



Karin Visnapuu

Doctoral student
University of Tartu

Land Reform and the Principle of Legal Certainty:

The Practice of the Supreme Court of Estonia
in 1918–1933^{*1}

1. Introduction

Before gaining its independence on 24 February 1918, Estonia was part of the Russian Empire. The legal acts that were in force in Estonia before the gaining of independence were not democratic – for instance, in the Russian Empire’s legal system, people were separated into categories on the basis of their class and titles. Nonetheless, it would have been unrealistic to declare blanket annulment of all laws that were in place prior to gaining of independence. Because of this practical factor, the Estonian legislator had to deal with intensive legislative work not only in the first years of independence but throughout it. In addition to amending the laws valid under the Russian scheme or otherwise adapting them to the new democratic state, it was necessary to create a foundation for this new modern state and society. The foundation had to be created before particularities could be coherently tackled. That is why the most important task of this newly created republic was to build and ensure the persistence of a democratic state based on the rule of law. Accordingly, the number-one priority of the Estonian Constituent Assembly (the forerunner to the Estonian Parliament, or Riigikogu) was to develop the Constitution of Estonia. However, in Article 7 of the Estonian declaration of independence^{*2} it was stated that the Estonian Provisional Government had to instantly develop a draft for a law designed to resolve the ‘land question’ (this is dealt with in greater detail in Section 2 of the present article).

The first Constitution of Estonia was adopted in 1920.^{*3} The principle of rule of law was not written into it *expressis verbis*, but the elements of it were specified therein.^{*4} Also, contemporary legal literature referred to Estonia as a state where the rule of law prevails.^{*5} Nowadays, the principle of legal certainty is an obvious component of the rule of law. Legal clarity and legitimate expectation are the two main principles

¹ The research for this article was supported by the Estonian Research Council (IUT20-50).

² *Manifest kõigile Eestimaa rahvastele*. – RT 1918, 1 (in Estonian).

³ *Eesti Vabariigi põhiseadus*. – RT 1920, 113/114 (in Estonian).

⁴ E.g., the principle of legality was set forth in §3. Also the Constitution carried forth the idea of separation of powers.

⁵ ‘Free Estonia is a legal state. At least it has a great will to be one,’ wrote F. Karlson. *Õigusteaduse oskussõnad* [‘Terms of jurisprudence’]. – *Õigus* 1920/1, pp. 6–7 (in Estonian), on p. 6. ‘The most positive moment of the Constitution of 1920 is that there was a great impact of lawyers in its development. All life in Estonia was based on law, and rule of law was created with juridical rationalising of life,’ wrote E. Laaman. *Isik ja riik Eesti põhiseadustes* [‘Individual and state in the Constitutions of Estonia’]. – *Õigus* 1937/3, pp. 97–120 (in Estonian), on p. 104.

that form the substance of the principle of legal certainty. Even though the principle of legal certainty was not, in fact, provided for directly in any of the first three Constitution of Estonia documents (or in any other legal acts that were in force during the first era of Estonian independence), it bears repeating that contemporary lawyers did reference the principle of legal certainty as general guidance and the principles of legal clarity and legitimate expectation. For example, Stefan Csekey, a Hungarian lawyer but also with more local relevance as a professor at the University of Tartu, stated that there cannot be any room left for uncertainty of legal sources in a state that follows the principle of rule of law.^{*6}

The purpose of this article is to describe the legal basis for the historically praised but also criticised land reform of that era and how the nation's highest court, the Supreme Court of Estonia^{*7}, conducted its judicial review of the reform carried out over the time for which the first Constitution of Estonia was valid. Since Estonia stated from the very first day of its statehood that it follows the principle of rule of law, this paper constitutes an attempt to answer the question of how the rule of law was ensured in conditions of legal plurality, as it was questionable whether the principles of legal clarity and legal certainty were followed correctly.

