

The Establishment of “Drumhead” Courts Martial and their Actions in the Estonian War of Independence 1918–1919



Taavi Minnik, MH

Tallinn University, Institute of History

PhD candidate

E-mail: tminnik@tlu.ee

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Friedrich Fromhold Martens (1845–1909) has noted that wars are the “gauges” of civility.¹ Till the early 1860’s, the warring parties had mostly followed warfare practices built upon custom (*jus non scriptum*), but the Lieber Code of 24 April 1863 became the turning point in the development of laws of land warfare. During the American Civil War (1861–1865), alumnus of the universities of Halle and Jena, Francis (born as Franz) Lieber (1798/1800–1872) assisted the American Government in drafting legal guidelines for the Union Army. The Lieber Code is concerned with martial law (Section 1) and also regulated the treatment of the civilians (Section 2), prisoners of war, deserters (Section 3), irregular forces (Section 4) and collaborators with the enemy forces (Section 5).² The reception of the Lieber Code in Europe was speeded up by the Franco–Prussian War (1870–1871), during and after the Lieber Code was accepted by Prussia (1870), France (1877), Russia (1877) and Great Britain (1883).³ It also formed the basis for the multilateral treaties like the Brussels’ Declaration (1874) and the Hague Conventions of 1899 and 1907. The principles of the Lieber Code also had strong influence on the 3rd and 4th Geneva Conventions (1949).⁴ Even though the Lieber Code integrated humane ideas, it allowed measures, which were finally banned with the Geneva Conventions of 1949, for instance, retaliations (Articles 28 and 29), including executions of the prisoners of war (Article 59), but also the summarily executions of the enemy collaborators caught in act (Section 5) and taking hostages in order to pressurize the other belligerent party (Articles 54 and 55).⁵ Hence, one should note that the concept of war crime at the end of the 19th century and at the beginning of the 20th century strongly differed from the modern, post-1949 understanding. Nevertheless, the Lieber Code formed the legal framework for the pre-1949 conflicts, including for the practices implemented by the temporary courts martial during the Wars of Independence as all three newly-born Baltic States continued using the laws of military justice of the former Russian Empire (volumes XXII and XXIV approved by the Russian Provisional Government on 1 March 1917),⁶ which were based on the Lieber Code.

Military conflicts that raged in the territory of the former Russian Empire between 1918 and 1921 significantly differed by their nature and the methods of

warfare from the preceding world war, a conventional encounter between empires. After Germany's defeat on the Western front in 1918, the war in the East adopted the form of a terrifying civil conflict, which arguably claimed at least as many victims as the World War I. This marked a birth of a new type of violence, which generally targeted the civilian population, as all the parties of the conflict were willing to use it in order to change the behaviour of the civilian population. In Latvia more than 2,000⁷ and in Estonia up to 700 people lost their lives in the Red Terror.⁸ The Bolsheviks demonstratively abandoned contemporary legal practices, switching explicitly to a terror politics in November 1918.⁹ Following the Cheka model, commissions for combating counterrevolution and special tribunals were set up in major towns and counties seized by the Red Army. These commissions and tribunals had the right to impose penalties without carrying out lengthy but indispensable legal proceedings, such as gathering evidence, presenting evidence and hearing testimonies of the witnesses. By killing prisoners of war, and annihilating and imprisoning those who were viewed as unsuitable to the new society,¹⁰ the Bolsheviks followed rules, established by themselves, not the common laws of war (including the Lieber Code). The defeat of the Bolshevik regime in both countries, however, led to the White Terror campaign, in which up to 2,000 people lost their lives in retaliation in Latvia and up to 800 in Estonia. In Latvia, the Baltic Germans and German Freikorps led by Rüdiger von der Goltz responded to Bolshevik repressions which had targeted local Germans and their suspected collaborators with a campaign of summary executions in the territories liberated from the Bolsheviks. The barbarity of the Bolsheviks experienced in the first half of 1919 cemented their impression that all Latvians were Bolsheviks. Therefore, not only supporters of Bolsheviks, but also ordinary Latvians (most of them inhabitants of Riga, who did not support the Bolsheviks) became the victims of revenge by the Baltic Germans.¹¹ Lithuania on the other hand became an "anomaly" in Soviet Westward offensives in 1918–1919, because there is not any documental proof that anyone was killed for political reasons by the Lithuanian Bolshevik regime led by Vincas Mickevičius-Kapsukas. Lithuanian Bolsheviks introduced typical communist reforms, by nationalising the land and private property. However, the Bolshevik institutions of repression did not carry out their typical activities in Lithuania. When the Red Army marched into Lithuania, local public life suffered little restrictions and everyday life basically continued as before the Soviet invasion, as Bolsheviks aimed to obtain a favourable or at least passive reaction from the local population with their liberal politics in order to ease the Red Army's advance through Lithuania. The defeat of the Bolshevik regime led to the small-scale White Terror campaign which claimed up to one hundred lives.¹²

