

The Competence of the Estonian Parliament in Foreign Relations on the Basis of Pre-war Constitutions and Other Legal Acts

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1. Introduction

The competence of the pre-war Estonian Parliament, as the legislative body of Estonia, in foreign relations reflects the classical competence of parliamentary European countries in the 1920's. Its legal competence was set by the Constitution and laws of Estonia. In practice, foreign relations were the competence of the government and the role of parliament was quite formal. This is why questions about the competence of various institutions in foreign relations in Estonia should not only be viewed from the aspect of legal acts, but should also be analysed via the implementation of these legal acts, practical administration, representation of the state in foreign relations, and mechanisms for making decisions about internal policies in the organisation of foreign relations.

The legal system of pre-war Estonia is divided into two parts: parliamentary democracy since independence until the coup of 1934, and presidential autocracy from 1934 until the Soviet occupation in 1940. I will also discuss the legal competence of the Parliament in pre-war Estonia.

2. Legal Acts – Sources for Publications

In the pre-war period there were three Constitutions and three Constitutional Acts (preliminary constitutions) valid in Estonia, which regulated the activities of the State before the 1920 Constitution was passed. In addition, there were two referendums conducted in 1932-1933 for passing Constitutions, which failed. The following constitutional acts were used in the present written paper:

1. Decision of a Higher Power. Passed by the Provisional Estonian Province Assembly of the Estonian District on 15. November, 1917 (28.11.1917 according to the new calendar).

2. Manifesto to All the People of Estonia. Declared by the Salvation Committee on 24. February, 1918.
3. Procedure for the Temporary Governance of the Republic of Estonia. Passed by the Constituent Assembly on 4. June, 1919.
4. Constitution of the Republic of Estonia. Passed by the Constituent Assembly on 15, June, 1920.
5. Constitution of the Republic of Estonia. Passed by a referendum initiated by the League of Veterans on 14, 15 and 16 October, 1933.
6. Constitution of the Republic of Estonia of 1937.

3. Pre-war Legal Acts on Foreign Relations

The only pre-war act regarding foreign policy is the Foreign Service Act, which was approved by a decree made by the Head of State on 13. March, 1936. (RT, 1936, 24, 160). The act does not cover the activities and competence of the Riigikogu (Parliament) on foreign policy.

The decision of the Provisional Estonian Province Assembly of the Estonian District on the 28th of November, 1917 (15th of November according to the old calendar), did not create the State of Estonia (independence was not declared), and formally Estonia was still a province of Russia. In principle, however, the Provincial Assembly (later Assembly) decided to assume the highest power in Estonia. Thus, this decision can be regarded as a preliminary constitution (EVPk 2002, 18-19), which prepared the way for the possible separation of Estonia from Russia and the creation of an independent state. Under these circumstances, it was merely a declarative act or a distinctive confirmation that the dual powers remained during Soviet times (Arjakas 2002, 21).

The certificate of birth of the Republic of Estonia – the Manifesto to all the people of Estonia, which was passed on 24. February, 1918, by the Salvation Committee, which was established by the Province Assembly – did not cover the competence matters of a legislative body, but in a legal sense was a second preliminary constitution. The manifesto established executive power and clearly fixed the historical and ethnographic borders of Estonia (Arjakas 2002, 21).

The procedure for the provisional governing of the Republic of Estonia from 1919, was not a constitution in the classical sense, but it was a constitutional

act that regulated the governing of the State of Estonia until the Constitution was passed on 15. June, 1920 (third preliminary constitution (EVPk 2002, 17-19)).

During the first years in which the Republic of Estonia existed, power was centralised in executive bodies and all foreign relations were delegated to the competence of the executive power. Even before the independence of Estonia was declared in December of 1917, the Province Assembly formed a foreign delegation with the competence of finding recognition of Estonian statehood, and on 24. February, 1918, the same day when independence was declared, the first Minister of Foreign Affairs, Jaan Poska, was appointed (Medijainen 1997, 30). On 12. November, 1918, the Province Assembly appointed the second membership of the Provisional Government and, under a treaty concluded in Riga, the Commissioner of Germany, August Winnig, awarded the entire power of Estonia to the Provisional Government as of 21. November. However, this step with the Provisional Government did not lead to the recognition of the independence of Estonia by Germany. On 27. November, the Province Assembly appointed the third membership of the Provisional Government and delegated its legal power to this government. This gave the Provisional Government the sole right to conclude foreign treaties (Pajur 2005, 47).