How these two principles were applied in practice, which problems arose in connection with them, and how those problems were solved are examined through the lens of the example of the practice of the Supreme Court with regard to land reform. The cases discussed in this article are merely examples, and their selection was based on three considerations. Firstly, during the first era of independence, the judgements of the Supreme Court were rather short and displayed a laconic feel, whereas cases in which the court issued a longer judgement and presented fuller grounds for the decision made are analysed in this article. These give us more material to work with, and we can assume them to address pivotal matters. Secondly, in this set of cases, the Supreme Court expressed the same opinions several times; hence, it can be stated that the Supreme Court had developed a body of case law, which we can examine as such. Finally, these judgements all were made while the first Estonian Constitution remained in force unchanged^{*8}.

2. Land reform in Estonia

The agrarian structure of societies in Western Europe and in the Scandinavian states at the beginning of the 20th century can be considered modern and to be formed mainly of small estates owned by peasants. On the other hand, equivalent structures in Eastern Europe and to some extent in Central Europe still showed feudalistic elements. Irrespective of the agricultural reforms of the 19th century, signs of feudalism remained even in the Russian Empire's more central administrative regions. They were also evident in the empire's more westerly Baltic governorates, where the distribution of land was dominated by large estates owned by feudal lords. Although separation of farmsteads from manor lands had begun in the middle of the 19th century, with the farmland being disposed of accordingly, the manors still accounted for more than 50% of Estonian land at the turn of the century.^{*9}

With Estonia having declared itself to be a democratic state, land reform was inevitable. There are also some political factors that rendered this reform necessary. Firstly, the fledgling Estonian government needed to rally a loyal citizenry, and the only thing that the state had to offer at the time was land. Secondly, since the Estonian War of Independence was still in progress, it was necessary to attract men to fight for the new state. Giving soldiers a piece of land was quite good motivation for military service.

⁶ S. Csekey. *Seaduste väljakuulutamine Eestis* ['The announcement of laws in Estonia']. – *Õigus* 1926/7, pp. 177–200 (in Estonian), on p. 179.

⁷ In addition to numerous other elements, a new state would require its own court system. In Article 1 of the Estonian declaration of independence, it was stated that all citizens of the independent entity would receive protection from the courts in Estonia. Article 4 specified that among the tasks of the Estonian Provisional Government would be to create court-related institutions. The Supreme Court of Estonia, which was to be the highest court in the hierarchy, was created in 1919 by means of a law dealing specifically with the Supreme Court (*Riigikohtu seadus*. – RT 1919, 3). Even though the first members of the Supreme Court were appointed in October 1919, this institution started its work in reality on 14th January 1920, when the first meeting of the General Department of the Supreme Court was held at Tartu's city hall. The Supreme Court of Estonia was composed of the Civil Department, Criminal Department, Administrative Department, and General Department.

⁸ *Eesti Vabariigi põhiseaduse muutmise seadus*. – RT 1933, 86; *Eesti Vabariigi põhiseadus*. – RT 1938, 71.

⁹ T. Pool. *Maauuendus Eestis ja selle tulemusi* ['Land renewal in Estonia and its results']. – *Fenno-Ugrica* (proceedings of the Finno-Ugric cultural congress, *Soome-Ugri kultuurkongress*) Tallinn 1936, pp. 1–41 (in Estonian), on p. 5.

There are many examples of Eastern European states carrying out land reforms in the years following World War I.^{*10} The general purpose was the same across all these reforms: to bring an end to large estates, divide the land into smaller estates, and give those pieces to peasants. The way of carrying out these reforms, however, was unique to each state. One example can be seen in the degree of radicalism in expropriating lands: this could differ greatly between states, and different means of redistribution followed.

In 1919, the Constituent Assembly adopted the Land Law Act.^{*11} With this act, all the manor lands were expropriated to state ownership.

The land reform itself and the acts of law that regulated it were considered to be of a public-law nature. At the same time, this reform was a radical intervention in one of the core institutions of private law, private property. With the Land Law Act of Estonia, 96.6% of the land of large estates held by manors were expropriated. In consequence, the Estonian land reform is considered to be one of the most radical land reforms of its time in comparison with other young Eastern European countries that conducted land reforms then.^{*12}

Even though Estonian literature usually considers the passage of the Land Reform Act in 1919 to mark the starting point for the Estonian land reform, one can look further.^{*13} In fact, one of the main authors of the Land Reform Act, Theodor Pool,^{*14} stated that the first legal basis for talking about the Estonian land reform dates from 1917, when the Russian Provisional Government issued a regulation by which all further transactions involving land were suspended. At first, this regulation applied to Estonia as a part of the Russian Empire, but the Estonian Provisional Government soon declared it to be valid also in independent Estonia.^{*15} While the Land Law Act was not adopted until 1919, preparatory actions had been carried out before this.

