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EVOLUTION OF ADMINISTRATIVE JUSTICE IN THE BALTIC STATES IN 1918–1940

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ABSTRACT

At the beginning of the twentieth century, administrative courts were established one after another in European countries. In this article, scholars review the origins of administrative justice in three Baltic states – Lithuania, Latvia, and Estonia – when all three states declared their independence. In the article, the authors reveal the legal regulation of administrative justice, the procedural provisions of judicial review, the system of institutions that supervised the legality of administrative acts, and their jurisdiction during the period from 1918 to 1940 in the Baltic states.

KEYWORDS

Administrative Justice, Judicial Review, Administrative Court, the Baltic states

INTRODUCTION

Judicial review is one of the essential components of the rule of law. The modern understanding of administrative justice (the supervision of the legality of administrative acts) began to evolve in the second half of the nineteenth century. In France, the beginning of administrative justice dates to 1872, when the French Council of State [*Conseil d'Etat*] was given litigation jurisdiction. In Austria-Hungary, the beginning of administrative justice dates to the establishment of the Administrative Court in Vienna in 1876, and in Germany, to the establishment of the Administrative Court in Baden in 1863¹.

At the beginning of the twentieth century, administrative courts were established one after another in European countries, and codes of administrative court proceedings were adopted. For instance, in Czechoslovakia, the law on the Supreme Administrative Court and its jurisdiction was adopted in 1918², and in Poland, in 1922³. Administrative courts were also functioning in Latvia⁴ and Estonia⁵. Lithuanian jurist M. Römeris repeatedly contended that administrative courts were functioning in European countries, with a few exceptions – in Lithuania and the Soviet Union⁶.

In this article, scholars review the origins of administrative justice in three Baltic states, which date back to 1918, when all three states declared their independence. Until then, all three countries had been part of the Russian Empire for several centuries. Legal regulation of the Russian Empire had a great influence on the newly formed and re-established Baltic states; for example, procedural laws (the Civil Procedure Law and the Criminal Procedure Law), adopted by the Russian Empire government, were not replaced and remained in force in Lithuania and Latvia until the Soviet occupation (in Estonia, the Criminal Procedure Code was adopted in 1934). The impact on administrative justice was also significant, especially in Latvia and Estonia, where the establishment of administrative courts was based on the Decree on Administrative Courts, adopted by the Russian Provisional Government in 1917. Lithuania took a different path: the Russian Decree on Administrative Courts never became part of the legal regulation in Lithuania.

¹ Vladimír Sládeček, Veronika Tomoszková, et. al. *Správní soudnictví v České republice a ve vybraných státech Evropy* (Praha: Wolters Kluwer, 2010), 141, 182.

² Zákon č. 3 ze dne 2. listopadu 1918 o nejvyšším správním soudě a o řešení kompetenčních konfliktů, Scribbr. November 30, 2021 // http://www.nssoud.cz/historie/3_1918.pdf.

³ Ustawa z dnia 3 sierpnia 1922 r. o Najwyższym Trybunale Administracyjnym, Scribbr. November 25, 2021 // <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19220670600>.

⁴ Kārlis Dišlers, "Latvijas administratīvā procesa ievadjaudājumi," *Tieslietu Ministrijas Vēstnesis* 1 (1936): 1.

⁵ Jānis Kalacs, "Paralēles starp Igaunijas un Latvijas likumiem par administratīvām tiesām," *Tieslietu Ministrijas Vēstnesis* 4 (1936): 870.

⁶ Michał Römer, *Dziennik 1930–1933*, MDWLLAS, f. 138-2260, 34; "Mūsų bendradarbio interviu su prof. M. Römeriū Kredito Įstaigų ir Kooperatyvų Inspekcijos," *Talka* 7-8/285 (1930): 13–14.

In the article, the authors reveal the legal regulation of administrative justice, the procedural provisions of judicial review, the system of institutions that supervised the legality of administrative acts, and their jurisdiction during the period from 1918 to 1940 in the Baltic states. Such a comparative study has not yet been carried out. However, separate studies on administrative justice from 1918 to 1940 have been performed. The history of the Lithuanian administrative court was analysed only by I. Deviatnikovaitė, the co-author of this article.⁷ Also, there are some studies that were written in the period from 1918 to 1940.⁸ M. Maksimaitis' work on the Council of State of Lithuania must be mentioned.⁹ The roots of the Estonian administrative court have also been researched.¹⁰ The evolution of Latvian administrative justice has been thoroughly analysed by the contemporaries¹¹, and after the restoration of independence, only two articles have been devoted to the origin of the administrative jurisdiction: one is a general overview of the genesis of the administrative jurisdiction in Latvia¹², and the other is a comparison of locus standi in the administrative procedure in the interwar period and nowadays.¹³ Nevertheless, a comparative analysis of the origins of administrative justice in the three Baltic states has not been carried out yet, and this fact reflects several historical curiosities. Although all three Baltic states culturally, linguistically, and politically were self-identified as having no legal continuity with Russia, the legal provisions of the Russian Empire continued to be implemented in the new democracies, while they became obsolete in the state of their origin. In turn, regarding understanding and implementation of the judicial review, the Baltic countries did not have a uniform solution.

Abbreviations used in the article are as follows: CSARL – the Central State Archive of the Republic of Lithuania, MDWLLAS – the Manuscript Department of the

⁷ Ieva Deviatnikovaitė, *Administracinio teismo istorija Lietuvoje 1918–1940* (Kraków: Wydawnictwo Księgarnia Akademicka, 2021).

⁸ Mauša Finkelšteinis, "Administracinis teismas," *Kultūra* 4 (1928); Viktoras Fridšteinas, "Dėl administracinio teismo Lietuvoje," *Teisė* 38 (1937); Konstantinas Račkauskas, "Lietuvos administracinio teismo pradai," *Teisė* 37 (1937): 55–65.

⁹ Mindaugas Maksimaitis, *Valstybės taryba Lietuvos teisinėje sistemoje 1928–1940* (Vilnius: Justitia, 2006).

¹⁰ Kalle Merusk and Ivo Pilving, eds., *Halduskohtumenetluse seadustik. Kommenteeritud väljaanne* (Administrative Court Procedure Act. Commentary) (Tartu: Tartu Ülikooli Kirjastus, 2012); Ivo Pilving and Madis Ernits, "Geschichte der Verwaltungsgerichtsbarkeit in Estland"; in: Karl-Peter Sommermann and Bert Schaffarzik, eds., *Handbuch der Geschichte der Verwaltungsgerichtsbarkeit in Deutschland und Europa* (Berlin: Springer 2019); Artur-Tõeleid Kliimann, *Haldusprotsess* (Tartu: Akadeemilise Kooperatiivi Kirjastus, 1937); Artur-Tõeleid Kliimann, "Diritto processuale amministrativo dell'Estonia," *Annuario di Diritto Comparato e di Studi Legislativi* XIII (1937): 77.