The Constituent Assembly was elected on 5-7 April, 1919, and it passed the method for the temporary governing of the Republic of Estonia, which was to be valid until a permanent Constitution entered into force (op. cit., 50). The Provisional Constitution made a sudden change in the form of government by abandoning the principles of parliamentary government and moving towards the Swiss system (it based strongly on direct democracy (referendum) and role of Parliament is smaller than in representative democracies). Up until that time, the principle of balanced power had been followed, and now the role of the parliament was suddenly increased. The government was thereafter an immediate subordinate body of the parliament. Subsequently, the ideas of the Provisional Constitution may be regarded as a deviation in the development of the statehood of Estonia. In reality, the Provisional Constitution did not enter into force and Estonia remained a parliamentary state (op. cit., 50).

The procedure for the temporary governing of the Republic of Estonia of 4. June, 1919, provided in § 9 that in the name and by the choice of people, the

highest power is executed by the Constituent Assembly and the Chairman of the Constituent Assembly is the legal representative of the Republic of Estonia. According to § 11, the Constituent Assembly discusses and approves treaties and unions concluded with foreign countries, authorises declarations of war and conclusions of peace. According to § 15, the government may operate under acts and regulations and the guidelines and tasks issued by the Constituent Assembly. The government was not given a specific competence on foreign relations. Thus, according to the procedure of temporary governing, the Constituent Assembly had complete jurisdiction over conducting foreign relations and the government was entitled to operate only under authorisations of the Constituent Assembly. At the same 4. June, 1919 meeting of the Constituent Assembly, the Standing Constitutional Commission was established with the task of drawing up the Constitution (Arjakas 2002, 23). The main principle of all those acts was that supreme power in the Republic of Estonia belonged to the people and it was implemented in the name of the people (Uibopuu 1996, 3).

4. The 1920 Constitution and its Regulations

The Constituent Assembly approved the Constitution on 15. June, 1920. As most of the political parties preferred the Swiss system, adopted in the Provisional Constitution to parliamentarism and presidentialism, representative democracy was outweighed by participatory democracy and, in addition to the eligibility to vote; the right to vote and the right to initiate referendums were also included in the Constitution. The balance of powers was pursued by including the institution of the President, but by an initiative of parties on the left the idea of the national government was retained – the people's direct control over the parliament and the initiative process of the people, and extensive right to vote was presumed.

The Constitution of the Republic of Estonia of 1920, continued the extreme parliamentary administration of the state provided for in the procedure for temporary governing. Although the Constitution prescribed broad instruments of democracy, such as the right to initiate referendums and initiatives of the people, § 34 prohibited putting foreign treaties on referendums. At the same time, the 1920 Constitution does not specify the competence of the Parliament in foreign relations. According to § 52, the Parliament passes acts, compiles the budget for the State's income and expenses, decides on the granting of loans, and other matters under the

Constitution. In principle, this provision gives the Parliament a mandate for foreign relations. § 60 appoints management of foreign policy to the competence of the government; by article 3 of the same clause, concluding foreign treaties is granted to the competence of the government, but approving the treaties is within the competence of the Parliament. The Constitution does not provide for the possibility of any foreign treaties to enter into effect without the approval of the Parliament. According to article 4, the government declares war and makes peace under a respective decision of the Parliament.

