

**Hannes Vallikivi**, Mg. iur.  
University of Tartu, Estonia

## ADMINISTRATIVE EXPULSION CASES BEFORE THE SUPREME COURT OF ESTONIA 1920–1934

**Key words:** administrative expulsion, Supreme Court of Estonia, state of emergency

### Summary

The Republic of Estonia inherited administrative expulsion law from the Russian Empire. During 1920–1934 (no expulsion cases were reviewed after 1934), the Supreme Court of Estonia reviewed 16 complaints involving foreigners and 36 complaints involving citizens. Foreigners were expelled for alleged sedition, disturbing the peace, hiding fugitives, smuggling or bootlegging, or constituting a burden to the economy recovering from the war. The Supreme Court upheld only one complaint because the authorities failed to provide reasons for the continuing banishment. Otherwise, the court accepted the unlimited discretion of the Interior Minister to expel foreigners.

The 1920 Constitution guaranteed citizens the freedom of movement and residence which could be curbed by administrative authorities for the protection of public health. Therefore, administrative expulsion of citizens was only possible as an emergency measure. Nationwide state of emergency lasted in Estonia from 1918 to 1922, after the attempt of the Communist coup from 1924 to 1926, briefly in 1933, and from 1934 until the occupation of Estonia in 1940. In between, there was state of emergency in certain parts of the country: in the capital city of Tallinn, its neighbouring municipalities, railways, and municipalities along the Estonian-Russian border. Citizens were banished from the areas under a state of emergency for alleged sedition, speculation, liquor smuggling, bootlegging, and brothel-keeping. The Supreme Court upheld complaints when the expulsion decision had no legal ground (in four cases) or was unreasoned or the authorities failed to prove the factual basis for the allegations (in another four cases). The court left the administrative authorities a wide margin of appreciation and accepted expulsion beyond clearly political reasons.

### Introduction

Many stories, both real and fictional, tell of people often labelled as “politically untrustworthy” forced into administrative exile in Siberia by the Russian Empire. Unsurprisingly, similar methods were later adopted by Stalin and other

Soviet rulers to deal with those they considered “national enemies”. What is more unexpected is that this practice of expelling people the government found troublesome continued outside Russian borders, in the democratic Republic of Estonia.

Fifty-two case files relating to administrative expulsion can be found in the archives of the Supreme Court of Estonia from the period before 1940. Expulsion decisions were adopted by the Interior Minister and complaints on ministerial decisions were reviewed by the Administrative Chamber of the Supreme Court as the first and only instance. In most of those cases, the court interpreted and applied legal norms Estonia inherited from Russia. In November 1918, the Estonian Provisional Government declared that all Russian laws that were in force in Estonian territory before 24 October 1917 continued to be in force until repealed or amended, provided they did not conflict with the Estonian constitutional acts. This paper aims to analyse, based on some of those cases, the legal grounds for expulsion and adherence by the Supreme Court to the principle of the rule of law that was part of the Estonian legal order at the time.

The Supreme Court of Estonia was established at the end of 1919 and started reviewing complaints in January 1920. The judgements examined here date between 1920 and 1934. In November 1934, the acting Head of State, Konstantin Pats, excluded complaints on the state of emergency measures from judicial review.

Since expulsion was primarily an emergency measure (altogether, 32 examined cases were of such kind), expulsion matters were not judicable after November 1934.

## 1. Statistical overview of the examined cases

Thirty-six of the examined cases were brought to the court by Estonian citizens, while sixteen – by either foreign nationals or stateless persons (see Figure 1). The latter were mostly former Russian citizens who settled in Estonia from other parts of the former Russian Empire as the result of the Bolshevik Revolution and the Russian Civil War.

The court dismissed two expulsion complaints on formal grounds, upheld nine complaints, partially upheld four complaints, and fully rejected 37 complaints. The partially positive decisions, however, revoked administrative measures other than expulsion (e.g. police surveillance) or revoked expulsion of just some of the applicants. Therefore, those four judgements are deemed rejections, too. Two out of three complaints were upheld by the Supreme Court in both 1920 and 1921, two out of five in 1925, and one complaint every year during 1926–1928. The success rate was thus relatively modest: 17% on average and was in decline.

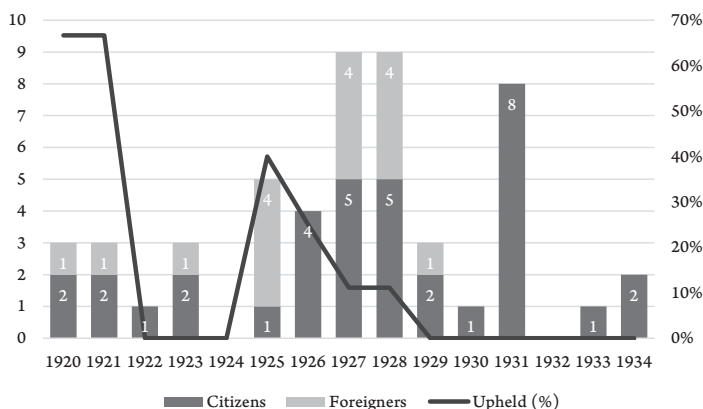


Figure 1. **Complaints to the Supreme Court of Estonia in expulsion matters and the outcome**  
 (Source: case files in the National Archives of Estonia)

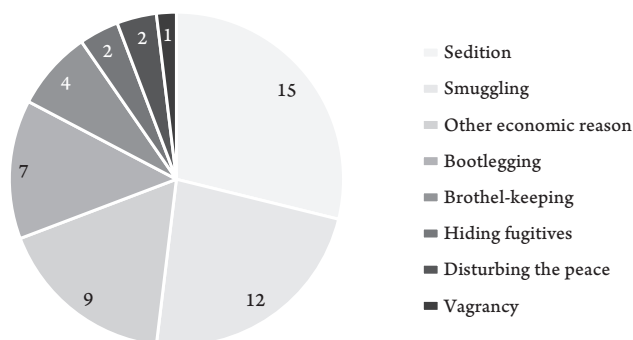


Figure 2. **Reasons for the expulsions challenged in the Supreme Court (number of cases)**  
 (Source: case files in the National Archives of Estonia)