Even if one considers only legal acts that were passed during Estonia's actual statehood, the first legal act that regulated land reform came before the Land Law Act. This was the 1918 regulation on bringing the manors under the state's control.^{*16} With this act of law, all the lands that were part of manors, including forests, were placed under the control of the respective local authority and ownership of all the state manors was transferred to the Estonian state. Manors were taken into state control even before the Constituent Assembly had made the decision as to how land reform should be carried out.^{*17} Just before passage of the Land Law Act, knights' manors were admitted to state property.^{*18}

Another reason the Estonian land reform is considered to be among the most radical of its kind is that the manors and manorial lands were expropriated all at once and without any compensation.^{*19} Whether the land reform in Estonia was necessary and the procedure applied for it were even discussed in the international arena, with former landowners filing complaints of various sorts with the League of Nations. These complainants emphasised the illegitimacy of the Land Law Act at first and later stressed that there had not been any compensation for the expropriation. They supported their arguments by referring to the

¹⁰ In addition to Estonia, land reforms were carried out in Latvia, Finland, Lithuania, Poland, Hungary, Romania, Greece, Bulgaria, Czechoslovakia, and Yugoslavia. W. Roszkowski. *Land Reforms in East Central Europe after World War One*. Warsaw: Polish Academy of Sciences Institute of Political Studies 1995, p. 5.

¹¹ *Maaseadus*. – RT 1919, 79/80 (in Estonian).

¹² J. Janusson. *Maareformi teostamine 1919–26* [‘Conducting the land reform of 1919–26’]. – *Eesti statistika* 1928 / 76 (3), pp. 171–195 (in Estonian), on p. 171.

¹³ E.g., F. Virma. *Maasuhted, maakasutus ja maakorraldus Eestis* [‘Land Relationships, Land Usage, and Land Disposition in Estonia’]. Tartu 2004 (in Estonian), p. 122, *passim*; A.M. Köll. *Peasants on the World Market: Agricultural Experience of Independent Estonia 1919–1939*. Stockholm 1994, p. 36, *passim*; T. Rosenberg. *Eesti 1919. aasta maareform: võrdlusjoni Ida- ja Kesk-Euroopa maadega* [‘The land reform in Estonia in 1919: Comparison with Eastern and Central European countries’]. – T. Rosenberg (ed.). *Künnivaod. Uurimusi Eesti 18.-20. sajandi agraarajaloost. (Õpetatud Eesti Seltsi Kirjad IX)* [‘Plowing furrows. Researches about the history of Estonian agriculture in 18th-20th century (Letters of the Learned Estonian Society)’]. Tartu 2013, pp. 401–417 (in Estonian).

¹⁴ Theodor Pool had a great impact on the implementation of the Estonian land reform, because he was the author of the draft for the Land Reform Act. As minister of agriculture at the time, he served as the principal guide for carrying out the land reform and as an adviser of peasants and tenants. See also M. Karelson. *Theodor Pool – riigimees ja ühiskonnategelane* [‘Theodor Pool – politician and public figure’]. – *Agraarteadus* 2000/13, pp. 17–19 (in Estonian).

¹⁵ *Ajutised administratiivseadused* (Temporary Administrative Laws). – RT 1918, 1 (in Estonian).

¹⁶ *Määrused mõisamaade kontrolli alla võtmise ja maaolude esialgse korraldamise kohta*. – RT 1918, 5 (in Estonian).

¹⁷ *Määrus mõisate korratu majapidamise ja laastamise asjus* (Regulation on Disorderly Manors and Pillaging). – RT 1918, 10 (in Estonian).

¹⁸ *Ajutise Valitsuse poolt vastuvõetud seadus rüütelkonna mõisate Eesti Vabariigi omanduseks tunnistamise kohta*. – RT 1919, 11 (in Estonian). The law was enacted by the Estonian Provisional Government for purposes of admitting the knights' manors to state property.

