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## **Duty of Loyalty to the State or the ‘Polish Section’ in the 1937 Estonian Constitution**

### **ABSTRACT**

There is a common comparison between the constitutions of the authoritarian regimes of Poland (1935) and Estonia (1937). The ideological model of the 1937 Estonian Constitution, especially in the section on loyalty to the state, was the 1935 Polish Constitution; for this reason, this section was also called the ‘Polish Section’. Compared to the first, 1920 Estonian Constitution, the 1937 Constitution was much more restrictive of basic rights, in particular through its general orientation and attitude. It was precisely in this that the so-called “loyalty to the state” section (§ 8) played a special role, affecting the whole chapter by its very nature, because it could, in its wording – and according to the example of Poland – constitute a general border clause on fundamental rights and freedoms. This article analyses specifically the ‘loyalty to the state’ section but first a short overview about historical background will be given. Secondly, the drafting of the section 8 of the Estonian Constitutions in the committees’ will be described and analysed, and thirdly, the discussions in the National Assembly will be summarized.

**Key words:** ‘loyalty to the state’ section, 1935 Polish Constitution, 1937 Estonian Constitution, authoritarian regime of Konstantin Päts

## Introduction and historical background

In Estonia's legal and historical discourse, the similarities and differences of the Constitution which was adopted in Poland on 23 April 1935 and the Constitution proclaimed in Estonia on 17 August 1937 by K. Päts (entry into force on 1 January 1938), the State Elder who remained in power following an authoritarian coup d'état, have already been highlighted or addressed during the first period of independent statehood.<sup>1</sup> Today, the fact that through the then State Elder Konstantin Päts, Estonia's 1937 Constitution was influenced by the 1935 constitution of authoritarian Poland, has been dealt with in particular by Rein Marandi.<sup>2</sup> However, Marandi wrote about the political system and the President's institution.<sup>3</sup> I have examined recently the relationship between fundamental rights and obligations, including the aspect of the duty of loyalty to the state.<sup>4</sup>

Although the Polish tradition of fundamental rights extends considerably further in history, both Estonia and Poland (at least most of the territory) formed part of the Russian Empire before independence in 1918. A certain parallel,

- <sup>1</sup> E.g. statement by Oskar Lõvi in the National Assembly. - *Eesti Vabariigi Põhiseaduse I lugemisel, Rahvuskogu. Esimene koda* [Reading of the Constitution I of the Republic of Estonia, National Assembly. First Chamber], Tallinn 1937, p. 36; E. Laaman, *Kodaniku põhiõigused ja kohused* [Fundamental rights and obligations of a citizen], [in:] *Põhiseadus ja Rahvuskogu* [The Constitution and the National Assembly], Tallinn 1937, p. 358. W. Meder has compared the right to issue a decree of the State Elder introduced by the amendments to the Constitution of 1933 to the relevant institute of the Constitution of Poland of 1935. *Das Dekretrecht des Staatspräsidenten in Estland*. Tartu 1936, pp. 158-160. E. Laaman, *Solidarism ja selle rakendamise meie põhiseadustes* [Solidarism and its Implementation in Our Constitutions], "Õigus" [The Law] 1938, vol 9, pp. 406-425. R. Sirge compared the first Constitution of Estonia and Poland with regard to excessive democracy and the empowerment of the people, but also took a critical view of the process of adoption of the 1935 Polish Constitution and the removal from the principle of the separation of powers. R. Sirge, *Uuest Poola põhiseadusest ja selle ellurakendamisest* [The New Polish Constitution and its Implementation], "Tänapäev" [Today] 1935, vol 9, pp. 362-364. Briefly, the Constitutions of 1920 and 1921 were also compared in the German-language Constitution commentary: E. Maddison, O. Angelus, *Das Grundgesetz des Freistaats Estland*, Berlin 1928, pp. 12, 16.
- <sup>2</sup> R. Marandi, *Poola 1935. aasta konstitutsioon kui Eesti 1937. aasta põhiseaduse eeskuju* [Poland's 1935 Constitution as an example of Estonian's 1937 Constitution], "Eesti TA Toim. Humanitaarja sotsiaalteadused" [Proceedings of the Estonian Academy of Science. Humanities and Social Sciences], 1994/41, vol 3, pp. 192-197.
- <sup>3</sup> Ibidem, p. 193. See also A. Pajur, *Konstantin Päts. Poliitiline biograafia. II osa: riigimees (1917–1956)*, [Konstantin Päts. Political biography. Part II: statesman (1917–1956)], Tartu 2018, p. 545ff. and A. Pajur, *Autoritaarne Eesti* [Authoritarian Estonia], [in:] "Eesti ajalugu VI. Vabadussõjast taasiseseisvumiseni" [Estonian history VI. From the Estonian War of Independence to Reindependence], Tartu 2005, p. 98.
- <sup>4</sup> H. Siimets-Gross, *Põhiõiguste ja põhikohustuste vahekord Eesti ja Poola põhiseadustes – paralleelne või vastandlik areng?* [The Relationship between Basic Rights and Basic Duties under the Estonian and Polish Constitutions: Parallel or Divergent Development?], "Riigiõiguse Aastaraamat (Annual Book of Constitutional Law)" 2021/2, pp. 53-87.