The main difference in the White Terror campaigns was that unlike Lithuania and Latvia, where were dominating summary executions (the so-called *Standrecht*), the Estonian Provisional Government followed the example of the Tsarist Government during the Revolution of 1905, implementing this extraordinary and controversial practice basically from the beginning. It is worth mentioning that the initiator of establishing courts martial, Prime Minister Konstantin Päts (1874–1956) was sentenced to death in 1905 by a court martial, but as a skilled barrister he accomplished that the decision was turned to one year imprisonment in 1909.¹³ It should be added that during this period Frances Lieber and his works became one the main influence, which helped Päts to win the fight for his life,¹⁴ Päts also translated his works into Estonian.¹⁵

In Russian Empire the first temporary courts martial were set up in 1812, during the Napoleonic Wars 1812. The courts martial were established in order to suppress

the revolution of 1905. According to the military legislation adopted in 1892, the declaration of the martial law in a specific region basically paved the way to the military dictatorships since all the necessary power went to the highest military commander.¹⁶ On 19 August (O.S. 1 September) 1906, the Cabinet of Piotr Stolypin issued a decree that the courts martial would be established in order to accelerate the trial process. The trials were closed; the court had to make a decision within two days, after that the decision became enforceable within one day without the right of appeal.¹⁷ In practice, the courts martial largely became a legal cover for the abuse of force by military. The activity of the courts martial sparked protest from all political parties of the Second State Duma, except the far-right monarchists. Liberal politician and professor of the Military Law Academy, Major-General Vladimir Kuzmin-Karavayev (1859–1928) noted that during the Russian Revolution of 1905 the misuse of the courts martial has created a precedent which was contrary to the contemporary Western legal practice.¹⁸ Particularly controversial was the frequent implementation of the death penalty, according to some statistics in Russia 1,100 out of total 1,300 people were sentenced to death by the courts martial in 1906–1907.¹⁹ According to the official records, during the Revolution of 1905 in Estonia, Livland and Courland 690 people were sentenced to death in 1905–1907, mostly by the temporary courts martial.²⁰ Courts martial were also established during the Finnish Civil War (1917–1918), by Whites, which acted on questionable legal mandates, sentencing more than 7,300 people to death after the conflict.²¹

Decision of the Provisional Government on 5 December 1918 established temporary courts martial to every infantry regiment and also divided their jurisdiction: Saare and Lääne Counties and Tallinn were assigned to the 1st Regiment, Järva County to the 5th Regiment, Viru County to the 4th Regiment, Viljandi and Pärnu Counties to the 6th Regiment, Tartu County to the 2nd Regiment, and Võru and Põlva Counties to the jurisdiction of the 3rd Regiment. The prosecution of somebody was to be decided by the regiment commander. The courts martial decisions were originally to be confirmed by the minister of war.²² However, this practice was abandoned and the decision of court martial was put into force after it was approved by the regiment commander. According to the orders of the Provisional Government on 5 December 1918, the temporary courts martial could sentence imprisonment, forced labour or death penalty. The structure and the organisation were specified by the Military Prosecutor Office's circular on 18 December 1918. Courts martial were composed of five officers, appointed by the regiment commander. The smallest military unit, which could form courts martial, was regiment. The trial was to take place behind closed doors and the judgment was adopted within two days by a simple majority. Resolutions were presented to the regiment commander, after his confirmation the decision was to be put in force within 24 hours. If the regiment commander refused to confirm the judgment, the case went to the Military District Court in Tallinn. In contrast to the civil courts, defendants lacked the opportunity to appeal the decisions of the courts martial.²³

The law concerning temporary courts martial entered into force after it was published in the State Gazette (Riigi Teataja) on 11 December 1918. The instructions to the courts martial were rather general and vague; for instance, stipulating that everyone who 'in any way acts against the Republic of Estonia or works for the forces opposing the state, communicates with them or in another way collaborates with them', 'who in any way obstructs the activities of the army and spreads slander subversive to the Republic of Estonia' should be put on trial.²⁴