Reasons for challenged expulsions varied considerably (see Figure 2). Alleged sedition and agitating against the democratic government produced the largest number but still only 29% of the reviewed cases. People accused of smuggling (mostly shipping liquor to the Gulf of Finland on merchant vessels and then transporting it to the coast) and bootlegging (selling illegal alcohol) constituted the second and fourth largest groups (23% and 13%, respectively). The third largest group (17%) contained expellees for speculation and other similar economic reasons. Few cases were brought to the Supreme Court by people expelled for alleged brothel-keeping, hiding of fugitives, disturbing the peace or being vagrants.

## 2. Early case law

The very first complaint on an expulsion decision was submitted to the Supreme Court by Emma Kuusk, a former prostitute, and a keeper of a disorderly house. She was expelled from Tartu to Parnu where she had to stay under police surveillance. The Interior Minister referred to Articles 121–125 of the Law of Decency and Security as the legal basis of his decision.<sup>1</sup>

The referred provisions codified the infamous 1881 Ordinance on the Measures for the Protection of the State Order and of Public Tranquillity.<sup>2</sup> The Ordinance that Richard Pipes has called the “real constitution of Russia” stipulated the procedure for declaring a state of emergency and authorised police to take emergency measures in the territories under the state of emergency.<sup>3</sup> The last Chapter of the Ordinance contained provisions regulating administrative expulsion.<sup>4</sup> Administrative expulsion was not dependent on the state of emergency and could be applied at any time and anywhere in the territory of the Russian Empire.<sup>5</sup>

The Supreme Court upheld Emma Kuusk’s complaint and declared her expulsion void. The court argued that the 1881 Ordinance had been repealed already by the Russian Provisional Government in July 1917 and even though the provisional government’s decree was temporary, the emergency measures were likewise temporary, and such measures had not been renewed since 1917.<sup>6</sup>

Notably, in July 1917 the Russian Provisional Government suspended the validity of the Ordinance together with the provisions of police surveillance (in Russian: *policejskij nadzor*) (altogether Articles 99–166 of the Law of Decency and Security).<sup>7</sup> The suspension decree expired upon the convention of the Russian Constituent Assembly in January 1918. It is also true that any state of emergency

<sup>1</sup> Interior Minister’s 22 March 1920 letter to the Supreme Court. NAE, ERA.1356.2.318, 18–18v. Ustav Blagocinija i Bezopasnosti [The Law of Decency and Security]. Svod Zakonov Rossijskoj Imperii. Tom XIV (Petrograd: B. i., 1916).

<sup>2</sup> Polozenie o merax k oxraneniju gosudarstvennogo porjadka i obscestvennogo spokojstvija [Ordinance on the Measures for the Protection of the State Order and of Public Tranquillity] (14.08.1881). Polnoe Sobranie Zakonov Rossijskoj Imperii: Sobranie Tret’e. Tom I, Sankt-Peterburg: Gosudarstvennaja tipografija, 1885, pp. 261–266.

<sup>3</sup> Pipes R. *Russia under the Old Regime*. 2<sup>nd</sup> ed. Harmondsworth: Penguin Books, 1995, p. 305.

<sup>4</sup> The Chapter began with the following norm (Art. 121 in the codified version, as amended): “The expulsion (*vysylka*) by administrative order of persons harmful to the state and public tranquillity to any designated area of European or Asian Russia, with the obligation of continuous stay for a designated period, can take place only if the following rules are observed.”

<sup>5</sup> Gessen V. M. *Iskljucitel’noe polozenie* [State of Emergency]. Sankt-Peterburg: Pravo, 1908, p. 39, 41 and pp. 233–234; Szeftel M. 1958, pp. 17–18.

<sup>6</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 16 April 1920 in the Emma Kuusk Case No. 141. NAE, ERA.1356.2.318, 23–23v.

<sup>7</sup> Postanovlenie Vremennogo pravitel’sтва o porjadke rassmotrenija del o licax, arestovannyx vo vnesudebnom porjadke [Decree of the Provisional Government on the Procedure for Considering Cases of Persons Arrested Extrajudicially] (16.07.1917). Vestnik Vremennogo pravitel’sтва [Bulletin of the Provisional Government], 20 July 1917, No. 109.

authorised by the Ordinance lasted either six or twelve months depending on the type and had to be renewed thereafter. However, as the expulsion provisions were not linked to a state of emergency, one could argue that when the suspension decree expired, the expulsion provisions of the Ordinance re-entered into force.

The next expulsion case related to the 2 August 1917 Decree of the Russian Provisional Government.<sup>8</sup> The Decree gave the Minister of War and the Interior Minister acting together extraordinary powers to require especially dangerous persons to leave Russia or else keep them in custody. In December 1919, the Interior Minister ordered to expel an Estonian citizen Aron Rogovski to Soviet Russia under that Decree for trading precious metals. Rogovski's lawyer, renowned Jaan Teemant furiously argued against the application of irrelevant law. He explained that his client was a merchant employed by a jewellery company and not a speculator. The Supreme Court declared the expulsion void because the Minister of Defence had not expressed his opinion on the expulsion and the Interior Minister alone had no authority to expel Estonian citizens.<sup>9</sup> The court thus deemed the 2 August 1917 Decree valid and part of Estonian legal order.