¹¹ Vladimirs Bukovskis, "Administratīvās tiesas reforma," *Tieslietu Ministrijas Vēstnesis* 7–9 (1925): 820; Jānis Kalacs, "Pārdomas par administratīvo tiesu," *Tieslietu Ministrijas Vēstnesis* 2 (1937): 318; "Likumprojekts par administratīvo procesu," *Tieslietu Ministrijas Vēstnesis* 4 (1940): 715; Kārlis Ducmanis, "Administratīvā justice, it īpaši Skandināvijas valstīs," *Tieslietu Ministrijas Vēstnesis* 5 (1939): 1135.

¹² Inga Bērtaite-Pudāne, "Administratīvās justīcijas un administratīvā procesa ģenēze Latvijā," *Jurista Vārds* 51/52 (2021).

¹³ Inga Bērtaite-Pudāne, "Tiesības un tiesiskās intereses administratīvajā procesā tiesā: pirms 100 gadiem un mūsdienās," *Jurista Vārds* 51/52 (2021).

Wróblewski Library of the Lithuanian Academy of Sciences, SCAD – the Supreme Court Administrative Law Department (Estonia).

1. ESTABLISHMENT OF ADMINISTRATIVE COURTS AND THEIR ORGANISATION IN LATVIA AND ESTONIA

The idea of the necessity of administrative courts had been bred in Russian legal science before the Revolution of 1917. Already at the beginning of the twentieth century, notable Russian legal scholar N. Korkunov argued that to ensure complete supervision of the legality of a government, it is necessary to establish special administrative courts. In his opinion, it is important that administrative courts be real courts, i.e., that they comply with all the basic conditions of an appropriate judicial order, in particular, the requirement that full independence of the courts from the government be ensured.¹⁴ The Russian legal scholar produced a rather significant debate on the importance and necessity of administrative jurisdiction.¹⁵ After the February Revolution of 1917, on 30 May, the Russian Provisional Government adopted the Decree on Administrative Courts (Ru. Положение о судахъ по административнымъ дѣламъ), which for the first time provided for the establishment of genuine administrative courts.¹⁶ This act had a great influence on the origins of Latvian and Estonian administrative justice.

The founders of the newly established states of Latvia (18 November 1918) and Estonia (24 February 1918) considered it important to start implementing the rule of law, including judicial review of administrative decisions. For that purpose, the Provisional Government of the Republic of Estonia adopted the Code of Administrative Court Procedure on 12 February 1919¹⁷. In essence, the Estonian Code of 1919 was a translation of the 1917 decree of the Russian Provisional Government. The People's Council of Latvia, the provisional legislative body, adopted Provisional Regulations on Courts of Latvia and Court Proceedings.¹⁸ Article 1 of the Regulations stated that Courts of Latvia and institutions affiliated with them shall act in accordance with the local and Russian laws, which were in force in Latvia until 24 October 1917. However, in 1921, the Law on Administrative Courts of the Republic of Latvia¹⁹ was adopted by the Constitutional Assembly of the Republic of Latvia, which replaced the People's

¹⁴ Nikolai Korkunov, *Russkoe Gosudarstvennoe Pravo* (S. Peterburg; Tipografia M. M. Stasulevicha, 1909), 648.

¹⁵ See: Jurij Starilov. "Geschichte des Verwaltungsrechtsschutzes in Russland"; in: Karl-Peter Sommermann and Bert Schaffarik, eds., *Handbuch der Geschichte der Verwaltungsgerichtsbarkeit in Deutschland und Europa* (Berlin: Springer, 2019).

¹⁶ *Ibid.*: 1630–1631.

¹⁷ *Administrative Court Procedure Code*, Official Gazette (Estonia) 10–23 (1919).

¹⁸ *Provisional Regulations on Courts of Latvia and Court Proceedings*, Collection of Laws and Regulations of the Provisional Government of Latvia 1 (1919).

¹⁹ *Law on Administrative Courts of the Republic of Latvia*, Official Gazette 64 (1921).

Council. As noted by Latvian contemporaries, major parts of the Law of 1921 were simply a translation of the Russian Law of 1917.²⁰ The Law on Administrative Courts of the Republic of Latvia of 1921 ceased the application of the Russian Law of 1917. This Law, with insignificant amendments, was in force until the Soviet occupation in 1940. The Code of Administrative Court Procedure of the Republic of Estonia was also in force until 1940.

The Law on Administrative Courts of the Republic of Latvia of 1921 provided that jurisdiction in administrative cases shall be conferred on magistrates, regional courts, and the Senate (Article 1 of the Law). Except for the Department of Administrative Cases of the Senate²¹, no special administrative courts were established. Special divisions for administrative cases had been established in regional courts, but these divisions were not established by a law.²² Most administrative cases in courts were at least formally reviewed by the same judges who reviewed civil and criminal cases. Therefore, the term "administrative courts" used in the title of the Law was ambiguous in the sense that no administrative courts with special jurisdiction were established. It was noted in 1925 that in terms of judicial independence, the Latvian administrative courts, being genuine courts and mostly resembling the English system, were not special administrative courts either and contrasted with the French and German systems, where administrative "courts", except the Prussian *Oberverwaltungsgericht*, were composed by the government itself.²³ Article 6 of the Law prescribed that a magistrate shall review complaints against county municipalities and officials, a regional court shall review complaints against city and regional municipalities and officials, as well as state institutions administering in a city or region, and the Senate shall review complaints against ministers as well as other central and regional state institutions and their superiors.

Under the Regulation of the Provisional Government "On the Establishment of Provisional Courts"²⁴, the possibility to establish separate administrative law departments in Peace Councils (Circuit Courts, i.e., second instance) was provided in Estonia. In reality, this option was never used during the period concerned. Similarly to the Russian temporary solution of 1917 (magistrates or judges of the peace, administrative judges),²⁵ general judges in district courts (first instance) and circuit courts of appeal started adjudicating administrative cases in lower instance courts.

²⁰ Vladimirs Bukovskis, *supra* note 11: 820; Jānis Kalacs, *supra* note 11: 318; "Likumprojekts par administratīvo procesu," *supra* note 11: 715.

²¹ The Department of Administrative Cases of the Senate of Latvia was created in December 1918 and started its activity before the Law on Administrative Courts of the Republic of Latvia of 1921.

²² Kārlis Ducmanis, *supra* note 11: 1135.

²³ Vladimirs Bukovskis, *supra* note 11: 828.

²⁴ *On the Establishment of Provisional Courts*, Official Gazette (Estonia) 1 (1918).

²⁵ Peter Liessem, *Verwaltungsgerichtsbarkeit im späten Zarenreich* (Frankfurt am Main: Vittorio Klostermann, 1996), 174.

An administrative department was established merely in the Supreme Court of the Republic of Estonia, which had five members²⁶. According to Articles 2–3 of the Code of Administrative Court Procedure of the Republic of Estonia, district judges had jurisdiction over claims filed against rural municipality agencies, township agencies, and police commissioners. Circuit courts adjudicated claims against urban and rural municipality councils and administrations as well as against cultural autonomy bodies of national minorities. A party to the proceedings was able to file a review claim with the Supreme Court against a judgement made by a district judge or by a circuit court. In adjudicating a review claim, the Supreme Court acted as the second and highest court instance. In many cases (e.g., claims against ministers and ministries as well as against decisions of other higher administrative authorities), the Supreme Court was the only court instance.