Initially, the Provisional Government did not specify the legislative basis for the courts martial. Although on 9 January 1919 the Provisional Government approved the laws of military justice of the former Russian Empire (volumes XXII and XXIV approved by the Russian Provisional Government on 1 March 1917),²⁵ which was based on the Lieber Code and henceforth were to guide the judicial process, it hardly changed anything, since the courts martial were usually formed of junior or non-commissioned officers, who were ill-informed of the legal standards of court procedures. For example, the court martial of the 2nd regiment of the Estonian army passed 56 sentences in Tartu County between 27–31 January 1919, sentencing 20 accused to death and acquitting only one, referring to the orders of 5 December 1918, not to the military justice.²⁶

The temporary courts martial eased the whole process of repression. For instance, the lowest stage of the civil justice system (Magistrates' Courts) had the right to punish for the non-compliance of the orders of the Provisional Government or the local authority with one year prison sentence or a fine up to 3,000 marks.²⁷ Major General Aleksander Tõnisson (1875–1941) later noted that the impact of the courts martial was immediately apparent.²⁸ Basically, the order of 5 December 1918 allowed asserting a state of war in the rear. At a time when the Red Army was slowly approaching to Tallinn, the Provisional Government faced a possible pro-Bolshevik rebellion, for example, on 17 December street riots occurred in Tallinn, in the course of which the military opened fire and two factory workers were killed and many others wounded.²⁹ After this, Major General Ernst Põdder (1879–1932), who was acting in the capacity of commander-in-chief, banned any further gatherings, threatening the violators with drumhead courts martial and the death penalty.³⁰ When the Provisional Government created the Commissioner Institution in order to control the municipality governments in December 1918, the Commissioner was given a right to have the local officials prosecuted by the court martial.³¹

In Viru County, in North-Eastern Estonia, the court martial of the 4th Regiment began at the end of the December 1918. The first death sentence made by the court martial was confirmed by Colonel Aleksander Seiman (1886–1941) on 30 December 1918, when a man named Gustav Rooberg (1894–1918), who was arrested as “suspicious” and admitted during questioning that he had wished to join the Red Army. Rooberg was immediately shot afterwards.³² In Tartu County the first trial of the drumhead court martial of the 2nd Regiment took place on 16 December 1918 when Osvald Reiman (1902–1918), who confessed that he is a pro-Bolshevik and that he has transmitted messages to the enemy, after he was caught. The next day, after the decision was confirmed by Colonel Johan Unt (1876–1930), Reiman was shot as a spy and enemy collaborator referring to the order of the Provisional Government of 5 December 1918.³³ The court martial of the 2nd Regiment ruled death sentences in most of the cases, among them to the youngest person executed during the War of Independence—14-year-old Ivan Ossipov, a captured flute player of the 2nd Estonian Rifle Regiment of the Red Army.³⁴

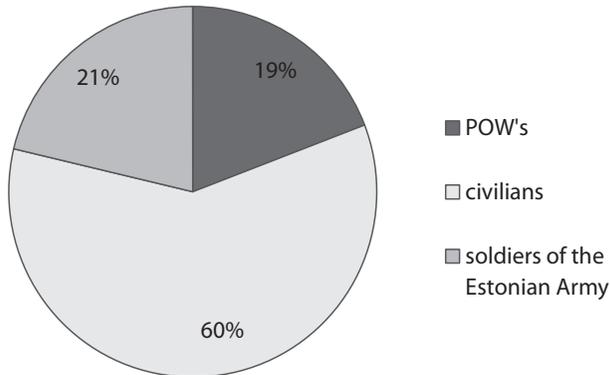
There were legal controversies in the work of the courts martial. For example, partisans operating in the Bolshevik-controlled territory seized three Bolshevik supporters from their homes on 6 January 1919, and summarily executed them the same day in the park of the Puurmani Manor, in Eastern part of Estonia. The partisan commander Julius Kuperjanov described it as ‘a court martial’, although he lacked the right to hold a court martial, as he was the commander of a unit smaller than a regiment.³⁵