particularly towards authoritarianism, can also be seen in the further national development of Poland and Estonia.

In Estonia, the beginning of the basic rights tradition can be seen at the earliest in the 1889 judicial reform.<sup>5</sup> As part of the Russian Empire, Estonia also became subject to the manifesto of 17 October 1905<sup>6</sup> – on the basis of which unprecedented freedom of expression prevailed in the Russian Empire<sup>7</sup> – and, on 23 April 1906, to the part of fundamental rights incorporated into the so-called Fundamental Laws of the Russian Empire, that is to say, the Constitution.<sup>8</sup> The adoption of both the 1905 Manifesto and the 1906 Constitution were welcomed by the Estonian general public – it was now possible to present a claim to the court when the Tsarist official closed a newspaper or forbade an intended assembly, relying on the violation of basic rights. Jaan Tõnisson, the editor of the newspaper “Postimees” and an active politician in the independent Republic of Estonia, who was twice elected as the State Elder, pointed out: “The Constitution has brought along political rights at the request of the people and the land. The concern and duty of the citizens of the state must now be to defend and uphold the new regime of state and political rights. Only then will the new regime of state and political freedom stand up, when a strong civic-mindedness is ready to fight for it, to carry it with all its will and power”.<sup>9</sup> Despite the fact that freedom of expression and assembly were meant to be declaratory in the Constitution, people started to use them actively and demand their rights in Estonia.

The Fundamental Laws of 1906 were precisely the constitutional act that established basic rights in both Estonia and Poland. In Poland, the basic rights and privileges granted to the Polish nobility against the royal power in the 14<sup>th</sup> century are regarded as the beginning of the establishing the basic rights. Also the Constitution of 3 May 1791 is considered to be the first democratically drafted and

5 T. Anepaio, *Justice Laws of 1889 – a Step in Estonia's Constitutional Development*, “Juridica International” 2005/X, pp. 150-160. See also H. Siimets-Gross, M. Leppik, *Estonia: First Landmarks of Fundamental Rights*, [in:] M. Suksi, K. Agapiou-Josephides, J.-P. Lehnens, M. Nowak (eds.), *First Fundamental Rights Documents in Europe*, Cambridge–Antwerp–Portland 2015, pp. 295-308.

6 26803, [in:] “Полное собрание законов Российской Империи”, Соб 3. Том XXIV. Санкт Петербург 1905. For a summary of this impact, see T. Karjahärm, *Revolutsioon ja sõda*, [Revolution and War], [in:] Eesti ajalugu V. Pärisorjuse kaotamisest Vabadussõjani [Estonian History V. From the Abolition of Serfdom to the War of Independence], Tartu 2010, p. 356.

7 Ibidem, p. 357.

8 27805, [in:] *Полное собрание законов Российской Империи*, Соб 3. Т. XXVI, Санкт Петербург 1906. L. Schulz, *Das Verfassungsrecht Russlands*, [in:] *Russlands Aufbruch ins 20. Jahrhundert*, Freiburg 1970, p. 47.