¹⁹ At least for the first five years of Estonian independence. This is considered further in Section 3 of the paper.

right to private property, which was provided for in the Constitution of Estonia itself.^{*20} With most of the previous landowners being of (Baltic) German heritage, they claimed furthermore that the state of Estonia had bullied them and discriminated against minorities. While the reactions of the various states belonging to the League of Nations differed, the final result was acceptance that, even though there were some conflicts between the principle of the right to private property and the Estonian land reform as carried out, the reform was inevitable and necessary in this form. It was concluded also that, because Baltic German were not the only ones whose land was expropriated, the action could not have been one of discrimination against minorities by the Estonian state.^{*21} Meanwhile, these problems were not addressed in the practice of the Supreme Court of Estonia. The Supreme Court focused instead on solving specific practical problems.

Since the people whose land was expropriated were not of Estonian heritage but mainly Baltic Germans, the land reform had become an international question quite quickly. Contributing to this attention is the fact that it was one of the most radical reforms of its day. It is clear that Estonia's land reform was not purely a domestic matter. At the same time, the land reform in practice started before the main questions surrounding it had even been sorted out within the national government. This shows how high a priority was given to dealing with this matter from the very dawn of Estonian independence.

3. Legal clarity and land reform

In total, the interwar years saw the implementation of 160 legal acts that regulated land reform in Estonia (about 140 of them were passed during the era in which the first Constitution of Estonia remained valid without any changes). Legislative efforts in this sphere were still in progress in 1939, which means that even 20 years after the beginning of the land reform, there were still issues that needed resolving. At the root of the problem is that these various amendments were made in practice over a rather short span of time.

Especially in the first years of the land reform, the legal acts were enacted rather hastily. Perhaps unsurprisingly therefore, they were not legally correct. For instance, regulations pertaining to taking manors into state control were passed in 1918, but the next issue of the *State Gazette* saw the same exact regulation published once more, with an accompanying note stating that the previously published text was an unedited version.

Attention was drawn to the problem even in contemporary journalism. It was opined that the essential legal acts were enacted too slowly (focus was on the not so essential and important acts) and that the cause of the problem was a lack of lawyers with legislative commissions.^{*22} The same unidentified author stated that, because there were no explanatory notes added to the legal acts, legal practitioners and courts had too large a workload since all the gaps needed to be overcome by interpretation.^{*23} Further complicating matters was the comparatively rapid passage of legal acts that, while necessary, addressed only minor problems or more technical questions (e.g., regulations that dealt with selling forest land to long-term tenants even though in 1921 it was impossible to be a long-term tenant)^{*24}.

Alongside the numerous legal acts that regulated the process of land reform, general acts were in force with parallel effect. The acts dealing with the land reform were *lex specialis*; hence, if these special acts set forth rules that were not in compliance with the general principles and regulations, then the special rules had to be followed, and *vice versa*.^{*25} If the Next, we consider a case from the year

²⁰ The Constitution of the Estonian Republic's §24 states: "The right of private property is guaranteed in Estonia to every citizen. Without the owner's consent it can be expropriated only in the common interest in accordance with the corresponding laws and in the ways foreseen in the laws." *Eesti Vabariigi põhiseadus*. – RT 1920, 113/114, 243.

²¹ See also V. Made. *Küllalisena maailmapoliitikas. Eesti ja Rahvasteliit 1919-1940* [As a Guest in World Politics: Estonia and the League of Nations, 1919–1940]. Tartu: Tartu Ülikooli kirjastus 1999 (in Estonian), pp. 145–172; A. Loit. *Baltisaksa rüütelkondade seisukohad ja tegevus Eesti iseseisvumisel 1918-1920* [Baltic German knights' opinions and activities in relation to Estonian independence]. – *Tuna* 2006/4, pp. 50–74 (in Estonian).

²² X+Y. *Küsimused tulevad kiiremas korras lahendada* [Questions need to be resolved quickly]. – *Tallinna Teataja* 1920/77, pp. 2–2 (in Estonian), on p. 2.