2. JURISDICTION OF ADMINISTRATIVE COURTS AND DISTINCTION BETWEEN ADMINISTRATIVE AND CIVIL CASES IN LATVIA AND ESTONIA

Under Article 2 of the Code of Administrative Court Procedure of the Republic of Estonia, the jurisdiction of administrative courts was regulated via reviewed authorities and contested operations. When an official was not explicitly listed, one had to move up the ladder of intra-authority appeals against the official until one reached a level where one was allowed to contest the decision in court. The list of jurisdictions excluded the Cabinet of the Ministers, the Prime Minister, the Head of State, the Commander-in-Chief of the Armed Forces, and the Minister of the Interior in the capacity of the Head of Internal Defence. In the opening years of its activity, the Supreme Court occasionally interpreted the jurisdiction provisions of the Code in an expanding manner, referring to the overall spirit of the law or to Article 15 of the Constitution of 1920 (*Eesti Vabariigi põhiseadus*²⁷) (the right to address state authorities). Thus, for instance, the Administrative Department of the Supreme Court of the Republic of Estonia did not apply Article 789 of the Russian Civil Service Act, under which officials were unable to file a claim against their dismissal. However, the Department did not recognise the existence of a legal standing regarding Cabinet orders or Prime Minister orders. Their judicial contestation was possible merely

²⁶ Note: Between the world wars, the Administrative Department of the Supreme Court of the Republic of Estonia adjudicated a total of 16,546 cases, of which 4,572 cases concerned state taxes, 3,506 cases concerned land adjustment, 1,446 cases concerned pensions, 1,073 cases concerned local taxes, 1,067 cases concerned ownership matters, and 1,002 cases concerned civil service relationships and social protection. While claims concerning the land reform and internal security were more frequent in the first years of the republic, the 1930s were dominated by taxation and social welfare disputes. See: Ivo Pilving, "Eesti halduskohtumenetluse loomine ja areng enne II maailmasõda," *Juridica* 27 (2019).

²⁷ *Constitution of 1920*, Official Gazette (Estonia) 113/114 (1920).

indirectly, when a claim was brought against the implementation of the decision by lower-ranking authorities.²⁸

Also, the Supreme Court did not consider it possible to directly contest the "regulations of general application" issued by the Executive. It was merely possible to contest the application of the regulation. Thereby, each court instance had to verify on its own the constitutionality of the applicable Acts and regulations, especially that of legislation in force since the Russian regime.²⁹

There were some issues with the distinction between administrative and civil cases. Private activities of the administration were within the jurisdiction of civil courts (e.g., in granting a lease of business enterprises). Legal scholars led by, above all, legendary administrative law professor Artur-Tõeleid Kliimann³⁰, demanded that administrative law and private law disputes be strictly distinguished. The Supreme Court preferred a pragmatic solution whereby it was possible in the administrative court procedure to, where necessary, assess civil law circumstances as a preliminary step.³¹

Under Article 3 of the Law on Administrative Courts of the Republic of Latvia, the following complaints were subject to judicial review: a) complaints of state institutions and officials on the decisions and actions of municipal institutions and officials; b) complaints of municipal councils and private natural or legal persons on the decisions and actions of municipal institutions and officials, and the decisions and actions of ministers and other state institutions; c) other complaints directly given to the competence of administrative courts. The depth of jurisdiction of administrative courts was regulated by Article 4 of the Law on Administrative Courts of the Republic of Latvia. It stated that any complaint was admissible to administrative courts only insofar as it was based on 1) a breach of a law or other mandatory prescription, 2) the use of power contrary to the given purpose, 3) the failure to perform an action that is prescribed as mandatory by a law or a bylaw; and 4) the delay of the matter. It was also expressly emphasised that the administrative courts did not review the usefulness of a decision. Hence, the scope of judicial review was clearly restricted to examining only the legality of the matter. In this aspect, the Law of 1921 differed from the Russian Law of 1917, which allowed administrative courts to examine the

²⁸ SCAD judgement, March 15/April 4, 1921, Riigikohtu otsused (1921), 43, 44; for further information, see Ivo Pilving, *supra* note 26: 660–661.

²⁹ Marelle Leppik, "Esimesi märke põhiseaduslikkuse kohtulikust järelevalvest: Riigikohtu praktika 1920. aasta põhiseaduse kehtimisajal," *Juridica* 20 (2012).

³⁰ A.-T. Kliimann (1899–1941), a student of Hans Kelsen, was one of the most famous Estonian legal scholars in the first period of independence. In 1933–1941, he was the professor for administrative law at the University of Tartu. His three monographs – "Theory of the Administrative Act", "Administrative Court Procedure", and "The Legal Order" – had considerable influence on Estonian administrative law even 50 years later, after the collapse of the Soviet Union.

³¹ Karl Guldenstubbe, "Tsiviil- ning administratiivkohtute kompetentsi piiramine," *Õigus* 10 (1929); Artur-Tõeleid Kliimann, "Tsiviilkohtu halduskohtulik eelmõist," *Õigus* 14 (1933); Ivo Pilving, *supra* note 26: 661–662.

usefulness of the decision as well; therefore, one author even concluded that Latvian administrative courts were courts of cassation.³² Such a conclusion, however, seems to be incorrect insofar as administrative courts were entitled to examine evidence, which is a classical feature that separates the competence of appellate and cassation courts.

However, Latvian regulation failed to provide guidelines for the distinction between cases subject to judicial review in accordance with the Law on Administrative Courts and civil cases. Article 3 of the Law on Administrative Courts did not give any clarification regarding legal relationships arising from the contested decision or action (i.e., public or private legal relationships). This lack of distinction was criticised as creating ambiguity and possibilities of parallel proceedings regarding the same issues.³³ The Civil Procedure Law of 1864 also did not provide precise guidelines regarding the distinction between civil cases and administrative cases. Article 1 of the Civil Procedure Law provided a note explaining that claims that were indisputable in accordance with the law shall be subject to review by the administrative authorities but not by the courts.³⁴ The Russian Senate elaborated on the distinction criterion that lies within the subject matter of the case: if the administration acted as a "power, when governing state or public matters", then such a dispute shall be decided within the administration. In turn, if the administration acted as a manager and caretaker of property owned by the state or society as a legal entity then such a claim was subjected to review in court.³⁵ Basically, this criterion developed by the Russian Senate was also used by the Latvian Senate throughout its existence.³⁶ Even in 1939, it was concluded that Article 1 of the Civil Procedure Law was the only general guideline on the distinction between the competence of administrative courts and courts of general jurisdiction.³⁷

³² Jānis Kalacs, "Novērojumi likumā par administratīvām tiesām," *Tieslietu Ministrijas Vēstnesis* 4 (1938): 966.

³³ Vladimirs Bukovskis, *supra* note 11: 820–821.

³⁴ *Sudebnie ustavi 20 nojabrja 1864 goda, s izlozheniem razsuzhdenij na koih oni osnovani*, Chast pervaja (Sanktpeterburg. Izdanie Gosudarstvennoi Kanceljarii, 1866), 15–17. Scribbr. November 30, 2021 // <http://civil.consultant.ru/reprint/books/115/65.html>.

