

# The Agrarian Reform in Esthonia

from the  
Legal Point of View

by

Arthur Weller

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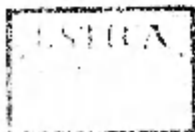
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On October 10, 1919, the Constituent Assembly of Esthonia passed the Agrarian Law — a law the tremendous significance of which is not at once evident from a perusal of its short text, nor was probably fully understood by the legislators themselves. For this law, which was supposed to reorganize in a most radical manner the existing property relations of an entire country, does not consist of more than 28 short articles. Four small printed pages are all that is to serve as the legal basis for the radical Agrarian Reform in Esthonia. A great number of things, in fact altogether too many, are left to the interpretation of the jurists — a circumstance which, as we hope to show, has helped materially to make the consequences of the law all the more momentous and sinister. But first we will attempt to recapitulate here the essential dispositions of the Agrarian Law.

All rural estates, i. e. the entirety of the large land holdings of the country, are subject to expropriation by the government. Excepted are only those landed properties which are owned by cities, charitable or scientific institutions, and communities or townships; but their number, particularly of the latter kind, is quite insignificant. Other parcels of land exempt from expropriation are cemeteries, and the sites of churches and monasteries. And it is not only the large farming estates themselves that are subject to expropriation, but all other types of farm lands (for example, the so-called "landstelles") as well, provided they belong to the possessions of large estate owners; even separate peasant farms, not at all connected with the estate and situated in other parts of the country are expropriated if their owner was at the same time proprietor of a baronial estate. Such, at least, has been the decision of the highest court of justice in the country, so that this constitutes one of the cases where an obscure place in the law has been interpreted by the court of justice in such a manner as to widen as much as possible the scope of the applicability of the law. The proprietor of a baronial estate was thus definitely deprived of the right to own even as little as one square meter of the land that had been his property hitherto.

Together with the expropriation of the land, the Agrarian Law provides also that of the agricultural stock found on the expropriated estates, i. e. the implements necessary for the carrying on of farm work, the seeding material, and the stock of animals. Also all the "appurtenances" of the land are subject to expropriation. Just what comes under this heading has not been defined in the Agrarian Law; but here, too,

the interpretation of the Supreme Court has already asserted itself and given to this term the widest conceivable application, counting among the "appurtenances" not only the things which the present civil law understands by this designation, such as scattered lots of land, islands, etc., but also the various industrial plants, such as distilleries, saw mills, flour mills, etc., which are on the expropriated territory.

Ownership of land in Esthonia entailed quite a number of important rights and duties. With reference to these, the Agrarian Law provides that all the rights pass over to the expropriating state, but the obligations only to a very insignificant extent, namely only those contributions in kind with which the land was encumbered in favor of the state itself or of organs of self-administration. Other contributions in kind shall be recognized only in so far as they form no obstacle to the parcelling out and the utilization of the land — a disposition which is remarkable for its vagueness. On the other hand, all contracts made with reference to the expropriated land and forests become null and void. Here, too, an exception is allowed: all contracts of sales made prior to July 12, 1917, and referring to parcels of land (not estates), and all contracts of sales concluded after that date, but with special sanction of the government, shall retain their validity. This exception, however, is of very slight practical importance inasmuch as hardly any one has been able to produce evidence of having received such government sanction. For the competent authorities, in the years from 1917 to 1919, hardly ever granted this permission, partly from principle, partly because the prescribed stages of appeal from office to office were too complicated and slow. Finally the court interpreted this part of the law, too, in the sense indicated above.

The expropriation has affected an enormous fraction of the entire area of the country, viz. about 56—57% (cf. E. Fromme, *The Republic of Esthonia and Private Property*, Berlin 1922). The law provides, in outline, the following modes of working and utilizing the expropriated land: by small farming in the form of hereditary leaseholds; by long-term leases to cooperative societies, associations, and organs of self-administration; by short-term leases to individuals; and, finally, by direct exploitation through the state itself. All the forests belong in the last named category. There follow a few brief dispositions as to the privileges accorded to the veterans of the Esthonian war of liberation, as to the size of the small farms to be allotted and the authorities to attend to the allotment, as to the granting of loans, as to the disposal of farm stock to the new leaseholders, etc. All these matters are compressed into ten short articles. So the execution of the entire reform, which affects more than half of the country's area, is at best only sketched, thus very free scope given to the judgment and discretion of the government, the officials, and the courts.

It is surprising how little space the Agrarian Law devotes to the matter of compensation. More than half of the landed property of the whole country, together with industrial plants, buildings, dead and live stock, is subject to expropriation, and yet the mode of compensation is disposed of in five brief articles. Compensation for the expropriated real estate is to be regulated by a special law, which, however, has not yet been enacted. The basis for appraising the live stock is to be fur-

nished by the market prices of 1914; dead stock is to be compensated for according to the original purchase prices, with deduction of a certain quota for depreciation. The appraisal of the stock is effected by a committee consisting of three members; the owner has the right to be present in person or to send a representative. The valuation of this committee can be appealed from to a Main Appraisal Committee, consisting of five members.