The early emphasis of courts martial had been placed particularly on the restoration of discipline in the Estonian Army, the highlight of their activities came after the expulsion of the Red Army by the end of January 1919. Repressions targeted Estonians who had served in the Red Army, lower-level Bolshevik officials and local residents suspected of supporting the Soviets. In the winter-spring the courts martial were most active in Tartu and the surrounding County, where a court martial of the 2nd Division was specially established for the city of Tartu in addition to the court martial of the 2nd Regiment. The main execution site in Tartu was the gravel pit of the nearby Raadi Mansion.³⁶ First executions in Tartu took place on 15 January 1919 shortly after the liberation of the city, when the crew of the armoured train shot nine people on the frozen Emajõgi River.³⁷ Later some relatives of the deceased made an inquiry to the Military District Court of the Estonian Army to find out why were these men executed. The District Court could not answer because there were no formal accusations and no judgments against the deceased. Later, Tartu Police was able to ascertain that these men were accused in collaboration with the enemy, and one of them, Ferdinand Raudsepp allegedly attempted to damage vehicles of the Estonian Army.³⁸ The commander of the armoured train Lieutenant Colonel Oskar Luiga (1894–1941) claimed to the District Court that there were no killings by his men after Tartu was captured from the enemy.³⁹ About one-fifth of the people executed according to the orders of the courts martial were Red Army prisoners of war (mostly Estonians), on the contrary to the Hague IV Convention (ratified on 18 October 1907, the treatment of the prisoners of war was regulated in Articles 4–20). For instance, on 18 January 1919, four Estonian Red Army soldiers were sentenced to death for treason; one could find many other similar cases from the first months of 1919.

Death sentences by courts martial during the Estonian War of Independence⁴⁰

	1 st Rgt	2 nd Rgt	3 rd Rgt.	5 th Rgt.	6 th Rgt.	7 th Rgt.	2 nd Div.	Navy court martial	Court martial of the Reserve Battalion	Court martial in Kuressaare	Total
XII 1918		1		1							2
I 1919	8	42		7	3		2				62
II 1919	5	32		2			7	28			74
III 1919		9		7		2	13			65	96
IV 1919		7	22				1				30
V 1919											
VI 1919											
VII 1919									22		22
VIII 1919											
IX 1919											
X 1919	1										1
XI 1919											
XII 1919							1				1
Total	14	94	22	17	3	2	29	28	22	65	284

Death sentences by courts martial, in 1918–1919



Searches and arrests were committed on the basis of denunciations. For instance, three farmers Jaan Kroon, Jaan Albrecht and Jaan Mürk from Võru County denounced Märt Angerjas (1898–1918) to the military authorities on 26 February 1919 for bad-mouthing Estonian politicians, including the Prime Minister Konstantin Päts (1874–1956) and Foreign Affairs Minister Jaan Poska (1866–1920), promising to kill ‘local bourgeois’ and allegedly writing denunciations against Albrecht’s son under Bolshevik rule.⁴¹ Angerjas was executed by the 3rd Infantry regiment of the Estonian Army on 13 March 1919.⁴² Evidence that might have been brought against defendants in court martial was different. For example, the underground Bolshevik Karl Tiitsen (1894–1919) was caught spreading leaflets during the Tartu Peace Conference (December 1919–January 1919). The court martial of 2nd Division sentenced Tiitsen to death for working for the enemy and for draft evasion and he was shot on 11 December 1919.⁴³ But courts martial death sentences were made on much more questionable evidence. Friendly relations with local Bolshevik supporters or careless political remarks often proved fatal. For instance, on 17 February 1919 a girlfriend of one Estonian Red Army soldier Anette Abel (1895–1919) was shot, after she was sentenced to death by the drumhead court martial of the 2nd Regiment for communicating with the enemy. Her notebook, where she had written down some workers’ songs among the others, as well as her personal letters became the main evidence against her.⁴⁴

The counter-offensive of the Estonian Army brought along also a number of summary executions in January and February 1919. Most of the victims were ethnic Estonian Red Army prisoners of war and local supporters of Bolsheviks. For example, a writer and war correspondent, Henrik Visnapuu (1890–1951) describes how the Estonian Army shot 19 Estonian Red Army soldiers in Tabivere (in Eastern Estonia),⁴⁵ reminiscences dedicated to Captain Anton Irv (1886–1919) mention an incident near Tapa, in North-Eastern Estonia, where 20 local men who mistakenly took Estonian armoured train as a Red Army’s one and wished to join the enemy were shot.⁴⁶ Estonia’s allies—Russian White Guards as well as Finnish volunteers serving in the Estonian Army—were also involved in the executions. A Swedish adventurer who had served in Swedish, Persian and German armies, and participated in the Finnish Civil War before the Estonian War of Independence and in the 1930’s became the leader of the Swedish Nazi party (Nationalsocialistiska Blocket, NSB), Martin Ekström (1887–1954) has described execution of 12 Estonian Red Army soldiers in Viru County near the church of Haljala, in his memoirs.⁴⁷ Similar accountings can be found in the Soviet historiography, for instance, historians Abe