³⁵ Vladimirs Bukovskis, *supra* note 11: 819–821.

³⁶ See, for instance, Judgement of the Senate of 20 March 1924, No. 27 in: *Latvijas Senāta spriedumi: 1918-1940. 2. sēj. Senāta Administratīvā departamenta spriedumi, 1920-1925*, Rīga, Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997–1998, 643.

³⁷ Jānis Pagasts, "Civiltiesiskie un publiski tiesiskie prasījumi," *Jurists* 7/8 (1939): 174.

3. PROCEDURAL PROVISIONS OF THE LAW ON THE CODE OF ADMINISTRATIVE COURT PROCEDURE OF THE REPUBLIC OF ESTONIA

3.1. STANDING, FILING A CLAIM

Under Article 3 of the Code of Administrative Procedure of the Republic of Estonia, private individuals could have recourse to the court only for the purpose of protecting their legal and property interests. One was not able to bring a claim in connection with purely economic consequences, the prevention of which was not the purpose of the relevant rule. For instance, the lessee of a mill could not contest local taxes related to the mill, which the owner of the mill was under a statutory duty to pay.³⁸ There was no right to bring an *actio popularis* in Estonia back in the day. However, officials exercising supervision in public interests did have the right to file protests with the administrative court. This became important, especially in exercising supervision over municipalities. According to the subjective legal protection model, one could contest a benefit granted to a third party, for instance, a building permit granted to a neighbour in accordance with the building code for the purpose of erecting an auxiliary building, appointing a competitor in applying for a position or granting a pharmacy licence to another pharmacist instead of the claimant. However, one could not file a claim against intra-administration guidelines or correspondence between authorities or in pending administrative cases where one or the other authority had expressed its initial opinion.³⁹ During court proceedings, the contested order of the Executive remained in force, i.e., the claim did not have an automatic validity-eliminating effect, but the court could provisionally suspend the implementation of the order (ACP § 13).

The entitled person had a month from the public announcement or learning of the administrative order or another activity to file a claim, unless otherwise provided by the Code (Article 9). As a rule, a claim was filed via administrative authorities (Article 11¹). An administrative decision not contested within the prescribed time limit had to be followed. According to this principle, one could not bring arguments against following an administrative decision in a subsequent dispute where no direct claim had been filed against the decision. Thus, in a dispute over collecting taxes, it was not possible to raise the issue of the lawfulness of assessing the taxes or, in a dispute over a compliance notice aimed at restoring the condition of property of value in

³⁸ SCAD judgement, March 15/May 6, 1932, Riigikohtu otsused (1932), 40, 42.

³⁹ Ivo Pilving, *supra* note 26: 662–663.

terms of heritage conservation, to review the matter of registration of the property as being of value in terms of heritage conservation.⁴⁰

3.2. HEARING AND DECIDING A CASE

Under Article 14 of the Code of Administrative Procedure of the Republic of Estonia, the parties to the administrative procedure were the claimant and the authority or official against whom a claim was filed. In addition, the authority exercising supervision over the authority against whom the claim had been filed could intervene in the proceedings. The Code of Administrative Procedure did not mention any third party, including the addressee of the contested administrative decision, but a third party was involved based on Article 663 of the (Russian) Civil Procedure Act. An administrative case could be heard in court only by way of an oral hearing (Article 17). The inquisitorial principle that was emphasised in three sections (Articles 19–21) was applied. The court was able to collect evidence on its own and was not limited to the evidence and information submitted by the parties to the proceedings.⁴¹

The Code of Administrative Procedure of the Republic of Estonia granted the court the right to, by its judgement, annul administrative decisions, order the administrative authorities and agencies to act or refrain from acting, make compliance notices aimed at remedying consequences, and even remove officials from office (Article 22). Like today, the court was not authorised to make decisions falling within the jurisdiction of the administrative authority, e.g., exceptionally discharging persons from tax liabilities.⁴² However, the court was authorised to annul an administrative decision and lead the authority with its instructions (Clause 2 of Article 2). An appeal could be granted only where a violation of law became evident in the contested administrative conduct (Articles 2, 3).

In Estonia, the main general administrative law text – the Administrative Procedure Act⁴³ – was adopted in 1935. Prior to that, judges had to adjudicate cases based on Western European doctrines and the Constitution, thus developing national law further in that regard. The Supreme Court had to teach that a substantive legal ground (i.e., an authority-delegating provision) was required for making a burdening administrative decision (e.g., designating property as being of value for heritage conservation purposes, forced sale of a right of lease or refusal to grant a permit to

⁴⁰ *SCAD judgement, December 7, 1937*, Riigikohtu otsused (1937), 45, 47; *SCAD judgement April 27/May 15, 1928*, in: Toomas Anepaio, ed., *Riigikohus: otsuste valikkogumik 1920–1940* (Tartu: Elmatar, 1999), 102, 104.

⁴¹ Ivo Pilving, *supra* note 26: 664.

⁴² *SCAD judgements no. 1927, 197; 1927, 240*, in: Jüri Valge, ed., *Riigikohtu administratiiv-osakonnas 1920.–1927. a lahendatud küsimused* (Tartu: A. Treufeldt: 1929), 9–10.

⁴³ *Administrative Procedure Act*, Official Gazette (Estonia), 4-25 (1934).

open a café).⁴⁴ At the same time, the Administrative Department of the Supreme Court considered a mandatory regulation of a town by which restrictions were imposed on market traders without a legal ground unlawful.⁴⁵ The requirement of a legal ground was laid down in Article 3 of the Constitution of 1920 ("No one can exercise Estonian state power except on the basis of the constitution or laws issued on the basis of the constitution")⁴⁶ as well as of 1937 ("No one can exercise state power except on the basis of the Constitution and laws consistent with it")⁴⁷.

Besides substantive errors, fundamental deficiencies such as, for instance, failure to state the reasons for the administrative decision and failure to hear a person (violation of Articles 49, 50, and 72 of the Administrative Procedure Act) in the administrative procedure due to which the administrative decision could have been "different in terms of its substance or aim" could also amount to the grounds for the annulment of an administrative decision. However, any violation of the rules of calling and conducting a meeting of a rural municipality council (e.g., the taking of minutes by the wrong person) did not constitute a fundamental formal error in making a council decision.

The Supreme Court's persistent demand that administrative authorities started to substantively reason their decisions in numerous fields was of utmost importance (the decisions of the Agricultural Labour Ministry regarding transfer of land, the granting of pensions, etc). The Administrative Department derived the duty to state reasons from the right of having recourse to the court: without reasons, "the administrative court cannot assess the lawfulness of the contested decision"⁴⁸. In 1925, the Supreme Court annulled the decision of the Minister of the Interior regarding the expulsion of the Vilberg family. In the written explanation given to the court, the Minister had failed to describe the events that demonstrated the threat that the claimants' posed to the state order effective on Island Naissaar: "With this the Supreme Court has been deprived of the opportunity to establish whether in the present situation the Minister of the Interior had a factual basis for exercising the authority given to...by the Cabinet of Ministers of the Republic against the claimants."⁴⁹ In 1926, the Minister of Justice tried to get rid of the burden of stating reasons by addressing the general assembly of the Supreme Court, but the latter did not accept the application for an on-the-merits hearing.⁵⁰ In a case adjudicated in

⁴⁴ Ivo Pilving, *supra* note 26: 665–666.