The first case involving a foreigner was decided by the Administrative Chamber on the same day as Rogovski's. An alleged bootlegger Michael Schmidt was arrested in order to be expelled to Latvia for illegally re-entering Estonia. Schmidt argued that even though he was born in Riga, he would qualify for Estonian citizenship, he had lived in Estonia for over 40 years and would be alien in Latvia. The Supreme Court rejected his complaint and stated that the Interior Minister had "full right" to expel a foreign national under Article 365 of the Law of Decency and Security.<sup>10</sup> The court did not examine the justification of the expulsion. Legitimate reasons for the expulsion of foreigners were very broad.<sup>11</sup> The outcome of this case could have been different if Schmidt had managed to

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<sup>8</sup> Postanovlenie Vremennogo pravitel'stva o prinjatii mer protiv lic, ugrozajuscix oborone gosudarstva, ego vnutrennej bezopasnosti i zavoevannoj revoljuciej svobode [Decree of the Provisional Government on Taking Measures Against Persons Threatening the Defence of the State, Its Internal Security, and Freedom Won by the Revolution] (02.08.1917). Vestnik Vremennogo pravitel'stva, 10 August 1917, No. 127.

<sup>9</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 29 October 1920 in the Aron Rogovski Case No. 165. NAE, ERA.1356.2.328, 35–35v.

<sup>10</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 29 October 1920 in the Michael Schmidt Case No. 512. NAE, ERA.1356.2.331, 15. Article 365 of the Law of Decency and Security read: "The removal abroad (udalene za granicu) of foreigners staying in Russia, with a ban on returning to its borders, is carried out, except for cases specifically specified in the law, at the discretion and order of the Interior Minister [...]"

<sup>11</sup> Such reasons were not defined in Chapter XIII (Art. 365–379) of the Law of Decency and Security, but could be derived from Article 1 of the same law, reading: "Governors, local police and in general all places and persons having civil or military authorities are obliged, by all means within their power, to take measures to preserve due respect for faith, or public tranquillity (obscestvennogo spokojstvija), order, decency and personal and property security. The rights, duties and procedures of the said authorities are determined both by the orders and instructions given to them, and by the rules set forth in this Law, as well as in the General Act on the Governorates, [...]"

prove his Estonian citizenship (he claimed that his identity document had gone lost in the Interior Ministry).<sup>12</sup>

After the War of Independence, in the economically difficult year of 1920, the Interior Minister, “considering the shortage of foodstuffs and housing in the country” threatened to expel all foreigners who had settled in Estonia after 1 January 1915.<sup>13</sup> The foreigners who did not voluntarily leave the country within one month from the Regulation would have been either issued residence permits or expelled at the discretion of the Interior Minister.

Sometime in the spring of 1920, the Interior Minister, this time “considering the shortage of foodstuffs and housing in Tallinn”, ordered 81 individuals who allegedly had settled in Tallinn from Narva during the last two years to move back to Narva.<sup>14</sup> Judging by the names, all or most of the listed people were ethnic Jews. One of them, a shopkeeper Simon Meier Goldmann protested the order and argued that he was an Estonian citizen and was free to choose his place of residence. The Supreme Court upheld his complaint and found the order legally groundless.<sup>15</sup>

These and other measures were intended to limit the immigration of ethnic Russians, Germans, and Jews, avoid their settlement in Tallinn, Tartu, and border areas, and expel disloyal and economically harmful persons from the country.<sup>16</sup> Although the Interior Minister had denied discrimination against Jews, police were given secret instructions to limit the freedom of residence of foreigners with Russian and Jewish ethnicity.<sup>17</sup>

Estonia’s Constitution which entered into force on 20 December 1920 guaranteed the freedom of movement and residence. Interference in that freedom

<sup>12</sup> According to the first Citizenship Act, all citizens of former Russian Empire who had been registered as residents of Estonian territory by the former Russian authorities and who were residing in Estonia at the time the Act entered into force (i.e. on 4 December 1918) were entitled to Estonian citizenship. *Maanoukogu maarus Eesti demokraatise vabariigi kodakondsuse kohta* [Decree of the Provisional Assembly on Citizenship of the Democratic Republic of Estonia] (26.11.1918). *Riigi Teataja*, 4 December 1918, No. 4, 5. For the development of citizenship right in Estonia after 1918, see Rohtmets H. *The Significance of Ethnicity in the Estonian Return Migration Policy of the Early 1920s*. *Nationalities Papers*, 2012, No. 6, pp. 895–908.

<sup>13</sup> *Siseministri maarus valjamaalaste Eesti vabariigist valjasaatmise kohta* [Regulation of the Interior Minister about the Expulsion of Foreigners from the Republic of Estonia, 17.02.1920. *Riigi Teataja*, 21 February 1920, No. 26/27, 209–210. The expulsion decree was followed by a threat to detain illegal foreigners. *Siseministri maarus vaajamaalaste interneerimise kohta* [Regulation of the Interior Minister about the Internment of Foreigners] (24.08.1920). *Riigi Teataja*, 1 September 1920, No. 133/134, pp. 1057–1058.

<sup>14</sup> Copy of an undated Decree, Estonian National Archives, ERA.1356.2.303, pp. 9–10.

<sup>15</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 18 March 1921 in the Simon Meier Goldmann Case No. 79. NAE, ERA.1356.2.303, p. 36.

<sup>16</sup> For the immigration restrictions on non-ethnic Estonians, see Rohtmets H. 2012, 898ff.