9 J. Tõnisson, *Rahvakoosolek politiliste õiguste pärast. Eesti näitusehoone ruumides* [A referendum because of political rights. In the rooms of the Estonian exhibition building.] 30 October 1905, “Postimees” 31 October 1905, No 238, p. 1.

adopted Constitution of Europe in Polish legal historical literature.<sup>10</sup> Accordingly the Constitution of 1906 and the basic rights established by it are generally not considered important nor mentioned in the Polish tradition.<sup>11</sup> However, bearing in mind that the Constitution of 1906 did not extend what had previously been in force in the Polish territories and that Poland had long been an independent state (and that following the division of Poland there was no statehood), it may not be very surprising that Polish researchers do not consider the granting of basic rights by the 1906 Russian Constitution to be significant. In Estonia, the situation was different, because in the past there had been no statehood nor an act clearly establishing basic rights under which one could demand anything at all. In parallel, the first republican constitutions were also issued in Estonia and Poland almost at the same time: In Estonia, the Constituent Assembly (Asutav Kogu) adopted the Constitution on 15 June 1920<sup>12</sup> and the Sejm in Poland did the same on 17 March 1921.<sup>13</sup>

This article analyses the section on loyalty to the state, which is particularly specific to Estonia's next Constitution of 1937, whose Polish influence was already referred to in the deliberations of the Estonian National Assembly (Rahvuskogu) and has therefore started to be referred to as the "Polish Section" in Estonian historical and legal historical literature.<sup>14</sup> In Estonia, as in Poland, the authoritarian coup d'état had taken place under the leadership of K. Päts, the State Elder, although not before 1934.<sup>15</sup> The restriction of basic rights and

<sup>10</sup> A. Hauser, Z. Kedzia, *Poland: From the Golden Liberty of the Nobles to Fundamental Rights*, [in:] M. Suksi, K. Agapiou-Josephides, J.-P. Lehnens, M. Nowak, (Eds.), *First Fundamental Rights Documents in Europe*, Cambridge–Antwerp–Portland 2015, p. 129.

<sup>11</sup> Eg. Ibidem, pp. 132-133. M.F. Brzezinski, *Constitutional Heritage and Renewal: The Case of Poland*, "Virginia Law Review 1991, vol 1 (77), p. 72; A. Rytel-Warzocho, A. Szmyt. *Current Constitutional changes in Poland Against the Background of Polish Political and Legal Traditions*, "Juridiska zinatne", No 12, pp. 64-65. Available <https://doi.org/10.22364/jull.12>.

<sup>12</sup> *Eesti Vabariigi Põhiseadus* [The Constitution of Estonian Republic], "Riigi Teataja" [State Gazette; hereinafter „RT“] RT 1920, 113/114, 243.

<sup>13</sup> The text of the Constitution of the Republic of Poland has been used here and afterwards from *Constitution of the Republic of Poland*, March 17, 1921. printed in: *The new constitutions of Europe*, H.L. Mc Bain, L. Rogers (eds.), Garden City 1922, <http://libr.sejm.gov.pl/tek01/txt/kpol/e1921.html> (access: 10.10.2021).

<sup>14</sup> First time was probably on June 9, 1937 Eduard Riisman, at the II reading in the Estonian National Assembly (Rahvuskogu). At I reading of the Constitution of the Republic of Estonia at its 4th meeting on 8 June 1937. *Rahvuskogu. Esimene koda. Stenograafilised aruanded* [the National Assembly. First Chamber. Stenographic reports.] From 19 February to 13 August 1937. Tallinn 1938, p. 88.

<sup>15</sup> A.I. Kasekamp, *The Rise of the Radical Right, the Demise of Democracy, and the Advent of Authoritarianism in Interwar Estonia*, [in:] L. Fleishman and A. Weiner (eds.), *War, Revolution, and Governance: The Baltic Countries in the Twentieth Century*, Boston, 2018, pp. 76-100. See also M. Luts-Sootak, H. Siimets-Gross, *Eine rechtmäßige Diktatur? Estlands Verfassungsentwicklungen in der Zwischenkriegszeit des 20. Jahrhunderts*, "Parliaments, Estates and Representation" 2021, vol 41:2, pp. 201-225, DOI: 10.1080/02606755.2021.1928863.

the increase of basic obligations are more broadly characteristic of Estonia's 1937 Constitution, which is already reflected in the changed title of the chapter on basic rights.<sup>16</sup> Compared to the 1920 Constitution, the 1937 Constitution was much more restrictive of basic rights, in particular through its general orientation and attitude. It was precisely in this that the so-called "loyalty to the state" section (§ 8) played a special role, affecting the whole chapter by its very nature, because it could, in its wording – and according to the example of Poland – constitute a general border clause on fundamental freedoms.