The economic, political and constitutional crisis at the end of the 1920's and at the beginning of the 1930's, brought along with it disappointment in the parliamentary form of government, which led to the idea of the creation of a Head of State, wielding broad concentrated power. The competence and membership of the Parliament as a legislative body, sought to be limited in the interests of executive bodies by granting executive power and part of the legislative power to the Head of State (later President). However, it must be stated that the global economic crisis reaching Estonia from the outside was inevitable and the emergence of an internal policy crisis, which led to certain conditions creating a sudden deterioration in the quality of life, was also inevitable. The constitutional crisis was, at least to some extent, a pseudo-crisis. It was brought about by the political forces that regarded parliamentary democracy and its basis – the 1920 Constitution – as unsuitable for Estonia (Pajur 2005b, 86-87). The central claim of the critics of the Constitution was that it became evident in implementing the 1920 Constitution that legally we had unlimited democracy, but in reality there was unlimited oligarchy (select domination) by central committees of political parties standing behind the parliament (Laaman 1937). The main flaw in the Constitution was considered to be the lack of the position of a Head of State, which results in the Parliament imposing its will on the government and the government not having any freedom to operate. This was seen as the reason for the long-term government crises and there was a demand that the Constitution should be amended and the rights of the Parliament should be reduced to increase the role of the Head of State and the government (op. cit).

5. The Struggle for Balanced Powers in the Estonian Legal System

Konstantin Päts, later the autocratic President of Estonia, was the first person to suggest the idea of amending the 1924 Constitution. The idea was probably motivated by the attempted coup by the Bolsheviks and the main basis was to specify the institution of a president elected by the Parliament in the Constitution (EVPk 2002, 20). At the same time, K. Päts has been suspected of having a personal interest in the concentration of power in a leader and assuming the position of a President with strong powers himself. K. Päts was not satisfied with his limited power to organise the government's activities. There was a specific confrontation with the Minister of Foreign Affairs, Mr. Pusta, whose course was mostly anti-Soviet after the revolt organised by COM intern of 1. December, 1924, and this, in turn, interfered with K. Päts' business interests and ties with the Soviet Union. On 11. March, 1925, the envoy of the Soviet Union in Tallinn, Adolf Petrovski, wrote on the basis of a conversation he had with K. Päts: “{In this conversation,} Päts said that in order to get rid of people like Pusta he intends to initiate a battle for amending the Constitution” (Ilmjärv 2004, 45). As of 1926, there were several drafts for amending the Constitution, concluded mainly by the Farmers' Association, circulating in the Parliament and the government. The drafts provided for the balance of power and suggested establishing the position of the Head of State (op. cit.). On 29. September, 1926, the Farmers' Association submitted a draft for amending the Constitution to the Parliament, which called for reducing the Parliament to 75 members, raising the voting age to 23, and establishing the institution of the President. This draft was not discussed in the Parliament.

In the middle of the 1920's, there were signs of crisis in democratic administrations evident throughout Europe. By that time, most of the countries in Central-Europe already had authoritarian regimes. It is possible that inspiration for subsequent initiatives for implementing a more president-centred administration came from Lithuania, where a coup from democracy to authoritarian administration was carried out at the end of 1926, and where noticeable changes were fixed in the 1928 Constitution (Arjakas 2002, 19). In the autumn of 1929, the Farmers' Association once again submitted a draft compiled in 1926 (this is redundant), but it was not discussed either. On 8. January, 1930, the parliamentary faction of the Peoples' Party also submitted a plan for amending the Constitution that was discussed, but was not supported (Tomingas 1961/1992, 310-317). It should

be noted that jurisprudents decided on the basis of a speech given by lawyer and politician, Jüri Uluots, stated that there was no need to amend the Constitution, as the valid Constitution gave sufficient possibilities, both for the government and the Head of State, to implement their power (EVPk 2002, 20).

In 1931, an unofficial committee began to work under the initiative of two members of the Parliament, Jaan Soots and Hugo Kukk, who compiled a draft for amending the Constitution. The IV Parliament approved it in March, 1932. A referendum on the draft was held on 13-15 August. The referendum was rejected with a slight majority of votes (333,979 voting in favour and 345,215 against). Socialists and the League of Veterans were opposed to amending the Constitution (the latter thought it was too radical) (Tomingas 1961/1992, 310-317). At the same time, the submitted changes are important from the perspective of the development of Estonian State administration. According to the Constitution, the Parliament was intended to have 80 members, and the election system was proportional (§ 36). The Parliamentary terms were extended to four years. According to § 60 (12), the President of the Republic had limited decree rights, according to § 53 of the draft, the right to refuse to proclaim an act, but an obligation to proclaim it in the event that the Parliament passes the act with an absolute majority of votes, the President also had the right to announce prescheduled parliamentary elections (§ 63). According to § 60 of the Constitution, the governing of the internal and foreign policies of the State were still in the competence of the President, as was appointing representatives of Estonia in foreign countries and accepting representatives of foreign countries. Article 5 of the same clause also placed the concluding of foreign treaties in the competence of the President, but prescribed passing the treaties in the Parliament. Article 6 also assigned the right to declare war and make peace to the competence of the President, but limited the right with the competence of the Parliament to make a respective decision. According to § 62 of the Constitution, the government was responsible before the President and it did not have an independent competence on foreign relations. Thus, the competence of the government on foreign relations was given to the President, but the competence of the Parliament on foreign relations was not changed.