⁴⁵ SCAD judgement, October 11, 1935, Riigikohtu otsused (1935), 32–33.

⁴⁶ Constitution of 1920, Official Gazette (Estonia), 1920, no. 113–114.

⁴⁷ Constitution of 1937, Official Gazette (Estonia) 71 (1937).

⁴⁸ Based on the example of refusal to grant a sales permit, SCAD judgement, *Vigus* 9 (1928), 93.

⁴⁹ SCAD judgement, November 3, 1925; Eugen Maddison, "Väljasaatmisest ja elamise keelust sõjaseisukorra maksvuse ajal," *Eesti Politseileht* 6 (1926): 2.

⁵⁰ Eugen Maddison, "Asja sisuline harutamine administratiiv-kohtu korra seisukohalt," *Eesti Politseileht* 7 (1927): 297–298.

1927, the Minister had ordered the claimant charged with selling illegal alcohol and pimping to leave his place of residence in Tallinn. Since the claimant had been cleared of the charges brought against him, he asked the Minister to change the expulsion decision. The Minister denied the request without stating the reasons. This deficiency resulted in the annulment of the Minister's decision.⁵¹

Unlike the Russian decree, where judicial interference was regulated, the Code of Administrative Procedure of the Republic of Estonia did not contain clear rules or a clear understanding of how to assess discretionary decisions. Those critical of the Supreme Court, especially E. Maddison, emphasised that the court is authorised, by way of the administrative court procedure, to hear matters falling within its jurisdiction on the merits but cannot, instead of the administrative authority, weigh whether the presented circumstances are sufficient to make an order, regulation, or decision in a given case.⁵² This criticism was based on an archaic understanding that outside the limits of the discretionary powers a discretionary decision is a purely non-law decision. On the other hand, in Estonian legal writings, references were made to the *détournement de pouvoir* doctrine of the French Council of State and to the need to verify discretionary decisions, especially from the point of view of considering the purpose of the rule. The Administrative Department of the Supreme Court explained, for instance, in a case concerning the fire safety of a cinema, that a decision of the town administration may be annulled "if fire safety surveillance has been established for reasons and in circumstances that have nothing to do with the existence of a fire hazard"⁵³. After assessing the matter on the merits, the Supreme Court accepted the Interior Minister's reasons for refusing to issue passports to those who wanted to emigrate to Brazil: conduct that causes the state unnecessary costs in bringing back citizens who have emigrated thoughtlessly cannot be supported by the government.⁵⁴

The court could verify the substantiation of undefined legal terms. Under Article 3 of the Building Act⁵⁵, the town administration had the right to assess building design documentation "from the artistic perspective". That did not mean that no claim could be filed against a decision of the town administration.⁵⁶

⁵¹ SCAD judgement no. 1928, 248; Eugen Maddison, "Seaduse jõusse astunud korraldused ja kohus," *Eesti Politseileht* 8 (1928): 402.

⁵² Eugen Maddison, *supra* note 50: 299.

⁵³ SCAD judgement, October 22, 1937, Riigikohtu otsused (1937), 9, 11.

⁵⁴ SCAD judgement, November 9, 1926; Toomas Anepaio, *supra* note 40, 96, 98.

⁵⁵ *The Building Act*, Official Gazette (Estonia) 104 (1931).

⁵⁶ SCAD judgement, November 1, 1932, Riigikohtu otsused (1932), 64, 65.

4. PROCEDURAL PROVISIONS OF THE LAW ON ADMINISTRATIVE COURTS OF THE REPUBLIC OF LATVIA AND A NEW DRAFT LAW

The relevant procedural provisions were included in the Law on Administrative Courts of the Republic of Latvia. As noted already in 1936 by Latvian Senator J. Kalacs, procedural provisions of the Latvian law were quite like the Estonian regulation explained above, with a few rather irrelevant differences.⁵⁷ The Law provided a rather coherent procedural regulation with some notable peculiarities. Articles 53, 54, and 55 of the Law prescribed that a complaint against a judgement of a magistrate shall be submitted to a regional court, and a complaint against a judgement of a regional court to the Senate. The judgements of the Senate were not subject to a complaint. Article 56 prescribed that if a regional court has made a judgement as a second instance, then a complaint to the Senate shall be permissible only if a) a direct expression of a law has been breached or misinterpreted, b) if significant procedural provisions have been breached, or c) if the competence of the court has been breached. Therefore, in practice, it turned out that less important cases regarding decisions of county municipalities were subject to review in three instances, whereas significant cases regarding complaints against ministers and other central state institutions were reviewed only by the Senate. Although this system was criticized by several contemporaries,⁵⁸ it remained unaltered. Under this system, most administrative cases were decided by the Senate as the court of first instance. For example, in 1936, the Senate initiated 1,032 cases as the court of first instance, 137 cases from regional courts, that had been decided in regional courts as courts of first instance, and 11 cases from the regional courts, that had been decided by regional courts as appellate courts. In turn, in 1936, regional courts decided 528 cases acting as courts of first instance and only 68 cases acting as appellate courts.⁵⁹

The provisions of the administrative court procedure were rather concise, and the whole Law contained 74 articles. In general, the Law on Administrative Courts included all the relevant provisions to ensure that the court proceedings corresponded to the requirements of a fair trial. Two points should be emphasised. First, Article 37 of the Law prescribed the principle of the inquisitorial principle (contrary to adversarial proceedings) – the court was entitled *ex officio* to gather necessary evidence and advise parties on the submission of evidence. Secondly, the Law provided a rather novel approach regarding interim decisions. As a basic rule, the submission of a complaint in a court did not suspend the effect of the contested decision. However, a court was entitled to suspend its effect on its own initiative. As

⁵⁷ Jānis Kalacs, *supra* note 5.

⁵⁸ Vladimirs Bukovskis, *supra* note 11: 819–21; Jānis Kalacs, *supra* note 32: 966.

⁵⁹ Jānis Kalacs, *supra* note 11: 321–322

a rule, under Article 23, decisions regarding administrative fines were suspended automatically. Both provisions nowadays seem to be elementary cornerstones of fair and effective court proceedings, but 100 years ago they were a novelty.

The Law on Administrative Courts of the Republic of Latvia remained almost unchanged until the Soviet occupation in 1940, when it ceased to be applied. However, it is known that by 1940, a new draft law on administrative procedure had been prepared by the Ministry of Justice. An overview of the draft law was published just before the occupation in 1940, stating that the draft law provides the Senate as the only court with jurisdiction in administrative cases and provides the Senate with only functions of cassation. Such a solution was based on the assumption that a decision made by administrative institution shall be subject to appeal in collegial bodies, and, therefore, there was no need for judicial review in substance.⁶⁰ Although the draft law seemed too progressive since it provided general regulation of administrative procedure within administrative institutions, the limited means of access to the court seems to be a setback. It should be considered that after the coup d'état of 1934, the Republic of Latvia was no longer a democracy but rather an authoritarian state.