### Reaching the Wording of the Loyalty to the State Section in the Committees

In Estonia, the State Elder's (Päts) interest in the Polish Constitution was no secret, and Poland's influence on the draft constitution and its various solutions was repeatedly talked about in the National Assembly. The first person who wrote about it (but not publicly) was Eduard Laaman, the Editor-in-Chief of the *Vaba Maa* [Free Country] newspaper, later a member of the National Assembly convened for drafting the Constitution and a lawyer close to Konstantin Päts, very soon after the entry into force of the Polish Constitution, on 1 May 1935 in his diary: "K. Päts before travelling to Poland: Wants to study the Polish constitution on holiday, establish a political council in the autumn and embark on state reform".<sup>17</sup> Laaman was invited by Päts to participate in the drafting of the Constitution on 30 November 1935, and already on 16 January it was taking a more concrete form.<sup>18</sup>

In order to draw up the draft Constitution, in January 1936, Päts set up an informal committee composed of three lawyers: Johannes Klesment, Counsellor of the Ministry of Justice; Eduard Laaman, Editor-in-Chief of the *Vaba Maa* newspaper; and Hugo Kukke, Editor-in-Chief of the *Uus Eesti* [New Estonia] newspaper. The committee was guided by the requirement of Päts that priority should be given to the development of a new constitution and that it should be based on a new constitution in Poland.<sup>19</sup>

<sup>16</sup> For more detailed information, see H. Siimets-Gross, *Social and economic fundamental rights in Estonian Constitutions between World Wars I and II: a vanguard or rearguard of Europe?*, "Juridica International" 2005/10, pp. 135-143; M. Luts-Sootak, H. Siimets-Gross, *Die „menschwürdige Existenz“ im Grundrechtskatalog des Grundgesetzes von 1920 der Estnischen Republik*, [in:] *Die rechtshistorische Exegese. Zugänge und Methoden anhand von (Lieblings-)Quellen. Ein bunter Geburtstagsstrauß mit 25 Blumen für Joachim Rückert zum 16. August 2020*, T. Keiser, P. Oestmann, T. Pierson (Hrsg.), (in publication 2022).

<sup>17</sup> *Laamani päevik 1922–1940* [Laaman's Diary 1922–1940], "Akadeemia" 2003, vol 12, p. 2777.

<sup>18</sup> *Ibidem*, "Akadeemia" 2004, vol 1, pp. 199, 205.

<sup>19</sup> A. Pajur, *Konstantin Päts*, p. 545.

The loyalty to the state clause which was the basis of the draft Constitution of Estonia was laid down in Article 6 of the Polish Constitution as follows: “It is the duty of the citizens to be loyal to the State and faithfully to discharge obligations imposed upon them by it”<sup>20</sup>

After the informal drafts and discussions of the committee, in December 1936, K. Päts, State Elder, appointed the members of the Committee on the Development of the Official Draft Constitution, also known as the Klesment Committee, after its President, Johannes Klesment.<sup>21</sup> According to Klesment, “It was the Committee’s task (...) to develop the draft Constitution in cooperation with the State Elder. There are currently no direct instructions given by the State Elder”.<sup>22</sup> By mid-February 1937, the draft was essentially completed and after it was presented to the Government, the draft was submitted on 23 February to the Estonian National Assembly.

At the meeting of the Committee on 30 December 1936, the wording was briefly debated, and Mr Kukke’s proposal was to formulate “in the imperative mood”: “[citizens] are loyal to the state and will fulfil [the duties]”. J. Klesment pointed out that “This is, then, like Hitler’s command: “Die deutsche Frau raucht nicht” [A German lady does not smoke].<sup>23</sup> At the meeting of the Committee on 9 January 1937, Klesment proposed to put it more softly: “§ 9. It is the ultimate duty of Estonian citizens to be loyal to the state and to fulfil all the obligations imposed on them by the state. Estonian citizens exercise their freedoms and rights in accordance with the common good of the state and the people”.<sup>24</sup> Klesment was of the opinion that this was a general declarative paragraph. However, no major discussion can be seen in the minutes.

<sup>20</sup> Translation in: *Constitution of the Republic of Poland*. <http://libr.sejm.gov.pl/tek01/txt/kpol/e1935-r1.html> (access: 10.10.2021). In principle, a similar provision also existed in Article 89 of Poland’s 1921 Constitution (Fidelity to the Republic of Poland is the first duty of a citizen).