The V Parliament decided on 14. February, 1933, to hold a referendum on the second draft for amending the Constitution of the Republic of Estonia.

The draft was drawn up by the Parliament and had some corrections for increasing the part of the Parliament on account of reducing the rights of the Head of State. The vote on the referendum took place on 10-12 June, 1933, and failed to pass, receiving only 161,595 votes for and 333,107 against (67 %) (Pajur 2005b, 88). § 36 of the draft retained 100 members in the Parliament, as was provided for in the 1920 Constitution. It also retained a proportional election system, with a clause that the nation shall have the right to elect people. According to § 53, the President retained the right to declare a law passed with the majority of the legal membership of the Parliament for the second time. § 60 of the Constitution prescribed the President as the head of foreign policy, as did the previous draft. Article 4 also gave the President the right to conclude foreign treaties while retaining the right to pass the treaty to the Parliament. Unfortunately, § 60 (10) gave the President the right to issue decrees with the power of laws. However, the Parliament retained the right to reject the decrees. The Constitution also provided limitations to which acts the President cannot enforce through decree. Foreign treaties were not included in that list, which leads one to the conclusion that the President was given the right to approve foreign treaties through decree.

6. The Constitution of the League of Veterans of the Estonian War of Liberation and the Coup

At the end of 1932, before the Parliament prepared the draft for amending the Constitution, citizens Aleksander Seimann, Leopold Tõnson, Theodor Rõuk and Artur Sirk submitted to the Parliament a draft for amending the Constitution of the Republic of Estonia (the so-called League of Veterans' draft) under a right of initiative, which was published in the State Gazette under the Elections of the Parliament, the Referendum Act and Citizen's Initiative Act. The League of Veterans of the Estonian War of Liberation applied for abandoning parliamentary administration, which was based on a system of political parties, and wished to replace it with a system that would be characterised as having a Head of State with strong power and absolute rule through executive power mechanisms (Nutt 2006, 134). The slogan of the League of Veterans was "democracy without political parties" (Kasekamp 1999, 66), and they denied in public that they opposed the parliamentary system and supported a one-party system and dictatorship (Tomingas 1961/1992, 324).

Directly before the referendum, the draft found support from the United Agrarian Party, led by K. Päts, which was the deciding factor in the passage of the decision (Pajur 2005b, 89). The amendment of the Constitution was passed by referendum on 14, 15 and 16 October, 1933, with the votes of 73% of the people in favour and 56% of the people eligible to vote for the draft, i.e. 416,878 for and 156,894 against (op. cit).

In its form, the League of Veterans Constitution was an amended version of the 1920 Constitution (amendment; of the 89 clauses, 30 were amended), but its content was fundamentally different (op. cit). On 24. February, 1934, the new Constitution of the Republic of Estonia entered into force. The League of Veterans' path to power was cut short by the military coup of 12. March, 1934, organised by Head of State, K. Päts, which resulted in the prohibition of the League of Veterans of the War of Liberation, and the arrest of its leaders (Nutt 2006, 134-135). K. Päts and his supporters justified the coup with the need to prevent the League of Veterans from seizing power and implementing a dictatorship that had been in preparation for a long time (Tomingas 1961/1992, 375-403). At the same time, K. Päts left the 1934 Constitution in force and kept his power under said Constitution (Nutt 2006, 138).