<sup>17</sup> *Th, Valjamaalaste valjasaatmine ja jutud juutide tagakiusamisest* [Expulsion of Foreigners and Rumours about Persecution of Jews], *Paevaleht*, No. 242, 25.10.1920, 1. Top secret circular to police chiefs by the Head of Police Department dated 8 October 1921. NAE, ERA.1.1.7075, 29. See also Rohtmets H. *Suletud ukсед: Eesti Vabariigi sisserandepoliitika 1920. aastatel* [Closed Doors: Estonian Immigration Policy during the 1920s]. *The Estonian Historical Journal*, 2013, No. 1, pp. 55–78.

was only possible by court judgment, except for imposing quarantine or other restrictions for health reasons.<sup>18</sup> The Constitution did not specify whether fundamental rights applied only to citizens or foreigners as well. Soon it became evident that foreigners did not enjoy equal protection. The Supreme Court rejected several other complaints by foreigners who had been exiled by the administrative authorities under Article 365 of the Law of Decency and Security and confirmed the consistency of that provision with the Constitution.<sup>19</sup> Legal scholars concurred that foreigners enjoyed equal fundamental rights with the citizens to the extent not restricted by the law.<sup>20</sup>

While Article 365 of the Law of Decency and Security was formally a law, there was another ground for restricting the freedom of residence of foreigners enacted by the Government.<sup>21</sup> Orders expelling foreigners sometimes referred to both Article 365 and the Regulation, sometimes to only one of them. With few exceptions, the Supreme Court referred to Article 365 as the legal basis for the expulsion even when the expulsion order referred to the Regulation alone. In two Semen Bushin cases, the court deemed the Regulation sufficient legal basis for the expulsion.<sup>22</sup>

Administrative expulsion of citizens was still possible under the emergency legislation. The Constitution allowed extraordinary restrictions on fundamental rights and freedoms in the case of emergency. A state of emergency (in Estonian:

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<sup>18</sup> Article 17 of the Constitution reads: "Movement and change of residence is free in Estonia. This freedom may not be restricted or impeded except by the judicial authorities. For reasons of public health, this freedom may also be restricted or impeded by other authorities in the cases and in the manner prescribed by the relevant legislation." *Eesti Vabariigi põhiseadus [Constitution of the Republic of Estonia]*, 15.06.1920. Riigi Teataja, 9 August 1920, No. 113/114, p. 243.

<sup>19</sup> Judgements of the Administrative Chamber of the Supreme Court of Estonia of 27 January 1921 in the Haim Sametschik Case No. 199. NAE, ERA.1356.2.569, p. 17; and of 7 December 1923 in the Adolf Pilar von Pilchau Case No. 954-II. NAE, ERA.1356.2.566, pp. 32–34.

<sup>20</sup> Maddison E. *Eesti kodanikud ja nende pohioigused [Estonian Citizens and Their Fundamental Rights]*. In: *Eesti. Maa. Rahvas. Kultuur*. Tartu: Eesti Kirjanduse Selts, 1926, pp. 1189–90; Csekey S. *Die Verfassungsentwicklung Estlands 1918–1928*. In: *Jahrbuch des öffentlichen Rechts der Gegenwart*. Tuebingen: Mohr, 1928, pp. 168–269, 178–79; Maddison E., Angelus O. *Das Grundgesetz des Freistaats Estland vom 15. Juni 1920*. Berlin: Carl Heymanns Verlag, 1928, p. 17.

<sup>21</sup> Article 8 of the Government Regulation provided: "The Interior Minister has the right to prohibit foreigners to stay in certain locations and towns of the Republic and authorities to issue residence permits to certain foreigners." The same Regulation revoked the above-mentioned 1920 Regulation of the Interior Minister about the Expulsion of Foreigners. *Vabariigi Valitsuse maarus vabariigi piirides viibivate valjamaa alamate elamislubade kohta [Government Regulation about the Residence Permits of Foreigners Located in the Territory of the Republic]*, (18.01.1921). Riigi Teataja, 28 January 1921, No. 7, p. 50. Article 8 (as replaced by a similar provision) was revoked in 1930. *Vabariigi Valitsuse maarus ule vabariigi piiri liikumise ja valismaalaste Eestis peatumise kohta [Government Regulation about the Crossing of the State Border and Stay of Foreigners in Estonia]* (11.07.1930). Riigi Teataja, 15 July 1930, pp. 54, 362.

<sup>22</sup> The Judgements of the Administrative Chamber of the Supreme Court of Estonia of 3 November 1925 in the Semen Bushin I Case No. 103-II. NAE, ERA.1356.2.298, 19–19v; and of 30 March 1928 in the Semen Bushin III Case No. 219-II. NAE, ERA.1356.2.300, 17–17v.

*kaitseisukord*) was declared by the Government, was approved by the *Riigikogu* (Estonian parliament), and was supposed to be temporary.<sup>23</sup>

The first case relating to administrative expulsion as an emergency measure was brought to the Supreme Court by a Baltic German lawyer, spy, and former officer of the Yudenich Army, Hermann Kromel. Kromel was expelled from Tallinn to live in Parnu County under police surveillance for allegedly belonging to a Russian Monarchist organisation and thereby endangering the state order and public safety.<sup>24</sup> The expulsion order was based on paragraphs 16 and 17 of Article 19 of the Annex to Article 23 of the General Act on the Governorates.<sup>25</sup> Kromel's lawyer Werner Hasselblatt argued that the Interior Minister lacked powers to adopt emergency measures because giving him the Governor-General's authority was unconstitutional.<sup>26</sup> The Administrative Chamber upheld the expulsion from Tallinn but "due to lack of respective law" revoked the order to live in Parnu County under police surveillance.<sup>27</sup> By "lack of respective law" the court most likely meant that the police surveillance regulation in the Law of Decency and Security (Articles 127–166) had been suspended in 1917 (see above).

The Supreme Court made similar decisions in the Boris Agapov and Vladimir Chumikov cases.<sup>28</sup> Russian Monarchists Agapov and Chumikov both argued that only criminal courts could punish for the incitement of hatred between ethnic

<sup>23</sup> Article 26(2) of the Constitution read: "Exceptional restrictions on citizens' freedoms and fundamental rights will enter into force in accordance with the law, based on and within the limits set by the relevant laws, in the event of a state of emergency declared for a specified period." Article 60 of the Constitution read: "The Government of the Republic [...] 5) announces a state of emergency in individual parts of the country as well as in the entire country and submits it to the *Riigikogu* for approval; [...]"