<sup>21</sup> Members of the Committee: J. Klesment, K. Terras, E. Laaman, H. Kukke, A. Palvadre, A. Anderkopp.

<sup>22</sup> *Protokoll nr. 2. Riigivanema poolt määratud Põhiseaduse eelnõu väljatöötamise komisjoni koosolek esmaspäeval 14. detsembril 1936 kell 11 pl. Riigikantselei nõupidamise saalis* [Minutes No 2. Meeting of the Committee on the Development of the draft Constitution, appointed by the State Elder, on Monday 14 December 1936 at 11 pm in the meeting room of the State Chancellery], [in:] Estonian National Archives (hereinafter: “NA”) NA ERA.31.3.735. (not paginated).

<sup>23</sup> *Protokoll nr. 14. Riigivanema poolt määratud Põhiseaduseelnõu väljatöötamise komisjoni koosolek kesknädalal 30. detsembril 1936 kell 5 pl. Riigikantselei koosolekute saalis* [Minutes No 14. The meeting of the Committee for the Elaboration of the Draft Constitution, appointed by the State Elder, midweek on 30 December 1936 at 5 p.m. in the meeting room of the State Chancellery], [in:] NA ERA.31.3.735, p. 83.

<sup>24</sup> *Protokoll nr. 22. Riigivanema poolt määratud Põhiseaduseelnõu väljatöötamise komisjoni koosolek laupäeval, 9. jaanuaril 1937 kell 5 pl. Riigikantselei koosolekute saalis* [Minutes No 22. The meeting of the Committee for the Elaboration of the Draft Constitution, appointed by the State Elder, on Saturday 9 January 1937 at 5 p.m. in the meeting room of the State Chancellery], [in:] NA ERA.31.3.735., l 125. This is also the case in the minutes of 17.1.1937, p. 155.

During the revision on the following day, the section about loyalty to the state had become § 8; the wording remained essentially the same.<sup>25</sup> Mr Laaman commented on this in his diary on 26 January, as follows: "I propose that the clause on the common good of § 8 should be omitted altogether from the [chapter of the] basic rights of a citizen, or that it be defined more concretely, because otherwise it will render the Constitution authoritarian. Kukke and Klesment were excited. Kukke says that without the imposition of duties, there will be disorder, Klesment says that if this § [section] is to be deleted, then the whole Constitution must be redone. Also Palvadre thinks there is no staying with the liberalist constitution. Klesment notes that they have not thought of an authoritarian order, but agrees with me that this recalls the Nazi *Gemeinnutz vor Eigen nutz* (common good before one's own gain)."<sup>26</sup>

Mr Laaman also expressed his views before the Committee, which led to a rewording of the draft – still because of "Mr Laaman's objections" by Klesment: "It is the ultimate duty of Estonian citizens to be loyal to their state and to fulfil all obligations imposed on them by law in the interest of the state and society, and to contribute to the benefit of the state and of the people".<sup>27</sup> This wording also suggests some of Poland's influence in a softened way, namely that the exercise of rights must be compatible with the common good of the state. However, there is nothing to prevent the use of means to protect the 'common good of the state and of the people' which, in essence, makes the exercise of basic rights impossible under the pretext of anti-statism.

As a result of the proceedings of the Klesment Committee the section was formulated as of 8 February 1937 as follows: "§ 9: It is the ultimate duty of Estonian citizens to be loyal to the state and to conduct their entire activities in accordance with the common good of the state and the people".<sup>28</sup>

<sup>25</sup> *Protokoll nr. 23. Riigivanema poolt määratud Põhiseaduseelnõu väljatöötamise komisjoni koosolek pühapäeval, 10. jaanuaril 1937 kell 6 õhtul pl. Riigikantselei koosolekute saalis* [Minutes No 23. The meeting of the Committee for the Elaboration of the Draft Constitution, appointed by the State Elder, on Sunday 10 January 1937 at 6 p.m. in the meeting room of the State Chancellery], [in:] NA ERA.31.3.735., p. 130.

<sup>26</sup> 26.01.1937, *Laaman's Diary...*, "Akadeemia" 2004, vol 2, p. 459.

<sup>27</sup> *Protokoll nr. 41. Riigivanema poolt nimetatud Põhiseaduseelnõu väljatöötamise komisjoni koosolek neljapäeval, 28. jaanuaril 1937 kell 5 pl. Riigikantselei koosolekute saalis* [Minutes No 41. The meeting of the Committee for the Elaboration of the Draft Constitution, appointed by the State Elder, on Thursday 28 January 1937 at 5 p.m. in the meeting room of the State Chancellery], [in:] NA ERA.31.3.735, p 237.