Liebmann and Edgar Mattisen describe an incident, in which the Finnish volunteers executed about 50 prisoners of war and local Bolsheviks with machinegun fire in the local park, shortly after capturing Narva.⁴⁸ In the southern part of Estonia and in the western parts of the Pskov Governorate many were killed by the White Russian warlord Stanislaw Bulak-Balachowitz (1883–1940) who, despite his controversial personality and previous voluntary service in the Red Army,⁴⁹ enjoyed the favour and support of Estonian senior military leaders.⁵⁰ The killings committed by soldiers of Bulak-Balachowitz are poorly documented; the main sources are the memoirs of the contemporaries. In late January 1919 during his brief stay in Rasina Mansion, in South Estonia, Bulak-Balachowitz's men stopped and searched the surrounding farms in order to capture the alleged "Reds". Those who might be suspected on the basis of testimony of the local people were summarily executed.⁵¹ Vassili Gorn has described in detail the activities of Bulak-Balachowitz in his memoirs. After Bulak-Balachowitz and his men arrived in Pskov on 29 May 1919, four days after the city was captured without a fight by the Estonian Army, a wave of arrests and executions began.⁵² The executions took place on the main square, where during the next month at Bulak-Balachowitz's orders alleged Bolshevik sympathisers were hanged on lamp-posts. In July 1919, as a result of protests by the city authorities, public executions were ended, but the executions continued at the nearby gravel pit.⁵³ Bulak-Balachowitz justified these actions by stating that his goal was not only to annihilate the communists, but also all possible "scum on earth".⁵⁴

A peculiar episode in the activities of the courts martial was the execution of the captured Soviet sailors on the island of Nargen, in 1919. In December 1918, the Baltic Fleet destroyers Spartak and Avtroil (transferred to Estonia as Lennuk and Wambola, sold to Peru in 1933 and renamed to Almirante Guise and Almirante Villar) surrendered to the Royal Navy. In total, 244 crew members were captured; most of them were handed over to Estonians, who placed them into a former German concentration camp on the island of Nargen. The sailors basically became prisoners of war whose treatment should have been regulated in the Hague Conventions of 1907. Instead, under the initiative of the commander of Estonian Navy Johan Pitka (1872–?),⁵⁵ a court martial headed by Lieutenant Alfred Valge (1894–1941) was established, which accused 28 (among them four Estonians) of the Spartak and Avtroil crew members in "acting against the Provisional Government" or being the members of the ship's party collective, the Estonians were accused in treason.⁵⁶ On 31 January and 1 February 1919 they were sentenced to death, the sentence came into force after it was confirmed by Pitka. The executions took place on 3 February, when 15 sailors were killed and on 4 February, when another 12 were executed by the firing squad lead by Lieutenant Adolf Keskk (1891–1941). Both Keskk and Valge were arrested 22 years later by the People's Commissariat for Internal Affairs (NKVD) and executed in June 1941.⁵⁷ One of the sailors sentenced to death, Mikhail Larionov succeeded to escape on 4 February 1919, his subsequent fate is not clear.⁵⁸ Along with him another sailor fled, Alexei Spiridonov, who was caught and summarily executed on the next day, with the sailors Alexander Nutrov and Konstantin Molokov, who were accused in "defiance".⁵⁹ Out of 214 in the prison camp on Nargen, 52 were acquitted, three were sentenced to forced labour, 156 were sentenced to public work duties, one was sent to penal military unit and two were acquitted under police supervision.⁶⁰

Besides the regions liberated from the Bolsheviks, courts martial operated also on the islands of Saaremaa and Muhumaa during February and March 1919.