<sup>24</sup> The 15 April 1921 Order No. 1216 by the Interior Minister. NAE, ERA.1356.2.311 (not paginated).

<sup>25</sup> Paragraphs 16 and 17 of Article 19 of the Annex to Article 23 of the General Act on the Governorates read: "Governors-General or persons vested with their authority have the right: [...] 16) to prohibit persons from staying in places declared under martial law; 17) to expel (*vysylat'*) persons to the inner provinces of the Empire, with notification to the Interior Minister, and establish police surveillance over them for a period not exceeding the duration of martial law, and to expel foreigners abroad as well; [...]" *Obshee Ukrezdenie Gubernskoe* [General Act on the Governorates]. *Svod Zakonov Rossijskoj Imperii*. Tom II, Petrograd: s.n., 1915. Annex to Article 23 of the General Act on the Governorates codified the twenty-five articles of Russian 1892 martial law. *Pravila o mestnostjax, ob"javljaemyx sostojascimi na voennom polozenii* [Regulation on the Places Declared under Martial Law] (18.06.1892). *Polnoe Sobranie Zakonov Rossijskoj Imperii: Sobranie Tret'e*. Tom XII (Sankt-Peterburg: Gosudarstvennaja tipografija, 1895), pp. 479–483.

<sup>26</sup> Werner Hasselblatt's 16 April 1921 complaint to the Supreme Court. NAE, ERA.1356.2.311 (not paginated).

<sup>27</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 31 October 1922 in the Hermann Kromel I Case No. 146. NAE, ERA.1356.2.311 (not paginated).

<sup>28</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 30 April 1923 in the Boris Agapov Case No. 603. NAE, ERA.1356.2.296, p. 19; Judgement of the Administrative Chamber of the Supreme Court of Estonia of 30 April 1923 in the Vladimir Chumikov Case No. 604. NAE, ERA.1356.2.336, p. 19.



groups and administrative expulsion for such activity was illegal.<sup>29</sup> Although the court did not address this question, it seemed to concur with the defendant's representative Jaan Teemant that expulsion was not a punishment and that the Interior Minister had unlimited discretion to decide on the need for someone's expulsion.

### 3. Turning point in the case law

In July 1925, the Interior Minister prohibited Theodor Viliberg and his adult children Hilda and Evald from living on the Island of Naissaar. Minister stated in the expulsion order that Vilibergs' presence in the vicinity of the Tallinn Fort "harmed national interests".<sup>30</sup> However, he did not explain in what way the harm was incurred. Most likely, the family was engaged in liquor smuggling. Vilibergs' lawyer Jaan Teemant complained to the court that the lack of motives in the Minister's order would not allow the legality of the order to be verified. The Supreme Court agreed with Teemant and revoked the order.<sup>31</sup> The court dismissed the defendant's argument that only the powers of the Minister could be verified by the court while justification of the Minister's decision was subject to political control of the *Riigikogu*. The court affirmed that the existence of a situation endangering the state order and public safety was subject to judicial review, too.

The change in the court's opinion and putting restraints on the administrative authorities was that much more surprising, because on 1 December 1924, as a result of the attempt of a Communist coup, a new nation-wide state of emergency had been declared and the importance of emergency measures had become evident. The reason for the court's stiffer approach could be the Interior Minister's refusal to explain to the court the reasons for the expulsion of the Vilibergs and the claim by the Minister that he had unlimited discretion to apply emergency measures.

The court confirmed the requirement to justify expulsion orders again in the Ernst Turmann case in September 1926. A Baltic German businessman and a tennis champion Turmann was exiled from Tallinn to the Island of Vormsi. The Interior Minister stated in the order: "Having reviewed the materials and reports submitted to me and taking into account the facts I personally know about him, I find that Ernst Turmann has committed acts that endanger public tranquillity and are harmful to the security and state interests".<sup>32</sup> There were no

<sup>29</sup> Minutes of the Hearing of the Administrative Chamber of the Supreme Court of Estonia dated 30 April 1923 in Case No. 603. NAE, ERA.1356.2.296, pp. 16–17. Minutes of the Hearing of the Administrative Chamber of the Supreme Court of Estonia dated 30 April 1923 in Case No. 604. NAE, ERA.1356.2.336, 16–17v.

<sup>30</sup> The 9 July 1925 Order No. 540/1253 by the Interior Minister. NAE, ERA.1356.2.340, p. 2.

<sup>31</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 3 November 1925 in the Vilibergs Case No. 1143-II. NAE, ERA.1356.2.340, pp. 21–23.

<sup>32</sup> The 3 April 1926 Order by the Interior Minister. NAE, ERA.1356.2.338, p. 5.

hints of such facts in the order and by referring to secrecy and national interests, the Minister refused to disclose the facts to the Supreme Court.<sup>33</sup> According to the newspapers, Turmann had spread slanderous rumours about life in Estonia amongst foreigners visiting Estonia.<sup>34</sup> The Supreme Court revoked Turmann's expulsion. The court explained it had the right and duty to assess whether the threat to state order and public safety existed, and whether the adoption of emergency measures was therefore justified.<sup>35</sup>

A few months later, the General Assembly of the Supreme Court admitted that the court's opinion in the Viliberghs and Ernst Tumann cases diverged from previous case law (i.e. Sametschik, Kromel, Agapov and Chumikov cases). The General Assembly approved the Administrative Chamber's new approach.<sup>36</sup>

Later the same year, the Administrative Chamber upheld a complaint on substantive grounds. Alleged keepers of a brothel and speakeasy Marie Kuus and her daughter Analie Kuus were expelled from Tallinn. Marie Kuus argued in her complaint that she had not been accused of any wrongdoing; she was not a tenant of the apartment in question but just lived together with her daughter.<sup>37</sup> The court found that the police file that was the basis for the expulsion order contained no facts supporting the allegations against Marie Kuus and revoked her expulsion.<sup>38</sup>