²³ X+Y. *Seadusandmine lonkab* [Legislation limps along]. – *Tallinna Teataja* 1920/83, pp. 2–2 (in Estonian), on p. 2.

²⁴ *Põllutöömistri määrus planeeritud kohtadelt maareformi teostamise määruste §§ 96-99 põhjal pikaaja rentnikkudele metsa müügi kohta* (the regulation issued by the agricultural minister about selling forest to long-term tenants in accordance with §§ 96–99 of the implementation acts for the Land Law Act). – RT 1921, 9 (in Estonian).

²⁵ For instance, in the private-law field, the Baltic Private Law Act was still in force. Among its underlying principles there remained an assumption that people differ in status. For further details, see M. Luts. *Private law of the Baltic provinces as a patriotic act*. – *Juridica International* 2000/1, pp. 157–167.

1924.^{*26} In this case, a former landowner tried to appeal to Section 868^{*27} of the Baltic Private Law Act, which stated that in cases of expropriation, the ownership of the relevant property is not to be transferred before the initial owner is fully compensated. Since the compensation question was not resolved in the Land Law Act and there were no other special laws that could have regulated this situation, the former landowner sought application of the principle that when something is not regulated with a special law, the case at hand must be resolved in accordance with all other valid laws. The Supreme Court explained in its decision that the Baltic Private Law norm was not applicable in this case. Because something was, in fact, written about compensation in the special law (under the Land Law Act's Section 10, the decision process was postponed), it could not be said that this situation was not regulated at all. The Supreme Court added that the situation that otherwise would have prevailed would be counter to the purpose of the land reform.

The foregoing reasoning of the Supreme Court was not legally strong, but the court had to offer some sort of opinion to resolve the case while also not becoming, in effect, a legislator itself. Unimaginable would have been a situation wherein all previous landowners could have claimed compensation on the basis of the Baltic Private Law Act. In addition, it is possible that with the Land Law Act the legislator had attempted to foresee situations of a type in which former landowners would try to refer to the Baltic Private Law Act and that the wording of Section 10 of the Land Law Act was chosen in consideration of this. The argument pointing to the purpose of the Land Law Act and of the land reform itself was quite extensively used by the Supreme Court, since the acts of law that regulated the land reform were incomplete and this body of law hence could have been interpreted in several ways. At the same time, the Supreme Court had to rule on such cases: not doing so would have been in conflict with the principle of rule of law.

The next judgement we turn to, from the Civil Department of the Supreme Court in 1921, is a quite good example of the previous landowners' attempts to use many kinds of arguments, including emotional arguments, in their efforts to emphasise that the Estonian land reform was illegal. One former manor owner tried to sell a piece of land from his manor after the passage of the Land Law Act. While the sales contract had been concluded, the transaction was not, since it was impossible to confirm it in a national register. The land that this person had tried to sell belonged to the state, and the permission of an owner would have been required for confirming a transaction in a national register. The former landowner stated before the Supreme Court that, with the expropriation, the state had violated §6 (on equality among Estonia's citizens) and §24 (on the right of private property) of the Constitution, the law on loss of legal status^{*28}, and the Land Law Act itself. Since all the manors were expropriated, without regard for the status of the owner, the act could not have been a breach of the Constitution, according to the Supreme Court. Added to this opinion was that it is permissible to expropriate property against the owner's will when this is in general interests and in accordance with the law. The Supreme Court stated additionally in the judgement that it is irrelevant for the appellant to criticise the purposefulness of the Land Law Act or speak to its goodness or badness. From this it can be concluded that the appellant had indeed somehow criticised the Land Law Act. It is regrettable that the Supreme Court did not point out in its judgement the specific arguments made in this regard.^{*29}

In the case described above, the former owner of the manor had tried to sell the property even though he was not the owner anymore. In addition, he had probably tried to take advantage of the legal confusion surrounding Section 28 of the Land Law Act. In the latter norm, it was stated that the real enactment of the Land Law Act, with the right to enact regulations accordingly, actually lay within the competence of the Estonian government. The wording of this provision could be grammatically interpreted in such a way that the Land Law Act did not come into force on 10th October 1919 but entered effect on 28 January 1920, when the implementation acts for the Land Law Act were passed. The idea here is that the enactment itself was something yet to be done by the government, through implementation terms.^{*30} Since the problem was relevant and caused problems in practice (because the procedure of a law taking effect was articulated in a very

²⁶ CCSCd 1483, 20.11.1924, *Georg Stackelberg v. Põllutööministeerium*. Estonian National Archives (ERA), 1356.3.64 (in Estonian).