A revolt against the Estonian authorities broke out there on 16 February (and quickly turned into the plundering of manors), directly caused by harsh social conditions, anger against the Baltic Germans and mobilisation into the Estonian army. The mutineers killed the deputy head of the Saaremaa Kaitseliit, Ensign Arseni Jefimov, and two of his assistants, who were instructed to send the mobilised men to the mainland.⁶¹ The mutineers proclaimed mobilisation on the islands and began looting the manor houses. During these violent excesses, 41 people were killed by the mutineers, among them the ex-Jägermeister of Alexander III, the owner of the Kuivastu Manor, Alexander von Buxhoeveden (1856–1919), and also the secretary of the German consulate, Oscar Rahr with her wife and the consulate's courier Lieutenant Krupp.⁶² In order to suppress the revolt on the islands, a 242-men punitive squad, led by Lieutenant Jaan Klaar (1889–1943), was formed on 16 February.⁶³ The punitive expedition reached Muhumaa on 18 February, where it did not meet much resistance.⁶⁴ Nonetheless, in 1919, 23 people were killed by the punitive squad; another 15 received corporal punishment,⁶⁵ which had been abolished from the Russian Criminal Code in 1863 but remained exercised in Estonia.⁶⁶ Therefore, the enforcement of the corporal punishment during both the revolt on the islands and the Revolution of 1905 was done without a legal basis. It was later alleged that the members of the penal squad also committed murders and robberies during the punitive expedition.⁶⁷ On 21 February, the rebellion was suppressed after the skirmishes near the villages of Upa and Vaivere, which claimed the lives of 75 mutineers.⁶⁸ The captured rebels were taken to Kuressaare, where some of them were summarily executed on the local market square.⁶⁹ On 22 February, a court martial was established in Kuressaare, headed by Lieutenant Aleksander Sepp (1891–1941), which sentenced 68 people to death, accused in “defiance” and “agitating or working for the Reds”, in short period of time.⁷⁰ The executions took place on the nearby pasture; the commandant of Saaremaa Aleksander Rosalk (1889–?) asked the permission of Ernst Pödder, commander of the Kaitseliit, to issue ten litres of spirit to the members of the firing squad.⁷¹ The court martial also sentenced forced labour for 58 people, prison term for 15 and corporal punishment for 118 people,⁷² before it was dismissed on 5 March 1919 by the Estonian General Attorney, Jaan Teemant (1872–1941).⁷³ The trials of the mutineers continued in Estonian court until 1925. The post-war Estonian civil courts viewed the Saaremaa uprising as a revolt against mobilisation rather than an attempt to overthrow the State. The punishments were usually lenient, for instance, in 1925 the Magistrates' Court of Tallinn-Haapsalu sentenced Jüri Pruul to 10 years of forced labour for murder, robbery and attempted murder, which was commuted to one year in prison by the orders of Minister of Justice, Tõnis Kalbus (1880–1942).⁷⁴

The so-called White terror became one of the central issues besides the agrarian problem before the elections to the Estonian Constituent Assembly on 5–7 April 1919. The leading left-wing forces, the Labour Party and the Estonian Social Democratic Workers' Party, the latter of which had demonstratively left the government in early February protesting against the excessive use of force, adopted a critical position, opposing the government of Konstantin Päts. The Provisional Government had taken energetic steps to decrease the violence in the rear in the end of March and beginning of April. On 18 March 1919 (entered into force on 5 April) the rules of the procedure for courts martial were specified, according to these rules the activities of courts martial were to be supervised by the Estonian Army's Prosecutor Gustav von Knorring (1894–1989). For the first time it became mandatory to protocol

the sessions of the court martial. Death sentences were no longer confirmed by the commanders, but by the Minister of War or commanders of the front.⁷⁵ As the legal proceedings became more difficult due to the new requirements, the administration of justice shifted from the courts martial to the Military District Court in Tallinn, where the trial was attended by qualified prosecutors and judges. On 25 March 1919, the Provisional Government ordered that the accused could defend themselves or by their defenders in courts martial.⁷⁶ Also, the defendant was permitted a right to an interpreter if needed. The elections to the Constituent Assembly brought considerable success to the left-wing parties, reinforced the authority of the State and significantly increased civil control over the military, resulting in a decline of violence. The new Constituent Assembly issued an amnesty on 3 May 1919 for all the deserters and draft evaders and also granted a right to those who were convicted according to the order of the Provisional Government of 5 December 1918 to reopen their case in the Military District Court.⁷⁷

The last controversial episode of the activities of temporary courts martial was suppressing the disorder in the reserve battalion of the 2nd Division, in Tartu on 10–13 July 1919. It is impossible to ascertain the guilt of the sentenced, as inquiry and the trial was conducted without a protocol. The disorder began on 10 July when up to 300 soldiers refused to obey orders given by their officers. The situation turned tense as the battalion commander Captain Villem Marder (1883–1935) called in soldiers from the Tartu Pupils' Battalion, but they unexpectedly refused to use violence against their fellow soldiers and returned to their barracks.⁷⁸ On 13 July 1919 soldiers from the Kuperjanov Partisan Battalion arrived and surrounded the Reserve Battalion barracks and arrested 60 soldiers who were rounded up by the officers of the Reserve Battalion.⁷⁹ The prisoners were beaten with horsewhips.⁸⁰ Shortly after a drumhead court martial assembled, headed by Lieutenant Eduard Grossschmidt (since 1940 Suursepp, 1896–1975), and sentenced 22 soldiers out of 32 prosecuted, two of them were sentenced to hanging, 10 soldiers were to be shot and 28 were acquitted.⁸¹ Johannes Anter (1896–1919) was hanged in front of his unit; Jaan Otsing (1896–1919) fainted before the hanging and was killed by revolver shots to head.⁸² Others were gathered behind the sauna where they were shot by their fellow soldiers. 18-year-old Voldemar Moor succeeded to escape and hide from the authorities until the end of the War of Independence. He was arrested on 28 July 1921 but the former Reserve Battalion officers and soldiers' statements to the court revealed that Moor was not involved in the disorder and he was acquitted on 13 October 1921.⁸³ On 16 July 1919 an investigation commission was set up by the Constituent Assembly, the investigation revealed numerous abuses by the officers. After the hearing of the commission's report on 9 September 1919, the Constituent Assembly issued a precept to the members of the Parliament's Defence Committee to take the necessary measures in order to eliminate abuses in the Army. Among other things, beating of soldiers by officers was forbidden, as the investigation revealed that the Reserve Battalion officers had applied physical violence in many cases.⁸⁴