According to the 1933 Constitution, the parliamentary administration of Estonia was replaced with a presidential administration. A broad institution of the President was created, public control over the government was decreased by means of the Parliament, and the government was made independent of the Parliament (Varak 2000, 120). At the same time, the Constitution provided broad direct mechanisms of public power – in addition to electing the Parliament and the Head of State, referendum and public initiative were retained under § 29 of the Constitution. Limitations on referendums to the extents under drafts were retained. Thus, according to § 34 of the Constitution, treaties with foreign countries could not be subject to referendum.

The Parliamentary election system was the same as in the draft of the 1933 Constitution, which was rejected – the proportional election system in § 36 was retained provided that the electors had the possibility to elect independent candidates, but the membership of the Parliament was limited to 50 members. According to § 39, the Parliament was elected for up to four years. The competence of the Parliament was limited by extending the

vetoing rights of the Head of State: § 53 provided that the Head of State was entitled to not proclaim an act passed by the Parliament until the Parliament accepted amendments suggested by the Head of State, or if the Parliament passed the same act after following elections (with two memberships). Thus, the same membership of the Parliament no longer had the right to pass an act without the consent of the Head of State.

The Head of State united the power of a head of state and executive body; the government was changed into a body under the Head of State (§ 57), which was appointed independently by the Head of State and was subordinate to him/her in every matter (§ 63 and 64). But the government had to have the trust of the Parliament, however, mistrust of the government or of its members gave the Head of State a basis for announcing new parliamentary elections (§ 63).

§ 58 provided direct elections of the Head of State by the nation. A candidate for the Head of State position was to be appointed by a public initiative of at least ten thousand citizens. Thus, the 1933 Constitution established a strong mandate for the Head of State, issued by the public and, through these means, broad powers as well.

As the drafts for amending the 1932 Constitution did, § 60 of the 1933 Constitution granted the Head of State administration over both internal and foreign policies. Similarly to previous drafts, the said Constitution provided for the conclusion of foreign treaties by the Head of State, but the treaties were to be approved by the Parliament (§ 60 (5)). Article 12 of the same clause granted the Head of State the right to issue decrees with the power of law, which enabled the approval of laws as well.

§ 3 of the second part of the 1933 Constitution determined that new elections of the Parliament and the Head of State were to be held within one hundred days from the Constitution entering into force. However, new elections were not held. Prime Minister K. Päts suspended the elections for the Head of State and the Parliament, with the decree of 19. March, 1934 (Tomingas 1961/1992, 292). § 4 of the second part determined that the power of the Parliament shall be valid until the power of the new the Parliament enters into force. As the new Parliament was not elected, the power of the existing Parliament retained its power until 1. January, 1938. But as the Parliament was not convened during that time, the Head of State

governed the State by decrees, acquiring indivisible power by violating the Constitution. The security situation established on 12. March, 1934, for six months extended until 12. September, 1939. The regulation of the Minister of Internal Affairs of 1935 suspended the activities of political parties and other political unions (except for the Pro Patria Party established in 1935) (EVPk 2002, 21).

On the international level, Estonia was regarded, after the overturn in 1934, as a country under a dictatorship (Nutt 2006, 138). Even the decision of the Estonian Court Department of 1934 stated that the overturn of 12. March, resulted in eliminating constitutional order and replacing it with a dictatorship (Tomingas 1961/1992, 509).

Due to the coup on 12. March, 1934, the Parliament lost its competence on foreign policy altogether. Until the coup in 1934, the political parties in Estonia (and Latvia – author's note), as well as public opinion, had been able to wield rather considerable influence on the country's foreign policy. After implementing an authoritarian regime, the right of the State to make foreign policy decisions was reserved only for a small group of people (Ilmjärv 2004, 915).

7. The Last Pre-war Constitution from 1937 and the Creation of a Corporative State

The new Constitution received criticism due to the extensive power it granted to the Head of State. In September, 1935, the League of Veterans submitted their second draft for amending the Constitution. But the Head of State rejected it granting it official power in October. During the so called "age of silence" three members of the Parliament submitted a second draft for amending the Constitution, but this was also rejected by the Head of State (EVPk 2002, 22).