²⁷ The Baltic Private Law Act's §868 regulated when ownership by a person could end without the consent of the owner. One of these situations existed when the expropriation was considered necessary for the state or community under the terms of a respective special legal act. In this connection, the previous owner had to receive full compensation before ownership could be transferred to the state or community.

²⁸ *Seisuste kaotamise seadus*. – RT 1920, 129/130 (in Estonian).

²⁹ CCSCd 237, 3.11.1921, *Morits Kruedener v. Viljandi-Pärnu Rahukogu*. ERA, 1356.3.58 (in Estonian).

³⁰ *Määrused maareformi teostamiseks*. – RT 1920, 28.1.1920, 16/17 (in Estonian).

unclear way), this legally confusing situation had to be dealt with by the Civil Department of the Supreme Court of Estonia. The Supreme Court interpreted the Land Law Act in such a way that Section 1 of the Land Law Act, which stated that the ownership of the land would be transferred to the state, was deemed to have come into force on 10th October while the rest of the Land Law Act was considered to have come into force upon passing of the implementation acts. People already considered the state to have been the owner of all the manor lands in Estonian territory since 10th October 1919. Hence, there was a question of legitimate expectation, in that everyone had already concluded that the land belongs to the state. The only group of people who tried to argue with this supposition was, of course, composed of the previous landowners. They tried to emphasise and prove, through every argument they could conceive of, that either the Estonian land reform was illegitimate or the land's ownership was not transferred to the state (at all or until after a particular date, which depended on when they had tried to sell the land that had belonged to them).

The Land Law Act did not regulate all legal aspects of the land reform. The land was expropriated, and its ownership was transferred to the state, but such matters as how the peasants would have used the land were not regulated. Estonian politician and agronomist August Kerem pointed out that it seemed as if the legislator had 'played Blind Man's Buff' and that this intentional legal uncertainty had put an unjustifiably high workload on the shoulders of the courts.^{*31}

Another example of the insufficiency of the Land Law Act can be identified from its Section 10. According to said section, the question about compensation to the previous landowners was left to be resolved by corresponding special law. That legislation, the law on compensation for expropriated land, was not enacted until 1926. In the interim, a situation of legal uncertainty prevailed.^{*32} In addition to creating this issue, its wording meant that Section 10 could have been interpreted in alternative ways: it hinted that the previous landowners had a right to be compensated.^{*33} Since it had been emphasised since the beginning of the creation of Estonian statehood that Estonia follows the principle of rule of law, the former landowners had a legitimate expectation of getting compensated for the expropriated lands. On the other hand, the provision could have been interpreted strictly in line with the language used: it stated that the decision process was in progress; hence, it remained possible for the final decision to go either way. Both among legal practitioners and in the halls of the Constituent Assembly, the debates on whether to pay compensation or not continued.

The thorny matter of compensation for expropriation was discussed by the Supreme Court too. In 1924, the Civil Department of the Supreme Court addressed a case in which a former tenant farmer demanded compensation from the land's previous owner for expenses he had incurred in relation to the manor's agricultural inventory (the aggrieved party had built a barbed-wire fence).^{*34} According to the Land Law Act, all the inventory of a manor was expropriated, irrespective of whether that property belonged in actuality to the tenant farmer rather than the landowner. The Supreme Court explained that only if and when the above-mentioned special law on compensation for expropriated land is finally enacted and compensation is to be paid under it could such claims be satisfied, in turn, by the former landowners.

As this case aptly illustrates, people's claims remained in limbo until the legislator enacted respective legal acts. In this climate of legal uncertainty, not only were the rights of the previous landowners put on hold but the rights of peasants too were kept on ice. This points to an additional question also: if the final decision had been that no compensation was to be paid to former landowners and, hence, they did not have to pay compensation to former tenants from their personal property, then what? How would the former tenants have satisfied their claims then?

