to power after the restoration of independence – the *Isamaa* [Pro Patria] party – was *Plats puhtaks!* [Let's clean house! – transl.]. See also the law governing the taking of the oath of conscience (English translation available at https://www.riigiteataja.ee/en/eli/520052014002/consolide).

the armed forces of a state which has occupied Estonia, nor participated in the persecution or repression of citizens because of political beliefs, disloyalty, social class or service in the civil or defence service of the Republic of Estonia. If a court establishes that the affirmation made in the oath of conscience is untrue, the candidate shall be removed from the list of candidates, or his or her mandate shall be voided, or the person shall not be appointed to a post specified in paragraph one of this section, or the person shall be released from office.

Chiefly, these rules operated as a psychological barrier. Due to Estonia's small size, people's background and past activities tended to be known. Still, there were a few court cases, although proceedings (and potential convictions) were hampered by the insufficiency of evidence (including archival material).[108]

In addition, the nation's political leaders shared the pragmatic understanding that independence was not restored in order to succumb to mutual recrimination and to seek retribution at all costs. At the time, Estonia was facing more important tasks. In 2001, the oath of conscience was replaced by the oath of office.

The constitution in force has been amended due to practical need on a total of five occasions:

[108] The archives of the repressive apparatus (the KGB and other agencies) were removed from Estonia before the restoration of independence.

– the first amendment in 2005 extended the election interval of municipal councils from three years to four in order to synchronize it with the timetable of general elections;
– the second amendment inserted a provision governing Estonia's accession to the European Union[109];
– the third amendment, adopted in 2007, inserted a requirement to protect the Estonian language in the preamble of the Constitution;
– the fourth amendment was adopted in 2011 to clarify the command authority of national defence;
– the fifth amendment, in 2015, lowered the voting age in municipal council elections from 18 to 16 years.

Having finally adopted the constitution for a state that had been won back after half a century of waiting and hoping, an unprecedented wave of state-building enthusiasm swept the country – which, as was jokingly referred to at the time, 'was governed by amateurs who played it by ear' (L. Meri[110]).

With every passing day, the former Soviet republic gradually transformed itself into a free, democratic Western nation under the rule of law. Estonia had used the historical opportunity to maximum avail.

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[109] The political instrument was of such significance and with such an impact on the country's constitutional order that it was adopted by referendum.

[110] See also: Meri, Lennart. A European Mind. Selected Speeches by Lennart Meri, the late President of Estonia. Tallinn, 2009.

14. Accession to the European Union[111]

Holding a Referendum in the Matter of Accession to the European Union and of Amending the Constitution of the Republic of Estonia

Adopted on 18 December 2002

In accordance with Articles 105, 162,163, 164 and 167 of the Constitution of the Republic of Estonia, as well as following subsection 1 of § 30 of the Referendum Act (RT I 2002, 30, 176; 57, 355; 90, 517) and § 155^2 of the Act on the Rules of Procedure of the *Riigikogu* (RT I 1994, 90, 1517; 2001, 1,1; 94, 581;2002, 30, 176; 64, 393) the *Riigikogu* resolves:

1. To submit to the referendum – to be held on 14 September 2003 – the following bill:

'**An Act to Amend the Constitution of the Republic of Estonia**

In the referendum of 14 September 2003, the Estonian people, under Article 162 of the Constitution, adopted the following Act to Amend the Constitution of the Republic of Estonia:

§ 1. Estonia may belong to the European Union, following the founding principles of the Constitution of the Republic of Estonia.

§ 2. On Estonia's entry to the European Union, the Constitution of the Republic of Estonia shall be applied taking into account the rights and obligations that arise from the treaty of accession.

§ 3. This Act can be amended only by referendum.

§ 4. This Act enters into force three months after the date of its promulgation.'

[111] Publication reference of the Estonian text: *RT* I 2002, 107, 637.

2. To cause the ballot paper to show:

1) the text of the bill;

2) the question: 'Are you in favour of joining the European Union and of adopting the Act to Amend the Constitution of the Republic of Estonia?'

3) the boxes showing the response options 'Yes' and 'No'.

Toomas Savi, President of the *Riigikogu*


Mina olen Euroopast!
991 MDG
ONE
HANSABUSS

EU Membership Campaign 2003. Tallinn Old Town.
Photo: Brian E. Hove (372collection.com), all rights reserved.

COMMENTARY

The biggest change in Estonia's constitutional status following its regaining of independence was the country's accession to the European Union. This was decided by referendum on 14 September 2003. Voter turnout for the referendum 'on the matter of accession to the European Union and of supplementing the Constitution of the Republic of Estonia' was 64%. Votes in favour were cast by 66.8% and against by 33.2% of the participants. Estonia officially became a member of the European Union on 1 May 2004.[112]

For a small country such as Estonia, accession was significant in economic but even more in political terms. Its political significance consisted in sealing the departure from the ideological space into which the nation had been drawn by foreign rule, and in marking Estonia's return to European legal and cultural space. In addition, accession to the European Union provided an important security guarantee to Estonian statehood.