5. BODIES THAT AUDITED THE LEGALITY OF DECISION-MAKING IN LITHUANIA

We have reviewed the origins of administrative justice in two Baltic states. The origins are common – the establishment of Latvian and Estonian administrative courts was based on the Law on Administrative Courts, adopted by the Russian Provisional Government in 1917. The origins of administrative justice in Lithuania were different. No judicial institution was established in Lithuania to examine the legality of administrative acts during 1918–1940. But there were attempts to replace it with other institutions that did not have the status of a judicial body. However, they were not equivalent to an administrative court because these institutions did not have appropriate legal instruments to audit the legality of decision-making by public administrative bodies.

Those bodies could be called the predecessors of the Administrative Court in Lithuania. They were established by the legislative body (the Lithuanian Council of State and later the Seimas) of Interwar Lithuania: the Complaints Commission of Lithuania of the Lithuanian Council of State (1917–1918)⁶¹, the Commission for Investigation of Illegal Government Activities (1918–1920) of the Lithuanian Council

⁶⁰ "Likumprojekts par administratīvo procesu," *supra* note 11.

⁶¹ *Transcript of the Meeting of Lithuanian Council of State in 7th of December 1917*, CSARL, f. 1014, ap. 1, b. 14, l. 24?

of State⁶², the Complaints and Investigations Commission of the Constituent Seimas (1920–1922)⁶³, the Complaints and Petitions Commission of the Seimas (1922–1927)⁶⁴, and the Petitions Commission of the Seimas (1936–1940)⁶⁵. Those commissions had to epitomize the instrument of parliamentary scrutiny. However, they exercised the audit of the legality of administrative acts. This audit was not sufficient because they could only establish the illegality of an administrative act or the actions of officials, but they were unable to annul illegal acts or cause any kind of legal consequences to an official who had issued an act illegally.

The activities, competence, and procedural rights of these commissions were regulated incompletely. However, these documents testify to the first traces of the legal regulation of the procedures of supervisory bodies over public administration in Lithuania. The first document, Protocol Resolution of the Lithuanian Council of State on the Formation of Commissions, issued on 26 April 1918⁶⁶, stipulated that each section of the Lithuanian Council of State must consist of three members of the Council. These must form an appropriate commission of competent candidates, whose nominations must have been approved by the Presidium of the Council. If there were any disputes over the candidates, they had to be resolved by the plenary of the Council of State. The head of the commission had to be a member of the Council who liaised with the Council and the Presidium and was responsible for the activities of the commission. The votes of all members of the commission were decisive. These rules for the formation of commissions were not officially published but were recorded in the minutes of the Council meeting. Moreover, the rules neither established the purpose of the commissions nor detailed complaint handling or decision-making rules. Nevertheless, it is believed that this document can be attributed to the first Lithuanian legal acts establishing, albeit primitively, the beginnings of the status and procedures of supervisory authorities. Another document, the Statute of the Complaints and Investigation Commission of the Constituent Seimas, was adopted on 7 July 1920. The Statute consisted of five articles. It cannot be described as regulating administrative procedures or administrative proceedings in detail. The purpose of the Commission was to investigate complaints and conduct investigations related to the illegal activities of the civil service and military authorities and their representatives. The Statute also established the rights of the members of the Commission – to invite witnesses, to inspect items on the spot, to receive the necessary documents, etc. In exercising

⁶² *Transcripts of Meetings of Lithuanian Council of State* (Vilnius: Mokslas, 1991), 202.

⁶³ Activities of the Constituent Seimas, Meeting of the Constituent Seimas on 28 June, p. 172.

⁶⁴ Transcripts of the Seimas meeting on 24 November 1922: 1.

⁶⁵ Transcripts of the Seimas meeting on 23 September 1936: 16–17.

⁶⁶ *1918 of the Council of State of Lithuania April 26 minutes of the meeting*, CSARL, f. 1014, ap. 1, b. 22, 52.

those rights, Commissioners had to comply with the rules of procedure for criminal investigators. In their turn, the civil service institutions, including the courts, had a duty to provide the Commission and its members with the necessary knowledge and documents and to comply with other requirements of the Commission. The Commission had to report the collected material to the Seimas plenary session on major events. Those events were situations where the Commission imposed sanctions in its conclusions. If the Commission established the signs of a criminal act of an official, the case had to be transferred to the State Defender, i.e., the prosecutor's office, under general criminal procedures. Decisions on the repeal of illegal acts were made by the Constituent Seimas itself, which, according to M. Römeris, "formed the hierarchical top of the entire administration and even the government itself in the constitutional organization of government at that time"⁶⁷. M. Römeris also noted that the Commission accepted complaints from citizens as an *actio popularis*, as they could be lodged based on the infringed rights or interests of others⁶⁸.

Another institution that was also engaged in verifying the legality of the activities of the administration was the Commission of Legal Advisers of the Ministries⁶⁹. This Commission was established in 1920. At that time, the Commission belonged to the system of the executive power bodies, but not the legislative body. The Commission was empowered to settle disputes and take decisions. Because of those powers, the Commission was called a surrogate of the administrative court⁷⁰. The Statute for the Commission was adopted on 10 March 1920⁷¹. The Statute, which consisted of 12 articles, determined the composition, competence, and procedure of the Commission of Legal Advisers of the Ministries. Under Article 2 of the Statute, the Commission was to be composed of one legal adviser per ministry. If there was no legal adviser in the ministry, a representative had to be delegated as a permanent member. If necessary, the Commission could invite experts with an advisory voice. The chairman of the Commission was to be appointed by the Prime Minister. The Statute governed more thorough administrative proceedings in comparison with the above-mentioned documents. However, the Commission of Legal Advisers of the Ministries did not embody administrative judicial authority. The reason for that was that its competence to settle disputes and take decisions existed mainly in the form of opinions. Moreover, only officials could apply to it, but not ordinary persons.

⁶⁷ Mykolas Römeris, *Lietuvos konstitucinės teisės paskaitos* (Kaunas: Vytauto Didžiojo universiteto Teisių fakulteto leidinys, 1937), 124–125.

⁶⁸ *Ibid.*

⁶⁹ *Legal Advisers Agenda of the Meeting on 20th of January 1920*, CSARL, f. 923, ap. 1, b. 104, 24.

⁷⁰ Mykolas Römeris, *supra* note 67, 95.

⁷¹ *The Commission of Legal Advisers of the Ministries*, Interim Official Gazette 23-290 (1920).

Following the dissolution of the Commission of Legal Advisers of the Ministries, in 1928, the Council of State was established. It was an institution of the constitutional level, as its legal status was originally established in Article 54 of the 1928 Constitution of the State of Lithuania⁷² and subsequently in Article 104 of the 1938 Constitution of Lithuania⁷³. In the afore-mentioned Articles of the Constitutions, there were no provisions about judicial review. However, that kind of provision can be seen in Article 3 of the Law on the Council of State⁷⁴. Article 3 stipulated that the Council of State had to notify the Cabinet of Ministers or the relevant minister of the observed contradiction of administrative acts with the law. With this competence, the Council of State approached closest to the idea of an administrative court in the Republic of Lithuania. Unfortunately, this monitoring function was rarely used, the provisions of law were interpreted rather than the facts of the illegality of administrative acts were established. In any case, the Council of State was not a court since its decisions were not binding.