<sup>28</sup> *Eesti Vabariigi Põhiseadus* [Constitution of the Republic of Estonia], [in:] NA ERA.31.3.735. (not paginated, p. 1 of the draft).

## Reaching the final wording of the Loyalty to the State Section in the Committees and the National Assembly

The Estonian National Assembly was a bicameral assembly which was convened after a referendum about drafting the new constitution was held. The First Chamber had 80 members and was elected – opposition parties were not allowed to participate. The Second Chamber contained 40 representatives of corporate chambers. The Estonian National Assembly assembled between 18 February 1937 and 17 August 1937.

On 23 February 1937, K. Päts submitted to the National Assembly a draft already developed, which in Estonian literature is referred to as the State Elder's draft. § 8 of this draft provided that "It is the duty of Estonian citizens to be loyal to the state, to defend the state and to contribute to the development of the state. Every citizen must bear the obligations imposed on him or her by law. Any act detrimental to the state and its development shall be prevented by the state by means of legal remedies".<sup>29</sup> Journalist Eduard Salurand found, commenting on this Section, that it "stresses (...) only the obligation of citizens against the state and is therefore one-sided and should be complemented by the sentence stating the obligations of the state".<sup>30</sup> He does not consider necessary the existence of the final phrases of Section 8 of the draft on the fulfilment of obligations imposed by law and on the prevention of harmful activities. However, Salurand considers that even the assertion that "the so-called 'general interest clause' is a novelty of the draft Constitution" is incorrect. The principle of the inviolability of private property also includes an obligation against society, as well as in the social protection section.<sup>31</sup> According to E. Laaman, in the opinion of the National Assembly, that section was similar to "section 10 of the new Polish Constitution, which gives normative shape to the declaration in section 5(3) of the same Constitution that the limits of citizens' freedoms are determined by the general interest, thus making the governmental power authoritarian".<sup>32</sup> Compared to the previous and more declaratory version proposed by Laaman, this wording is aimed directly at restricting the exercise of basic rights or preventing harmful conduct. Since the prevention of harmful acts is in the same section with the duty to bear the obligations and duty of loyalty to the state, non-fulfilment of those obligations can be easily interpreted as an act which is detrimental to the state.

<sup>29</sup> E. Laaman, *Kodaniku põhiõigused...*, p. 358.

<sup>30</sup> E. Salurand, *Kodanike põhiõiguste ja kohustuste küsimusi* [Issues of citizen's basic rights and obligations], "ERK" 1937, vol 2, p. 31.

<sup>31</sup> *Ibidem*, pp. 34-35.

<sup>32</sup> E. Laaman, *Kodaniku põhiõigused...*, p. 358.

By contrast, the Minister of the Interior and the former Chairman of the Estonian-Polish Society, Kaarel Eenpalu, in the I Chamber of the General Committee of the National Assembly, considered that: “this is the only section in this chapter that concerns citizens’ duties in a declarative manner, all others concern obligations in a more specific way. (...) I do not think that many disputes should arise about the fact that the section about the declaration of obligations must remain in the Constitution. (...) The attitude towards the Polish Constitution has been somewhat negative, I would point out, precisely towards the Polish Constitution, and people have wanted to keep away from it. This project therefore does not follow the Polish Constitution. The Polish Constitution, both in its design and in its regulatory part, is one of the most exemplary and beautiful in terms of literacy and content. Apparently, this beautiful part has been developed by a thorough professor, and as a result there is such a valuable creation”.<sup>33</sup>

The fact that several sections followed the lead of Poland was contemporarily widely known; in the National Assembly, its member Oskar Lõvi stressed the inappropriateness of the Polish Constitution for Estonian circumstances<sup>34</sup>, and some, such as Ago Anderkopp, the General Rapporteur for the draft Constitution in the Second Chamber of the National Assembly, agreed in principle with him on the inappropriateness of the example of the Polish Constitution.<sup>35</sup>

As regards § 8, the similarity with Poland was highlighted in the National Assembly by Eduard Riisna (Riisman), Chairman of the Workers Union (Tööühingute Liit), on 9 June 1937: “This section is also included in the constitution of some countries, especially in the Polish Constitution. But my guess is we can still keep it out of our Constitution. Not that I am essentially arguing against it, not at all, but that it is a lowering of our own value if, in the Constitution, we have to underline it [loyalty to the state]. The following paragraphs say the same as the first paragraph and the transition to the other paragraphs is clear that without any impediment, we can delete the first paragraph and liquidate this Polish section”.<sup>36</sup>

<sup>33</sup> *Protokoll nr 4*, op. cit. p. 15.