Temporary courts martial, which were founded according to the orders of the Provisional Government on 5 December 1918, formed the repressive apparatus of the Estonian Republic during the War of Independence, set up by the extraordinary outdoor courts formed during the War of the Republic of Estonia, sentencing nearly 300 people to death. The courts martial were established following the example of the Russian Empire, where courts martial were used to suppress the Revolution of 1905. Similarly to 1905 and to the Finnish Civil War, their activities

sparked legal and moral controversies, as the courts martial rarely ever consulted with the military justice. This in turn forced the Provisional Government to take steps to regulate the activities of the courts martial and place them under legal supervision in March and April 1919. By mid-April the courts martial were already held on a new basis (with the notable exception of court martial to suppress the disorder in the Reserve Battalion of the 2nd Division in July 1919), when the law of raw force was overwhelmingly replaced with the generally recognised laws of war. One might say that the principles of the Lieber Code, which founded the bases for the contemporary military justice and the practices of the courts martial during the Estonian War of Independence, represented two different ways. The first one was orientated on the reconciliation of the warring parties; the other was aimed at the suppression of the opposition and retaliation (similarly to the Revolution of 1905 and the Finnish Civil War).

This leads to the conclusion that the temporary courts martial in 1918–1919 did not follow the principals of the contemporary military justice.

Zusammenfassung / Summary in German

Nach der Befreiung des estnischen Territoriums von der Roten Armee erreichte die Tätigkeit die Feldgerichte, die von der Provisorischen Regierung am 5. Dezember 1918 bei den größeren Infanterietruppen eingerichtet worden waren, ihren Höhepunkt. Sie waren in der verzweifelten Situation zu Beginn des Freiheitskrieges mit dem Ziel gegründet worden, die Loyalität der Soldaten und der Bevölkerung in der unmittelbaren Umgebung der Front gegenüber der jungen Republik zu sichern. Die Richtlinien, nach denen sich die Feldgerichte in ihrer Tätigkeit zu orientieren hatten, waren ziemlich allgemein und vage formuliert. So sollten z.B. alle vor Gericht kommen, die „auf irgendwelche Weise gegen die Republik Estland oder zum Nutzen der gegen den Staat gerichteten Kräfte arbeiten oder mit diesen Kräften in Verbindung stehen oder auf eine andere Weise kooperieren“; dies galt zudem für all diejenigen, die auf irgendeine Weise die Tätigkeit der Armee behinderten oder der Republik Estland schädliche Gerüchte verbreiteten. Obwohl die Provisorische Regierung am 9. Januar 1919 für die eigene Armee die Gültigkeit der Regelungen und Gesetze der ehemaligen russischen Armee festlegte, nach denen sich auch die Rechtsprechung zu richten hätte, änderte sich nicht viel, da die Feldgerichte meistens aus niedrigrangigen Unteroffizieren bestanden, die sich in den juristischen Normen schlecht auskannten, nach denen die Urteile hätten gefällt werden sollen. Die Gesamtzahl derjenigen, die während des Freiheitskriegs aufgrund von im Namen der Republik Estland durchgeführter Repressionen ihr Leben verloren, dürfte bei knapp 800 Personen liegen. Ungefähr 300 davon wurden aufgrund eines Urteils der Feldgerichte hingerichtet.

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- ⁶ Minutes of the Provisional Government session, 9 January 1919. *ERA.31.1.13*. – p. 20.