Although the laws regulating the structure and competence of Lithuanian courts did not refer to administrative cases but only to civil and criminal ones, under special laws⁷⁵, courts of general jurisdiction were given the competence to review the legality of acts adopted by one or other public administration as well as of other activities. The Supreme Tribunal, as an “administrative” court, heard complaints from individuals against decisions made by the public administration in accordance with the provisions of various special laws. It was possible to appeal to it about the legality of decisions made by ten institutions or officials and politicians. Thus, the function of the Supreme Tribunal as an administrative court was not general but attributive, i.e., it was not stipulated in the law establishing its competence but in the special legal provisions regulating the relevant public areas. In some areas, first instance cases were heard at lower courts, first by judges of the peace and later by regional courts. Sometimes first instance cases were heard by a higher hierarchical administrative entity whose decisions could be appealed to the Supreme Tribunal. However, some areas remained where, generally, the judicial review of the legality of administrative acts was inaccessible. It ended in a decision made by a higher hierarchical administration.

The function of the administrative court was also performed by other institutions: certain commissions of a judicial nature (land management

⁷² *Constitution of the State of Lithuania*, Official Gazette 275-1778 (1928).

⁷³ *Constitution of Lithuania*, Official Gazette 608-4271 (1938).

⁷⁴ *Law on the Council of State*, Official Gazette 283-1813 (1928).

⁷⁵ For example, the *Law on Labor Income Tax*, Official Gazette 388-2668 (1932); *Law on Meetings and Entertainment*, Official Gazette 393-2688 (1932); *Trade Register Act*, Official Gazette 574-3999 (1937), etc.

commissions⁷⁶, labour income tax commissions⁷⁷, and commissions for regulating the repayment of debts⁷⁸), the Cabinet of Ministers, some ministers, the Director of the Tax Department, the Department of Municipalities under the Ministry of the Interior, more than twenty different two-stage commissions, the Department of Labour Inspectorate under the Ministry of Labour Social Security, the Presidium of the Chamber of Commerce and Industry, the Commission under the Minister of the Interior to consider complaints in municipal affairs, the Land Reform Board, Customs, etc.

There were several types of the so-called "ersatz administrative" courts: first, those composed of judges who acted as administrative courts of first instance and whose decisions could be appealed to the Supreme Tribunal; second, those which did not contain judges and whose decisions could be appealed first to the Minister of the Interior and then to the courts; and third, those whose decisions could not be appealed to the courts, i.e., the final instance for the dispute remained with the administrative entity itself. There were a lot of areas where disputes could not be resolved through the courts: social guarantees for civil servants, taxes, the remuneration for the seizure of movable and immovable private property for the state, public or military purposes, military service, construction, the acquisition or loss of citizenship, the establishment of public organizations, etc.

There was no administrative court in Greater Lithuania; however, there were many specialised courts in the autonomous Territory of Memel, including the Regional Administrative Court, which was authorised to review the legality of administrative acts adopted by the Regional Authorities or to repeal illegal acts⁷⁹. In 1933, the Memel Regional Division of the Supreme Tribunal became the highest judicial instance for administrative cases in the Region⁸⁰. Obviously, this should have been the final instance for the decisions of the Regional Administrative Court.

At the local government level, almost all the actions of municipal entities could be subject to judicial review of legality by judicial institutions of general jurisdiction. However, until 1937, the exception consisted of complaints regarding the applicable administrative liability under the Law on the Issuance and Completion of Mandatory Orders of Municipalities⁸¹. And there, according to the Law on Municipalities⁸², adopted in 1919, the decisions of municipal entities could be reviewed in seven

⁷⁶ *Law on Land Management*, Official Gazette 494-3446 (1935).

⁷⁷ *Law on Labor Income Tax*, Official Gazette 388-2668 (1932).

⁷⁸ *Law to Facilitate the Payment of Homeowners' Debts*, Official Gazette 444-3103 (1934).

⁷⁹ *Instruction of the Representative of the Cohesion States in 1920 September 21 for redevelopment by the central government*, Official Gazette of the Memel Territory 41 (1920).

⁸⁰ *Judicial System Act*, Official Gazette 419-2900 (1933).

⁸¹ *Law on the Issuance and Completion of Mandatory Orders of Municipalities*, Interim Official Gazette 5 (1919).

⁸² *Law on Self-Governance*, Interim Official Gazette 14 (1919).

instances: the County or City Council, the Regional Council, the Department of Municipalities under the Ministry of the Interior, the Minister of the Interior, the Cabinet of Ministers, the Regional Court, and the Supreme Tribunal. However, due to the complexity of the legal regulation, cases were not always heard in the courts.

6. DRAFT LAWS ON ADMINISTRATIVE COURT IN LITHUANIA

Although no judicial institution was established in Lithuania to examine the legality of administrative acts, debates on such an institution began immediately after the declaration of Lithuania's independence, as the first references to the court of "officials" were recorded in the official environment in 1920, when the first permanent Constitution of the State of Lithuania was being drafted⁸³.

A trend is emerging from the surviving and archived documents to constitutionalise the function of the administrative court in interwar Lithuania. This trend was particularly evident in the preparation of the 1922 Constitution of the State of Lithuania and the 1938 Constitution of Lithuania. Unfortunately, only the 1922 Constitution established judicial review of the legality of administrative acts: "The court decides the legality of administrative orders" (Art. 68)⁸⁴. However, this provision remained unimplemented – the administrative court was not established.

There were no provisions in the 1928 Constitution of the State of Lithuania on judicial review⁸⁵. The same could be said about the 1938 Constitution of Lithuania⁸⁶. However, the fact that in 1928 and 1938, there was no established function of the administrative court in the texts of the permanent Lithuanian constitutions did not mean that it was forbidden to establish it in separate laws. Thus, lawyers were drafting laws intended to legalise the review of the legality of administrative acts.

M. Römeris first sought to do this in 1928 when he drafted the Statute of the Council of State, under which the Council would have been subject to review of legality applied to all administrative acts and could therefore be applied to by any interested party in accordance with a clear, specific procedure, not the usual one, where a separate judicial authority was in place to review the legality of administrative acts. However, M. Römeris hoped that eventually the opinions provided by the Council of State on the legality of acts would become authoritative and the institutions would take them into account. This was how the administrative court emerged in France, which the scientist hoped for in Lithuania as well. Such an

⁸³ *Preparation of the Draft of Lithuanian Constitution*, CSARL, f. 1557, a. 1, b. 168, 14.

⁸⁴ *Constitution of the State of Lithuania*, Official Gazette 100-799 (1922).

⁸⁵ *Constitution of the State of Lithuania*, Official Gazette 275-1778 (1928).

⁸⁶ *Constitution of Lithuania*, Official Gazette 608-4271 (1938).

idea proposed by M. Römeris for the implementation of the function of monitoring the legality of administrative acts of the Council of State was not approved⁸⁷.

However, M. Römeris did not give up and again made efforts in 1931 to introduce the function of an administrative court in the new Judicial System Act being drafted on the occasion of judicial reform. It proposed the establishment of a court only for disputes concerning the review of the legality of administrative acts, which would verify the legality of all administrative acts, unless exceptions were provided for by law, and which would be one for the whole republic, etc. There was a failure again⁸⁸.