<sup>34</sup> Oskar Lõvi’s speech in the National Assembly, at the I reading of the Constitution of the Republic of Estonia. 4th meeting, 8.6.1937, *Rahvuskogu. Esimene Koda* [National Assembly. First Chamber], p. 36.

<sup>35</sup> This was highlighted by Anderkopp on p. 155, quote from pp. 159-160. The speech is available: *Rahvuskogu teise koja põhiseaduse eelnõu üldaruandja A. Anderkopp’i kõne Rahvuskogu teise koja koosolekul 6. juulil 1937* [Speech by A. Anderkopp, the General Rapporteur for the draft Constitution of the Second Chamber of the National Assembly, at the meeting of the Second Chamber of the National Assembly on 6 July 1937], [in:] *Põhiseadus ja Rahvuskogu* [Constitution and National Assembly], Tallinn 1937, pp. 152-168.

<sup>36</sup> E. Riisman, at the II reading in the National Assembly, p. 88.

Professor of International Law and Representative of the University of Tartu to the National Assembly, Ants Piip, noted when speaking at the National Assembly that “if we mention the obligations of citizens under Section 8 of the Constitution, this is still a general declaration without any content”<sup>37</sup>. Eduard Laaman also criticised Section 8 again in the National Assembly, suggesting the existence of a “general interest clause” could still be “reconsidered”.<sup>38</sup> He meant the third sentence of the State Elder’s draft: “Any act detrimental to the state and its development is hindered by the state power by means of legal remedies.” He noted that “the general interest, the common good of the state and the people (...) is one of the high moral norms”, but not legal, since the legal content of the norm includes both obligation and “demand”. According to Laaman, the problematic question is who determines the general interest, who is justified to demand for the implementation of the general interest, and what the general interest is. It should be done by the government or a majority in parliament. But – “this clause stands in authoritarian constitutions, and there it has a definite point. The authoritarian principle itself is expressed there. An authoritarian government is at every moment empowered to explain what the general interest is”.<sup>39</sup> In Laaman’s opinion, in the case of a democratic regime, this is not possible.

The so-called Loyalty to the State section was not entirely excluded from the 1937 Constitution, but in conclusion, it was worded as follows: “§ 8. The supreme duty of every citizen is to be loyal to the Estonian State and to its constitutional order. Legal obligations and duties devolve upon the citizen in consequence of his membership in the Commonwealth. This membership also gives rise to the citizen’s legal rights and freedoms”.<sup>40</sup> All in all, the wording

37 A. Piip, *Rahvuskogu Esimese ja Teise Koja Põhiseaduse eelnõu-osade komisjonide 1. ühine koosolek. 2. märtsil 1937* [First joint meeting of the Committees on draft parts of the Constitution of the First and Second Chambers of the National Assembly. On 2 March 1937], [in:] *Rahvuskogu üldkoosolekute ja põhiseaduse eelnõu-osade komisjonide ühiste koosolekute stenograafilised aruanded* [Stenographical reports of the general meetings of the National Assembly and of the joint meetings of the Committees on draft parts of the Constitution], Tallinn 1938, p. 14.

38 In his next speech, Piip also agreed with Laaman: “(...) the second subsection of § 8 brings a new moment in, for which I would warn and please consider whether or not to include it.” A. Piip, *Rahvuskogu Esimese ja Teise Koja Põhiseaduse eelnõu-osade komisjonide 3. ühine koosolek. 3. märtsil 1937* [Third joint meeting of the Committees on draft parts of the Constitution of the First and Second Chambers of the National Assembly. On 3 March 1937], *ibidem*, p. 46.

39 E. Laaman, *Rahvuskogu Esimese ja Teise Koja Põhiseaduse eelnõu-osade komisjonide 2. ühine koosolek. 2. märtsil 1937* [Second joint meeting of the Committees on draft parts of the Constitution of the First and Second Chambers of the National Assembly. On 2 March 1937], *ibidem*, p. 35.