- ⁷ *Minins, Aldis*. Latvia, 1918–1920: Struggle for Freedom or Civil War? *Journal of Baltic Studies*, 2015.
- ⁸ *Minnik, Taavi*. Der Teufelskreis der Gewalt: Terror und Repressionen in Estland, 1917–1919, *Forschungen zur baltischen Geschichte*. – 2011 – 6 – S. 133.
- ⁹ During this period Bolshevik's Provisional Revolutionary Committee issued a decree on 21 November which banned all the other political parties and threatened their opponents to be punished with all "the revolutionary harshness". Besides the supporters of the Estonian national government, all Baltic German gentry and clergymen were declared outlaws by the Bolsheviks on 29 November 1918. The clergymen had been designated as 'counterrevolutionaries' and 'enemies of the working people' on 10 December, and their presence in Estonia was unwanted.
- ¹⁰ See: *Minnik, Taavi*, 'Der Teufelskreis der Gewalt: Terror und Repressionen in Estland, 1917–1919', *Forschungen zur baltischen Geschichte* – 2011 – 6 – S. 120–141.
- ¹¹ *Ibid*.
- ¹² Ceslovas Lauriniavicius. On Political Terror during the Soviet Expansion into Lithuania, 1918–1919. *Journal of Baltic Studies*, 2015.
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- ¹⁴ Foreword by Jüri Adamsi, in: *Konstantin Päts*. Eesti riik II. Tartu, 2001 – pp. 12–13.
- ¹⁵ For instance Lieber's *On Civil Liberty and Self-Government* (first published 1853) in 1908.
- ¹⁶ Пчелинцев, С. В. Законодательство дореволюционной России об ограничениях прав и свобод граждан в условиях особых правовых режимов. История государства и права. – 2006 – № 5 – с. 37.
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- ²⁰ *Karjahärm, Toomas*. Ida ja Lääne vahel. Eesti-Vene suhted 1850–1917, Tallinn, 1918 – p. 117.
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- ²³ Instructions for court martials, 18 December 1918. *ERA.527.1.6a* – pp. 1–2.
- ²⁴ Ajutise Valitsuse määrus välikohtute asutamise kohta: Riigi Teataja (RT)1918 – Nr. 6 (11 December).
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- ²⁶ Decisions made by the court martial of 2nd Estonian infantry regiment, 27–31 January 1919. *ERA.541.1.307* – p. 3–51.
- ²⁷ *Riigi Teataja* – 1919 – Nr. 8 (19 December).
- ²⁸ *Tõnisson, Aleksander*. Katkendid sõjamälestustest – Mälestused iseseisvuse võitluspäevilt, 2. kd, Tallinn, 1930 – p. 222.
- ²⁹ *Päevaleht* – 1918 – Nr. 51 (18 December).
- ³⁰ *Riigi Teataja*– 1919 – Nr. 9 (24 December).
- ³¹ *Ibid*.
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- ³³ Decisions of the court martial of the 2nd Regiment. *ERA.541.1.307* – p. 53.
- ³⁴ *Op. cit.* – p. 55.
- ³⁵ Report of ltn Julius Kuperjanov. *ERA.518.1.217*. – p. 192.
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- ³⁷ About the shooting of Porosna Pauli and the others 15 January 1919 by the officers of the armored train. *ERA.927.1.552*. – p. 23.
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- ³⁹ *Op. cit.* – p. 43.
- ⁴⁰ The statistics is based on the materials of the courts martial (ERA.510.1.320; ERA.518.1.173; ERA.518.1.181; ERA.518.1.216; ERA.518.1.217; ERA.518.1.218; ERA.518.1.248; ERA.518.1.249; ERA.518.1.252; ERA.518.1.256; ERA.518.1.257; ERA.518.1.262; ERA.518.1.264; ERA.518.1.265; ERA.518.1.268; ERA.518.1.269; ERA.518.1.272; ERA.518.1.279; ERA.518.1.286; ERA.518.1.287; ERA.518.1.288; ERA.518.1.292; ERA.518.1.293; ERA.518.1.297; ERA.518.1.298; ERA.518.1.304; ERA.518.1.308; ERA.518.1.316; ERA.518.1.361; ERA.518.1.374; ERA.518.1.404; ERA.518.1.405; ERA.518.1.407; ERA.518.1.415; ERA.518.1.416; ERA.518.1.418; ERA.518.1.419; ERA.518.1.421; ERA.518.1.422; ERA.518.1.428; ERA.518.1.431; ERA.518.1.435; ERA.518.1.445; ERA.518.1.447; ERA.518.1.455; ERA.518.1.457; ERA.518.1.458; ERA.518.1.459; ERA.518.1.461; ERA.518.1.477; ERA.518.1.587; ERA.533.1.403; ERA.541.1.307; ERA.544.1.15; ERA.544.2.34; ERA.544.2.40; ERA.927.1.919; ERA.932.1.5).

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