In two cases of the same period, the Supreme Court revoked the refusal by the Interior Minister to reverse expulsion after criminal charges against the expellees had been dropped. The court deemed the Minister's endorsement "To reject" insufficient, and wished to see at least some justification for the refusal. In the first case, a shopkeeper in the Nina village, Soviet Russian citizen Semen Bushin had been accused of selling goods smuggled from the Soviet Union across Lake Peipsi. He was prohibited from living in municipalities along the coast of Lake Peipsi that were declared under a state of emergency, including in the Nina village.<sup>39</sup> In the second case, already mentioned Analie Kuus had been acquitted of several brothel-keeping charges by the criminal court.<sup>40</sup> Bushin's case was the only expulsion case with a positive outcome for a foreigner and Analie Kuus' case was the last positive decision of the Supreme Court in expulsion matters. Both Bushin

<sup>33</sup> The Interior Minister to the Administrative Chamber of the Supreme Court, 15 June 1926. NAE, ERA.1356.2.338, p. 10.

<sup>34</sup> Moot on tais [Enough is Enough]. Postimees, No. 92, 07.04.1926, p. 1.

<sup>35</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 21 September 1926 in the Ernst Turmann Case No. 961-II. NAE, ERA.1356.2.338, pp. 19–20.

<sup>36</sup> Judgement of the General Assembly of the Supreme Court of Estonia of 31 January 1927 in Case No. 88. NAE, ERA.1356.1.696, pp. 5–6.

<sup>37</sup> Marie Kuus' 3 August 1927 complaint to the Supreme Court. NAE, ERA.1356.2.317, 2–2v.

<sup>38</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 11 October 1927 in the Marie Kuus Case No. 734-II. NAE, ERA.1356.2.317, 16–16v.

<sup>39</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 27 November 1925 in the Semen Bushin II Case No. 739-II. NAE, ERA.1356.2.299, 22–22v.

<sup>40</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 27 April 1928 in the Analie Kuus I Case No. 284-II. NAE, ERA.1356.2.316, 14–14v.

and Kuus were eventually banished (Bushin on new grounds and Kuus – because she was sentenced on one account). The Administrative Chamber rejected their last complaints.<sup>41</sup>

#### 4. Supreme Court's retreat?

The court's intervention in the Interior Minister's discretion was criticised in legal literature by some law enforcement officials. Eugen Maddison, a clerk of the Interior Ministry and frequent representative of the Ministry at the Supreme Court, wrote that the protection of state order and public safety would require maximum flexibility in selecting emergency measures and unlimited discretion of the Interior Minister in applying such measures.<sup>42</sup>

Military prosecutor Konstantin Trakmann wrote in 1931 that the Supreme Court practice would hinder the government's ability to adopt effective emergency measures in truly serious situations.<sup>43</sup> He analysed in the article whether, after the Russian martial law (Annex to Article 23 of the General Act on the Governorates) had been replaced with the State of Emergency Act,<sup>44</sup> it was possible to abolish the partial state of emergency.

Abolition of the state of emergency was a constant topic in the *Riigikogu* when the renewal of the state of emergency or the State of Emergency Bill was discussed. The Government had tried to replace the Russian martial law with a new law already in 1922, but the bill met resistance from left-wing, as well as some centrist political parties. In those debates, the member of the *Riigikogu*, Social Democrat Anton Palvadre criticised the use of the state of emergency as an ordinary governing measure and its abuse in restricting the fundamental rights of citizens, especially the extensive use of administrative expulsion and submission of civilians to military courts.<sup>45</sup> The Social Democrats continued criticising the practice of administrative expulsion.<sup>46</sup> Ironically, Palvadre became a member

<sup>41</sup> Judgements of the Administrative Chamber in the Semen Bushin III Case in 1928 and of 2 October 1928 in the Analie Kuus II Case No. 488-II. NAE, ERA.1356.2.315, pp. 13–14.

<sup>42</sup> Maddison E. Valjasaatmisest ja elamise keelust sojaseisukorra maksvuseajal [About the Expulsion and Restrictions on Residence under the Martial Law]. Eesti Politseileht, 5 January 1926, No. 1, pp. 2–3. Maddison expressed his dissent with the new approach even after the General Assembly had expressed its opinion. Maddison E. Asja sisuline arutamine administratiiv-kohtu korra seisukohalt [Merits Review the in the Administrative Courts]. Eesti Politseileht, 20 May 1927, No. 20, p. 298.

<sup>43</sup> Trakmann K. Kaitseseisukorra aramuutmise tingimustest [The Conditions for Termination of the State of Emergency]. Part I. Õigus, 1931, No. 1, p. 31.

<sup>44</sup> Kaitseseisukorra seadus [State of Emergency Act] (10.07.1930). Riigi Teataja, 5 August 1930, No. 61, Art. 423.

<sup>45</sup> Minutes No. 124 of the VI session of the I composition of the *Riigikogu*, 23.05.1922, pp. 260–268 and 285–288. Minutes No. 148 of the VIII session of the I composition of the *Riigikogu*, 22.09.1922, pp. 259–260.

<sup>46</sup> Minutes No. 98 of the IV session of the III composition of the *Riigikogu*, 28.10.1927, 308; Minutes No. 30 of the III session of the IV composition of the *Riigikogu*, 05.02.1930, p. 562; Minutes No. 46 of the III session of the IV composition of the *Riigikogu*, 01.04.1930, pp. 833–834.

of the Administrative Chamber of the Supreme Court of Estonia in October 1923 and with him on the bench, the court rejected many expulsion complaints.