The main problems related to legal clarity were caused in part by incomplete legislative work: the legislator did not provide any explanations in connection with the most important legal acts. At the same time, too many amendments were made over a very short time. The main problem was a multiplicity of legal acts regulating land reform, alongside which all other, general acts were in force with parallel application (among them the Baltic Private Law Act). This sometimes led even to clashes between norms. Of course, there cannot be a universal law, but if important aspects are not being regulated and there are gaps in laws,

³¹ A. Kerem. Riigikogu ja maauendus ['The Riigikogu and land renewal']. – *Tallinna Teataja* 1920/294, pp. 2–2, on p. 2 (in Estonian).

³² *Riikliku maatagavara loomiseks võõrandatud maade eest tasumaksmise seadus*. – RT 1926, 26 (in Estonian).

³³ In §10 of the Land Law Act, it is stated that the question about compensation referred to in §1 of said act and the amount of that compensation, along with the types of land that may be expropriated without any compensation, shall be resolved by means of a corresponding special law.

³⁴ CCSCd 726, 4.12.1924, *Jaan Sarapuu v. Ministry of Agriculture*. ERA, 1356.3.64 (in Estonian).

a problem has arisen. Furthermore, in the early years of Estonian independence, there was a paucity of professional Estonian lawyers, so the practitioners' workload was huge. The only way for people to protect their rights was via the courts. The Supreme Court as final-instance court had the obligation to handle all of the cases, since a situation in which the courts avoid rendering a judgement and thereby leave a legal question unanswered is untenable. It would have meant a breach of the principle of rule of law, since the Constitution set forth a guarantee that people would get protection from the courts.

4. Legitimate expectation and land reform

In cases of legal plurality, the administrative authorities were often too formal in focus and forgot to follow the principle of legitimate expectation. This is, of course, understandable, since the workload of the legislative and executive power was so great in the years of early statehood. In these cases, it fell to the Supreme Court to overcome this problem.

In one case in 1923, someone wanted to confirm a land-sales contract in the relevant national register.^{*35} The contract was concluded between a natural person and a former landowner, and the minister of agriculture had granted the permission that was needed if a landowner wished to sell a piece of land before the Land Law Act entered force. The administrative organ denied registration of this transaction, for reason that, since the Land Law Act had been enacted and the landowner was now the state, the application for registration should have been made by the state, not the previous landowner. The administrative organ did not do anything wrong in this, since the law *expressis verbis* stated that the contract may be registered by the parties to that contract; however, the Supreme Court stated that this contract should have been registered in order to ensure justice. All other conditions were fulfilled, and there was only the formal issue of the contract bearing the wrong seller's name and the state not having signed the application for registration itself. The Supreme Court stated that in a situation of this nature, registration should have been completed.

It was explained that it would have been a waste of time if a new registration application were required merely because the ownership changed in the meantime. The Supreme Court used the legal methodology known as fiction. In the absence of an application by the state, it was presumed that one existed since the state agreed that the contract was valid and since the intention of registering was there. Besides that, the competent government minister had already given his permission, so the legitimate expectation of the parties to this transaction was that the sales contract was concluded and the transaction had been finished.

As mentioned earlier in the paper, one of the political rationales for conducting the Estonian land reform was to give land to soldiers who fought in the Estonian war for independence. There was even a regulation issued in 1918 that stated that all Estonian citizens fighting in that war and showing special courage or getting injured therein and the families of fallen soldiers would receive land; this was issued even before the Estonian Constituent Assembly decided on how to carry out the land reform.^{*36} According to the Land Law Act's Section 21, the people who would be first to get land were veterans of the Estonian War of Independence. In contrast, a few years later, the Estonian government enacted a regulation in which it was stated that the previous tenant farmers on manor lands would be the first people to get land.^{*37} Of course, this entailed a collision between a law and a regulation, but the problem needs more specific and in-depth analysis. A second important factor is that men went to war to fight for their home country, and in return they expected to receive land, which had been promised to them by law. This represented a legitimate expectation, for this right was provided for by a regulation and later in a law.