Accession to the European Union (EU) meant incorporation into the Estonian legal order of a large body of EU law together with the relevant doctrines. Estonia's constitutional as well as other rules had to be interpreted and applied having regard to EU law.

[112] Estonia became a member of the Schengen Area starting from 21 December 2007 and of the Eurozone from 1 January 2011.

Entry into the area in which EU law had effect resulted, for Estonia as well as for other member states, in an unprecedented situation. Paragraph 2 of Article 1 of the Estonian Constitution provides that 'the independence and sovereignty of Estonia are timeless and inalienable'. The absolute clarity and unconditional nature of this rule was the principal hurdle that had to be overcome when preparing for Estonia's accession and seeking a solution to render Estonian (constitutional) law and legal order compatible with EU law. It was a clear given that accession would lead to the sharing of sovereignty.

It is easily understandable that a common legal space presumes the existence of a hierarchical legal system. Without the principle of the primacy of EU law, the Union could not function effectively. Still, the principle was viewed with suspicion and opposition by many. In the end, geopolitical and economic arguments in favour of accession prevailed.

The system of competences set up between the member states and the community created by them – the EU – has given rise to a series of academic, political as well as constitutional debates. In construing the legal relationship between a member state and the Union, Estonia favours the position that sees it based on primacy as opposed to supremacy. If the relationship were based on the supremacy of EU law, member states' sovereignty and the supremacy of their constitutions (such as of

paragraph 2 of Article 1 of the Estonian Constitution), would lose their meaning.

Estonia's perspective on the issue is that of shared sovereignty. To sum up – the EU is constitutionally limited by the constitutions of the member states, first and foremost by the underlying principles of those constitutions, and in cases of conflict, the principle that is applied is that of the primacy – not supremacy – of EU law.

16. Constitutional Review Procedure Act[113]; Jurisdiction of the Supreme Court

Constitutional Review Procedure Act

Passed 13.03.2002
RT I 2002, 29, 174

Entry into force 01.07.2002 (version of the excerpted provision in force through 24.07.2004)

...

§ 2. Jurisdiction of the Supreme Court

On the basis of this Act, the Supreme Court:

1) disposes of petitions seeking review of the constitution-ality of a legislative or regulatory instrument, or of the omission to adopt one;

2) disposes of petitions seeking review of the constitution-ality of a treaty;

3) disposes of petitions and appeals concerning resolutions of the *Riigikogu*;

4) disposes of appeals against resolutions of the Board of the *Riigikogu*;

5) disposes of appeals against resolutions of the President of the Republic;

6) disposes of petitions to declare a member of the *Riigikogu*, the President of the Republic, the Chancellor of Justice or the Auditor General permanently incapable of performing their duties;

7) disposes of petitions to terminate the mandate of a member of the *Riigikogu*;

8) decides on the granting of consent, to the President

[113] Publication reference of the Estonian text: *RT* I 2002, 29, 174.

of the *Riigikogu* acting as the President of the Republic, to declare extraordinary elections of the *Riigikogu* or to refuse to promulgate an Act of the *Riigikogu*;

9) disposes of petitions to terminate the activities of a political party;

10) disposes of complaints and exceptions concerning decisions and operations of the electoral committee.

COMMENTARY

Any attempt to discuss the role and work of the Supreme Court, which by virtue of paragraph 3 of Article 149 of the Constitution is 'also … the court of constitutional review', would take us into a field of details that is beyond the aim of this collection. A look at the jurisdiction conferred on the Court by the relevant law provides a general overview of the functions that the nation's court of constitutional review is tasked to perform in order to keep state institutions on the constitutional straight and narrow. Estonia's system of constitutional review is unique in that the court that serves as the highest court of appeal on points of law also operates as the constitutional review tribunal[114].

[114] See: Suumann (footnote 105) and Roosma (footnote 106).

Hearing in the Criminal Chamber of the Supreme Court.
Scanpix Baltics. Photo: Ode-Maria Punamäe

INDEX OF ILLUSTRATIONS

Page 24	Wikipedia
37	ERA.2124.2.191
38	TLM_F 23692 G 1879
54–55	EAA.3825.1.138.34
61–63	ERA.957.18.4
64–65	ERA.1583.1.4.15.1
66–67	EFA.114.0.28282
88–89	ERA.4399.1.5.110
113	Wikipedia
114–115	EAA.2073.2.389.1
178–179	EAA.2111.1.13228.16
196–197	Wikipedia
198–199	EFA.202.0.146768
200–201	ERAF.2.1.3113.1
206–207	ERA.4944.1.20.24
214–215	EFA.204.0.253198
226–227	EFA.250.0.139849
232–233	TLM F 10112:76
234–235	EFA.204.0.254454
254–255	EFA.204.0.254428
256–257	EFA.204.0.259488
308–309	EFA.204.0.259860
310–311	EFA.204.0.256047
322–323	© Brian E. Hove
330–331	Scanpix Baltics