When a new State of Emergency Bill was read in the *Riigikogu* in 1930, a right-wing politician General Jaan Soots proposed to narrow down the scope of judicial review of emergency measures. He suggested limiting review to the formal questions of (i) whether the Commander of Internal Protection (in Estonian: *sisekaitse ulem*) (equivalent to the Governor-General under Russian law) was authorised to adopt emergency measures and (ii) whether the measures had been adopted within the limits of the Commander's powers. Soots justified the amendment with the Vilibergs and Ernst Turmann cases where, according to him, the Supreme Court had erroneously reviewed the substance of emergency measures.<sup>47</sup> His opponents deemed the proposed limits of judicial review obvious and already captured in the legal order. Probably convinced by these arguments, the majority of the *Riigikogu* voted against the Soots' proposal.<sup>48</sup>

The State of Emergency Act entered into force on 15 August 1930. The emergency measures available to the administrative authorities under the Act were very similar to or even broader than the ones under the Russian martial law.<sup>49</sup> Upon entry into force of the Act, the state of emergency extending to Tallinn and neighbouring municipalities and to the municipalities along the Russian border continued uninterrupted. The Interior Minister was given the power of the Commander of Internal Protection.<sup>50</sup>

Administrative expulsion from areas under state of emergency continued to be possible under the State of Emergency Act.<sup>51</sup> The new law was first tested by the Supreme Court in several liquor smugglers' cases. After giving a warning to the so-called liquor bosses a few months earlier, late in 1930 the Interior Minister ordered fourteen leading liquor smugglers to leave their homes within 48 hours

<sup>47</sup> Explanatory report to the amendment proposed by Jaan Soots. NAE, ERA.80.4.448, 81–81v. Minutes No. 65 of the IV session of the IV composition of the *Riigikogu*, 03.06.1930, pp. 1180–1181.

<sup>48</sup> Minutes No. 76 of the IV session of the IV composition of the *Riigikogu*, 03.07.1930, pp. 1425–1427.

<sup>49</sup> Lindmets J., Luts-Sootak M., Siimets-Gross H. Imperial Russian Rules on the State of Emergency in the Estonian Republic. In: *New Legal Reality: Challenges and Perspectives: Collection of Research Papers in conjunction with the 8<sup>th</sup> International Scientific Conference of the Faculty of Law of the University of Latvia*. Riga: University of Latvia Press, 2022, p. 40.

<sup>50</sup> The 14/15 August 1930 Resolution by the Government. Riigi Teataja, 15 August 1930, No. 65, Art. 457.

<sup>51</sup> Article 9, paragraph 9 of the State of Emergency Act reads: “The Commander-in-Chief of the Armed Forces has the right, in the territory declared under a state of emergency: [...] 9) to prohibit: a) the presence of individuals in places declared under a state of emergency, if the state of emergency has been imposed only in a part of the Republic, b) the presence and residence in certain places, if the state of emergency has been imposed over the whole territory of the Republic.” The same right was granted to the Commander of Internal Protection (Art 7, para. 2 therein).

and settle outside the territory declared in a state of emergency.<sup>52</sup> Several of the expellees filed complaints against the expulsion orders. The Supreme Court rejected all the complaints, but three decisions indicate a possible change in the Supreme Court's approach.

Shipowners Eduard Kronstrom, Juri Silberberg and Elias Sandbank stated in their complaints that no allegations against them of smuggling contraband to the territory declared under a state of emergency or inciting armed resistance to the police forces had been proven. They stressed that emergency measures could be used only to protect state order and public security and not to fight alleged customs violations.<sup>53</sup>

In three almost identical decisions, the Administrative Chamber first recalled that a state of emergency may be declared not just during the war but also when "criminal activity aimed at state order and public security acquired a threatening character" (Article 1 of the State of Emergency Act).<sup>54</sup> In the court's view, expulsion was not a punishment, but a general measure to maintain state order and public security.<sup>55</sup> Consequently, the application of emergency measures was not limited to persons who had committed or had been sentenced for any political crimes. The measures could be applied to anyone whose activity "paralysed" state order or public security.

The court further noted that on several occasions, the transporters of illegal liquor to the coast have publicly resisted border guards and even caused the use of firearms by the authorities. Such resistance undermined public security.<sup>56</sup> Thereafter, the court stated: "Whether the use of the powers granted by the State of Emergency Act in a certain case is indispensable, expedient, and just is a matter

<sup>52</sup> Piiritusekuningate voistlus riigi viinamonopoliga [Liquor Bosses Competing with Government's Vodka Monopoly]. *Paevaleht*, No 243, 07.09.1930, 3. Piiritusekuningad välja [Liquor Bosses Out]! *Postimees*, No. 316, 20.11.1930, p. 3. Kitsendusi salapiiritusevedajate kohta [Restrictions on Liquor Smugglers]. *Maaleht*, No. 134, 22.11.1930, p. 4

<sup>53</sup> Sandbank's lawyer Jaan Teemant to the Supreme Court, 27.11.1930. NAE, ERA.1356.2.329, 2–2v. Kronstrom's lawyers Ilmar Tannebaum and Alfred Maurer to the Supreme Court (not dated). NAE, ERA.1356.2.313, pp. 3–4. Silberberg's lawyer Alfred Maurer to the Supreme Court (not dated). NAE, ERA.1356.2.333, 2–2v.

<sup>54</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 17 March 1931 in the Elias Sandbank Case No. 401-II. NAE, ERA.1356.2.329, pp. 20–21. Judgement of the Administrative Chamber of the Supreme Court of Estonia of 17 March 1931 in the Eduard Kronstrom Case No. 511-II. NAE, ERA.1356.2.313, 18–19v. Judgement of the Administrative Chamber of the Supreme Court of Estonia of 17 March 1931 in the Juri Silberberg Case No. 502-II. NAE, ERA.1356.2.333, pp. 15–17.