In a court case from 1922, litigation took place between a soldier who had fought in the Estonian War of Independence and a former tenant farmer.^{*38} The veteran applied for a piece of land, which over the course of the land reform had ended up being given to a person who had been renting that land before the land reform even started. The Administrative Department of the Supreme Court stated that, though veterans had the right to receive land (according to §16 of the Land Law Act and §11 of the implementation acts for the land reform), if a particular piece of land desired by a veteran had already been given to a former

³⁵ CCSCd 202, 22.3.1923, *Friederich Verneke v. Viljandi-Pärnu Rahukogu*. ERA, 1356.3.60 (in Estonian).

³⁶ *Ajutise Valitsuse määrus*. – RT 1918, 9 (in Estonian).

³⁷ *Määrus maareformi teostamise määruste §§ 9, 74, 75, 77, 78 muutmise ja täiendamise kohta*. – RT 1921, 17 (in Estonian).

³⁸ ACSCd 517, 25.4.1922, *Jaan Hirjel v. Tartu-Võru Rahukogu*. ERA, 1356.2.81 (in Estonian).

tenant farmer (or could be considered so given), the veteran was not to receive said piece of land. Former tenant farmers held a privileged position with regard to the land they had previously rented and cultivated. Veterans' rights to the land were not annulled completely, though; they simply did not have the privilege of obtaining specific lands that were already in use by previous tenants.

In this case, the Supreme Court interpreted the various legal acts on the basis of the wider purpose behind the land reform. The promise to grant land to veterans represented a political decision made at the beginning of Estonian independence. Later on, the politics changed since the war was now over. At this point, the executive (and at times the legislative) power started to think more about the general purpose and aims behind the Estonian land reform. Accordingly, it was considered necessary for the people who had in practice actually cultivated and used the land would receive that land. Otherwise, the land would suffer, or it might get sold, with such transactions bringing a danger of the system of large estates reasserting itself.

A breach of the principle of legitimate expectation with regard to the veterans did exist, since, even though they did ultimately get land, an illusion could be deemed to have been created that they would be the first ones to receive land – that is, if several people wanted the same piece of land, they would be the first ones in the queue. It is regrettable that the Supreme Court did not draw attention to the principle of legitimate expectation specifically in this connection.

While some things have changed, opinions about the courts were the same in 1918 as they are today. To wit, Kaarel Einbund rightly wrote that the main task of the courts is to apply law in every individual case and not to create new law. This is why courts had to be wholly impartial and still must be. Most important is that the courts had to ensure the protection of impartiality in the face of the demands of the executive power.³⁹

5. Conclusions

Rapid carrying out of land reforms was essential, and it was inevitable that many mistakes would be made as the reforms were conducted. Young Estonia had to start creating a state nearly from scratch, which is precisely why the process could not have happened in a legally perfect manner. Since the land reform was not a one-time event – it continued throughout the first era of independence – this reform was characterised by constant endeavours to conduct it in a legally correct manner, with improvements along the way and correction of the mistakes or deficiencies wrought over its course. Even though it brought various problems and misunderstandings in practice, nearly all of these problems were solved by the Supreme Court with its practice. In its judgements, the Supreme Court had to explain the content and the scope of application of the legal acts that regulated land-related matters. From the examples examined in this paper, it seems that at least in the practice of the Supreme Court of Estonia, the principle of legal certainty was honoured. The implementation of the principle of legitimate expectation was more problematic. On the one hand, the Supreme Court tried to follow it (and also common sense). For instance, if something was promised to people by law, then there could not be withdrawal of that promise. On the other hand, in the example case of the veterans, where these apparent promises were not in line with the purpose of the land reform as a whole, the promises could not have been fully kept.

Since Estonia was still developing as a state and honing its legal system, these mistakes were inevitable. Not all promises (even when made in a law) can be considered to give people a legitimate expectation that is protected by the rule of law. In addition, the principle of rule of law itself was still in development in those times.

³⁹ K. Einbund. *Õiguslik riik* ['Legal State']. Tartu 1918, p. 105 (in Estonian).