40 *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. Official edition*, Tallinn 1937.

of the Loyalty to the State Section became more precise, also the vague clause “for the common good of the state and the people” was omitted. While the Klesment Committee’s draft also highlighted citizens’ rights as opposed to their obligations, the additions to the State Elder’s draft resulted in an obligation to protect and contribute to the development of the state, as well as the fulfilment of legal obligations. And also the possibility for the state to use legal remedies in the event of damage to the state and its development. As such, it would have given the courts and the executive power a free hand to interpret the damage to the state and its development broadly. It is this part of the provision that changed most during the discussions and once again the rights and obligations arising from the national society were added for the sake of balance. Although it is also possible to interpret loyalty to the state and to the constitutional order as restricting basic rights, the wording of Section 8, which was finally included in the Constitution, gave far fewer possibilities for abuse than the earlier versions, which used the concept of the common good of the state and of the people. However, there remains an emphasis on the obligations, which have clearly been given an advantage over rights. However, how Section 8 as a whole was applied in practice, has not yet been examined.

## Conclusion

The ideological example for the 1937 Constitution of Estonia was, at the request of the State Elder Konstantin Päts, the 1935 Polish Constitution. This also had to be the case specifically for the Loyalty to the State Section. In the Committees formed by Päts, as well as in the National Assembly, the inclusion or deletion and the wording of this Section were thoroughly debated. Both the Committees and the National Assembly were largely seeking to avoid the arbitrariness of the state, and the authoritarian governance which could be exercised on the basis of this Section. According to the express wish of the State Elder to follow the model of the Polish Constitution and the authoritarian governing style of Päts himself, these discussions can, in turn, be regarded in a certain way as an indicator of free discussion and decision making. Although the discussions over the draft of the Constitution do not show any direct pressure by Päts, during them the general guidelines and wishes given by Päts, e.g. when amending the chapter on basic rights, were followed. At the same time, it can be seen that the Committees and the National Assembly had broad powers to (re-)formulate the Loyalty to the State Section and that the initial version changed significantly during the discussions.

When comparing the final wording of the Loyalty to the State Section, i.e. Section 8, with Section 6 of the Polish Constitution, both parts have remained: loyalty to the state and the obligations. However, the tonality and context of the Estonian Section are more liberal. While in the Polish Constitution one must

take into account the “common good” clause and the fact that no action must be contrary to the objectives laid down by the state, the relevant provision of Estonia emphasizes not only the state but also the constitutional order and rights. In addition, the obligations imposed by the state in the Estonian Constitution are not to be performed “diligently”, but they result from “belonging to the national society” in the same way as rights. However, the duty of their diligent fulfilment – as in the Polish Constitution – was left out.

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## SUMMARY

### Duty of Loyalty to the State or the 'Polish Section' in the 1937 Estonian Constitution

In Estonian legal literature, there was and is a common comparison between the constitutions of the authoritarian regimes of Poland (1935) and Estonia (1937). The ideological model of the 1937 Estonian Constitution was at the request of the State Elder Konstantin Päts the Polish Constitution (1935). One of the most prominent sections that had the Polish Constitution as model, was loyalty to the state. Compared to the first, 1920 Estonian Constitution, the 1937 Constitution was much more restrictive of basic rights, in particular through its general orientation and attitude. Although the Section about the loyalty to the state was first formulated

on the basis of the Polish example, the Committees for drafting the constitution and the National Assembly had broad powers to (re-)formulate the section and the initial version changed significantly during the discussions. The main aim of changes was to avoid as much as possible the arbitrariness of the state and authoritarian governance. The members of the National Assembly were mostly loyal to Päts, as the opposition had boycotted the elections and only four opponents were elected. Although there does not appear to be any direct pressure by Päts from the discussions, in general, the guidelines and wishes of Päts were followed. In the final wording of the Loyalty to the State Section (“§ 8. The supreme duty of every citizen is to be loyal to the Estonian State and to its constitutional order. Legal obligations and duties devolve upon the citizen in consequence of his membership in the Commonwealth. This membership also gives rise to the citizen’s legal rights and freedoms”.) both parts of Polish Constitution Article 6 have remained: loyalty to the state and obligations. However, the tonality and context of the Estonian Section are more liberal and the rule of law oriented, as the relevant Estonian provision emphasizes not only the state but also constitutional order and rights.