<sup>55</sup> The Administrative Chamber had implicitly agreed with the same approach in the Boris Agapov and Vladimir Chumikov cases in 1923 (see above) and expressed a similar view for instance in the Judgements of 14 October 1927 in the Vasili Orekhov Case No. 731-II. NAE, ERA.1356.2.323, 19–19v; 13 November 1928 in the Liisa Liivak Case No. 593-II. NAE, ERA.1356.2.321, 14–14v; and 20 January 1931 in the Helene Karner Case No. 417-II. NAE, ERA.1356.2.319, 11–11v.

<sup>56</sup> The Administrative Chamber had made similar arguments in two other smuggling cases, in the Judgement of 20 January 1931 in the Siegfried Reindorf Case No. 447-II. NAE, ERA.1356.2.327, 11–11v; and in the Judgement of 3 March 1931 in the Otto Kont Case No. 439-II. NAE, ERA.1356.2.310, 18–18v.

for the Commander of Internal Protection, but not for the Supreme Court. The Supreme Court can only decide whether, under the circumstances and conditions, the Commander of Internal Protection was at all justified by law to use his extraordinary powers.” The court concluded that by shipping large quantities of liquor to Estonian waters, the complainants had made possible the transportation of illegal liquor to the territory declared in a state of emergency and therefore the authorities had not exceeded their powers with the expulsion.

In some later cases, the Supreme Court found that the Interior Minister had acted within the limits of its powers by expelling a sewing machine sales agent for the incitement of hatred between ethnic groups in Petseri,<sup>57</sup> an egg exporter for endangering public finance with the breach of foreign exchange controls,<sup>58</sup> and leaders of National Socialist organisations of local German minority for non-recognition of the democratic republic of Estonia.<sup>59</sup> In the latter, the court was not convinced by the argument of the complainants’ lawyer Siegfried Bremen that “a negative attitude towards the democratic order and a positive attitude towards the leader principle [*Fuehrerprinzip* – H.V.] by itself should not be a reason to expel citizens”.<sup>60</sup>

From the correspondence preserved in the court files, it appears that usually the Interior Ministry attached police investigation materials or the ministry’s case file to its submission to the Supreme Court. These materials were returned after completion of the court proceedings and have not been preserved in the court’s case files. The Minister’s uncompromising refusal to produce any evidence supporting the allegations in Vilibergs and Ernst Turmann and perhaps some other earlier cases seems to be exceptional. Therefore, in most of the examined cases, the Supreme Court could and did check the facts supporting allegations against expellees.

## Conclusions

1. The legal basis for the administrative expulsion of citizens and foreigners differed. Since the entry into force of the Constitution in December 1920, citizens could only be expelled under emergency legislation (Hermann Kromel I case). Foreigners could be exiled or, if that was impossible, interned

<sup>57</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 20 November 1931 in the Sergei Filatov Case No. 1089-II. NAE, ERA.1356.2.302, 13–13v.

<sup>58</sup> Judgement of the Administrative Chamber of the Supreme Court of Estonia of 10 March 1933 in the Eduard Kink Case No. 463-II. NAE, ERA.1356.2.309, p. 15.

<sup>59</sup> Judgements of the Administrative Chamber of the Supreme Court of Estonia of 6 March 1934 in the Otto Haller and Emil Musso Case No. 345-II. NAE, ERA.1356.2.304, 15–15v; and of 13 April 1934 in the Ernst Maydell, Georg Lehbort and Heinrich Jucum Case No. 393-II. NAE, ERA.1356.2.306, 16–16v.

<sup>60</sup> Maydell’s, Lehbort’s and Jucum’s lawyer Siegfried Bremen to the Supreme Court, 02.01.1934. ERA.1356.2.306, p. 3.

under both emergency and ordinary legislation. All expulsion laws were inherited from Russia and in the early 1920s, some additional regulations were adopted, aiming to solve complex demographic and economic issues resulting from the War of Independence (1918–1920). Like in Russia and despite strong criticism by left-wing political parties in the *Riigikogu*, expulsion became an ordinary governing measure in the Republic of Estonia. The reason for this was political movements that questioned the sovereignty and democratic governance of the Republic of Estonia (Communists, but also Russian Monarchists and Baltic German National Socialists). The utilisation of expulsion did not change when the Russian laws were replaced with Estonia's own State of Emergency Act in 1930.

2. However, unlike in Russia, expulsion decisions could be challenged in the Administrative Chamber of the Supreme Court. The Supreme Court enforced several principles of the rule of law in those cases. Firstly, it affirmed that expulsion decisions must have a legal ground or else the decisions were void (Emma Kuusk, Aron Rogovski, and Simon Meier Goldmann cases). Secondly, starting from 1925, the court required that expulsion decisions either contained reasoning or the reasons for the decisions had to be provided to the expellees and the court (Vilibergs, Semen Bushin II, and Ernst Turmann cases). When reviewing the cases, the Administrative Chamber satisfied itself that the allegations against the complainants had at least some factual ground. Otherwise, the court revoked expulsion (in addition to the Vilibergs and other cases, Marie Kuus and Analie Kuus I cases).
3. Towards the end of the 1920s, the Supreme Court became more careful in judging the reasons for expulsion. The court declared that it did not decide whether the administrative measures were indispensable, expedient, or just (Sandbank, Kronstrom and Silberberg cases). In fact, throughout the examined period, the Supreme Court left the Interior Minister almost unlimited discretion to expel foreigners (Michael Schmidt, Haim Sametschik, and Adolf Pilar von Pilchau cases), and very wide discretion to expel citizens. Even though the original aim of expulsion was the protection of state order and public safety justifying perhaps expulsion for political reasons (suppression of sedition), the Supreme Court accepted expulsion as a measure to fight organised crime (large-scale liquor smuggling on the Baltic Sea), support the economy (speculators) and deter petty breachers (brothel-keepers and bootleggers).

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