Subsequently, the drafts of the Law on the Administrative Court were prepared. The first draft of the Law on Administrative Court was made in 1932 by the Judicial Settlement Commission of the Council of State⁸⁹. In the period of 1937–1940, other ten draft laws were prepared by a commission formed by the IV Seimas to legislate this law⁹⁰.

In 1932 and 1937–1940, the draft laws were both different and similar. The difference was that subsequent drafts regulated the rules of administrative court proceedings in greater detail. The 1932 draft envisaged the establishment of the Administrative Court as a division in the court of the last resort while in subsequent drafts as a separate judicial institution. The general competence of the Administrative Court was planned in the 1932 draft law; in the subsequent ones, the attributive one. However, the 1940 draft also proposed a general competence of the administrative court. In the 1932 draft, the jurisdiction of the administrative court was to cover all official disputes, and in subsequent cases, only disputes concerning remuneration for service. Subsequent drafts were intended to give the administrative court jurisdiction to interpret legal issues submitted by the prime minister or the president of the administrative court. Such competence was absent in the 1932 draft law. In the draft laws prepared in 1937–1940, the criteria for an illegal act were formulated. There were no such criteria in the first draft. The 1932 draft did not foresee the aspect of dismissal of judges, which was provided for in subsequent drafts but did not specify the grounds for dismissal.

The draft laws were similar in the fact that they provided for the Administrative Court to review the legality of administrative acts and to annul an illegal act or part thereof; however, they did not rule on the legal consequences of an administrative act. The civil consequences of an unlawful administrative act had to be ruled by the

⁸⁷ Michał Römer, *Dziennik 1926–1928*, MDWLLAS, f. 138-2258, 455.

⁸⁸ Mykolas Römeris, "Administracinio teismo įstatymo aiškinamasis raštas," MDWLLAS, f. 138 (Römerių giminės aktai), unit 2325, 10–29.

⁸⁹ Mykolas Römeris, "Administracinio teismo įstatymo projektas," *Židinys* 36 (1940): 563.

⁹⁰ The Seimas meeting on 22nd of October 1936 Transcripts, 64, The Seimas meeting on 17 March 1937 Transcripts, 49–52.

courts of general jurisdiction. The drafts stipulated a single-instance administrative court. Pursuant to the drafts, judges of the administrative court were to be appointed by the head of the state on a proposal from the Cabinet of Ministers or the Prime Minister. In all the projects, in addition to the general requirements applicable to judges of other courts, it was provided for the candidates for judges that a judge of the administrative court had to have a length of service in the state or municipal institutions.

Unfortunately, the Law on Administrative Court was never passed. According to M. Römeris, Lithuanian politicians kept away from the establishment of an administrative court due to political positions or doubts about the qualifications of the young country's lawyers. Moreover, they did not want the judicial authorities to interfere in the affairs of the administration.⁹¹ Furthermore, the lack of legal education and knowledge of administrative justice and administrative law in general must be mentioned as reasons for the chaotic legal order of the institute of administrative justice in Lithuania.

CONCLUSIONS

The establishment of Latvian and Estonian administrative courts was based on the Law on Administrative Courts, adopted by the Russian Provisional Government in 1917. The Code of Administrative Court Procedure of the Republic of Estonia was adopted in 1919, and the Law on Administrative Courts of the Republic of Latvia was issued in 1921. Both acts were, in essence, a translation of the 1917 decree of the Russian Provisional Government. Therefore, the regulation adopted in the last months of the Russian Empire, which embodied an advanced understanding of the rule of law, was rather successfully implemented in two newly established democratic states.

Lithuania took a different path. The Russian Law on Administrative Courts adopted in 1917 never became a part of the legal order in Lithuania and was never translated into the Lithuanian language. An administrative court was never established in interwar Lithuania. There was not any act on an Administrative Court or Administrative Proceedings taken during the period from 1918 to 1940 in Lithuania. However, there were attempts to replace the administrative court with other institutions, and some acts were taken that testify to the first traces of the legal regulation of the procedures of supervisory bodies over public administration in Lithuania: the Protocol Resolution of the Lithuanian Council of State on the Formation of Commissions issued in 1918, the Statute of the Complaints and Investigation

⁹¹ Mykolas Römeris, *Lietuvos konstitucinės teisės paskaitos* (Vilnius: Mintis, 1990), 410.

Commission of the Constituent Seimas adopted in 1920, and the Statute of Legal Advisers of the Ministries Commission adopted in 1920.

According to the Law on Administrative Courts of the Republic of Latvia, jurisdiction in administrative cases should be conferred on magistrates, regional courts, and the Senate. However, no special administrative courts were established, except for the Department of Administrative Cases of the Senate. Most administrative cases in lower instance courts were reviewed by the same judges who reviewed civil and criminal cases. Under the Regulation of the Provisional Government "On the Establishment of Provisional Courts", the possibility to create separate administrative law departments in Peace Councils (Circuit Courts, i.e., courts of second instance) was provided in Estonia. Also, judges in district courts and circuit courts of appeal started adjudicating administrative cases in lower instance courts. Moreover, an administrative law department in the Supreme Court of the Republic of Estonia was established. Moreover, there were a great number of different administrative bodies that resolved administrative disputes. They were an important part of the system because the procedure in those administrative tribunals was obligatory before applying to the court.

Whereas no administrative court was established in Lithuania, there were attempts to replace it with other institutions: first, complaints commissions within the legislative body; second, Legal Advisers of the Ministries Commission; third, courts of general jurisdiction, including the Supreme Tribunal; fourth, commissions of judicial nature; fifth, the Cabinet of Ministers; sixth, some ministers; seventh, more than twenty different two-stage commissions, etc. In most cases, administrative appeals may not have reached the courts. Moreover, those legislative and executive bodies, whose decisions in most cases were final, could not embody administrative judicial authority.

Whereas administrative courts were in place in Latvia and Estonia and laws on administrative proceedings were adopted, the institute of administrative justice was more developed. The procedural provisions included requirements that should ensure a fair and effective trial. From a contemporary view, the procedural provisions are notable for their concise yet sufficient nature to ensure due process. The advanced understanding of administrative procedure law led to draft laws on a unified legal provision for the decision-making process in administrative institutions. The Administrative Procedure Act of the Republic of Estonia was adopted in 1935, and in Latvia, a similar draft law was elaborated only in 1940 but was not adopted due to the Soviet occupation. The Administrative Procedure Act of Estonia further developed not only the doctrine of administrative law but also the case-law of Estonian administrative courts.

Although no judicial institution was established in Lithuania to examine the legality of administrative acts, debates on such an institution began immediately after the declaration of Lithuania's independence. Jurists were drafting laws intended to legalise the review of the legality of administrative acts. The most famous Lithuanian lawyer of all time, M. Römeris, created two draft laws on the Administrative Court in 1928 and 1932. In the period of 1937–1940, more than ten draft laws were prepared by a commission formed by the IV Seimas. However, the Law on Administrative Court was never adopted in interwar Lithuania.

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