In his speech at the end of 1935, the Head of State, K. Päts, stated that a new Constitution should be compiled and the Constitutional Assembly should be convened for this purpose. The referendum of 23-25 February, 1936, gave the Head of State authorisation to convene the Constitutional Assembly for the preparation of a new Constitution. The basis for presidential public order and the principles of a bicameral Constitutional Assembly were approved. A draft compiled by the committee formed by K. Päts, and based on the 1935

Constitution of Poland, was taken as a basis for the new Constitution. The Constitution was passed on 28. July, 1937, at a common meeting in the chambers of the Constitutional Assembly, with 115 affirmative votes (three opposed and two undecided). The third Constitution of the Republic of Estonia came into force in January, 1938 (Pajur 2005c, 98).

Official propaganda described the Constitution as a return to democracy (Vellerma 1938, 3). Unfortunately, this Constitution was not more democratic than the 1934 Constitution (Nutt 2006, 138), instead the 1937 Constitution was more undemocratic. It may be regarded as symbolic that if the Constitutions of 1920 and 1934 (and drafts of 1932) gave more power to the Parliament than to the Head of State (the President) and/or the government, article 4 of the 1937 Constitution concerned the President of the Republic, article 5 the Government of the Republic and article 6 concerned the Parliament. The direct power of the people was considerably decreased compared to earlier powers. The initiative process was excluded. Organising referendums was the right of initiative of the President, which enabled the position to increase its mandate over the Parliament even further (§ 98, 148-150). According to § 40, direct elections of the President were possible only in the case of an emergency. Only both chambers of the Parliament and the representative body of local governmental institutions were permitted to announce presidential candidates. If only one candidate was announced, the election of the President was the competence of the common meeting of these bodies.

In parliamentary elections, the nation was electing only 80 members to the State Council under the majority system (§ 35 (2)), which had practically no power as an independent legislative body. The Parliament did not even have independent power to initiate acts. According to § 92, at least one fifth of the membership of the State Council was entitled to initiate an act, provided that the President was informed. In addition, both the State Council and the President had veto rights over acts.

The so-called Supreme Chamber of the Parliament, the State Council, was a corporate body that consisted of the positions of heads of institutions, representatives of local governments and chambers and persons appointed by the President.

In general, the power of the Head of State was, under the 1933 Constitution, transferred to the President of the Republic. However, electing the President was, as a rule, within the competence of the State Council and not of the people. Thus, the power of the President was similar to the previous system, but there was no people's mandate, except in the case of an emergency (§ 40).

Foreign treaties were covered in the 1937 Constitution separately in chapter 8. § 101 therein provided that foreign treaties are concluded and ratified by the President of the Republic. The Constitution provided that the Parliament ratified foreign treaties, but it also differentiated types of treaties that were distinguished by law as treaties not subject to approval, and according to § 102, the President was entitled to demand approval of other treaties subject to approval in general meetings of the Parliament. The 1937 Constitution did not include the prohibition on placing foreign treaties on referendums that was included in the Constitutions of 1920 and 1933. This left the President the right to approve foreign treaties via referendums, in case they were not passed in the Parliament for some reason, and thus bypassing it to approve the treaty.

On 17. June, 1940, the Soviet Union occupied Estonia, and on the 6th of August, Estonia was annexed and united with the Soviet Union in the “rights of Union Republics”. The 1937 Constitution formally was in force until 1992, because Soviet annexation was not internationally recognised. But real life continued according to Soviet regulations.

8. Conclusion

There have been two rather different administrations in Estonia since the State gained its independence in 1918, until Soviet occupation in 1940 – a parliamentary democracy from 1918-1934, and a presidential autocracy from 1934-1940.

These periods are also evident in the foreign relations of the Parliament. If until 1934 the role of the Parliament in foreign relations was important, considering that the government was responsible to Parliament and foreign treaties were ratified by Parliament, then after the turnover in 1934 the competence of Parliament on foreign relations ceased to exist (it was transferred to the Head of State [Riigivanem] and in 1938 to the President).

In the period of autocracy both legislative and executive power was monopolised by the Head of State, and the role of the government was for the administration of the Head of State. It made the legislative body – the Parliament – the same as a puppet-parliament.

In foreign relations, including the ratification of international treaties, the Parliament lost its functions completely to the Head of State. Did this change in influence cause Estonia to lose its independence through foreign occupation is a question without an answer.

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