One can understand that the legislators themselves realized how unfinished and sketchlike their law was. This knowledge found its expression in the brief, but momentous conclusion of the Agrarian Law, which runs: "The execution of this law, together with the right to issue administration regulations, is left to the government of the republic." Indeed the government did avail itself of this right to issue ordinances; it proclaimed a number of decrees which go far beyond the usual compass of so-called "administrative regulations" and supplement the defectiveness of the Agrarian Law by orders that are partly in flagrant contrast with the meaning and the text of the law. The defectiveness and obscurity of the Agrarian Law showed particularly in the following matters. The moment at which the expropriated lands were to pass into the possession of the state was designated to be the date on which the Agrarian Law would be published (October 25, 1919). But this is in direct contradiction to those provisions of civil law, now in force in Estonia and not cancelled by the new Agrarian Law, according to which the ownership does not change until the property is handed over, and according to which every expropriation must be preceded by a complete indemnification. Some of the estate owners continued to run their estates for seven or eight months longer. The legal relation thus created was officially described as "unauthorized management", a definition which is legally absolutely false. The law did not say whether the state would, or would not, take over the hypothecary obligations encumbering the estates; but the assumption that such would doubtless be the case was presently refuted by an expression of opinion on the part of the Ministry of Justice. The matter of compensation was partly not settled at all, partly in vague outlines. Only a few milestones marked the course which the allotment of the land was supposed to take. Despite the enormous number of differences and grievances that were to be foreseen, there was no provision made for the possibility of legal redress, except in the one instance mentioned; neither the proper courts for the litigations, nor the method of obtaining redress in the administrative way, nor the time limits within which suit must be brought are mentioned. Thus the execution of the law has become a rather limitless territory with unstable ground, affording no support against the arbitrary dealings of the executing organs.

### The Execution of the Agrarian Reform.

As early as one year and three quarters prior to the enactment of the Agrarian Law, the government issued an ordinance providing that poorly managed farming estates should be taken into compulsory management by the state. In pursuance of this ordinance, a very great number of estates were subjected to compulsory management, the ma-

majority of them belonging among the best-managed estates of the country. The well-grounded charges of complaint brought by the proprietors were not heard until after the publication of the Agrarian Law because there was no competent court of justice; and after that date, the cases were dismissed with the explanation that no bill was found because the estates were now subject to expropriation anyway. Thus the actual execution of the reform had begun even before the publication of the law.

About three months after that publication, the government gave out a rather detailed instruction for carrying the law into effect. Beside a goodly number of rules pertaining to organization, it contains also some that are of a very comprehensive and exhaustive nature and constitute not only supplements to the Agrarian Law, but also alterations of it. The term "agricultural stock" is not defined by this instruction in the same manner as in the existing civil law, but adds to it, without the slightest legal excuse, the amplification "of which the new settlers or the state may be in need". This addition of "being in need of" is responsible for the great majority of encroachments that have been committed in carrying out the reform. The instruction also deals with the appraising of the expropriated stock. It rules, without any legal basis for so doing, that certain kinds of stock (fertilizer, hay, straw) are not to be appraised, and hence not to be compensated for. Of paramount importance, owing to the exchange conditions of the country, is a provision which says that the values of the stock are to be expressed in Estonian Marks, and that the government reserves for itself the right to determine every year the exchange rate of the Mark in accordance with the domestic purchasing power of the latter. Inasmuch as the expropriated stock had originally been acquired at Rouble prices and was to be appraised in Rouble values, whereas the compensation was to be paid in Estonian Marks, some such regulation was, of course, needed. But the significance of this regulation becomes at once manifest when one considers that the actual ratio of the Mark to the Rouble, in the month the instruction was issued, was as 1 to 75-100 on an average (the opinion of experts appointed by the court is that the computation which arrives at this ratio is perfectly correct and that the lowest index figure is 50), but that the Mark depreciated in the course of a year to only half that value. The government fixed the rate at 1:20, manifestly disregarding the text of its own instruction, which named the purchasing power of the Mark as basis for the rate of conversion. It therefore found itself impelled, a year later, to strike out that reference to the purchasing power of the Mark, thus making not only its own instruction, but also the compensation clauses of the law practically valueless. According to the regulations now in force, the government is absolutely free and bound by no restrictions in determining the rate at which the Rouble is to be converted into Estonian currency for the purposes of compensation for expropriation. So it is practically left to the discretion of the government to fix the amount of the compensation, and the corresponding articles of the law have become valueless, since even the highest administrative court has decided that it has no authority to annul an ordinance of that type. But the government went even further than that. As early as March 31, 1920, and again in direct contra-

diction to the Agrarian Law, it decreed that the appraisal of dead stock should not be based on the original purchase price, as the Agrarian Law unequivocally prescribes, but on the pre-war market prices of 1914, which were mostly considerably lower. The original purchase price is to be considered only where documentary evidence can be produced. In by far the greatest number of cases it is of course impossible to produce now, subsequently, such "documentary evidence". Another example illustrating to what extent the government regulations have deviated from the Agrarian Law is the following. Inasmuch as the Agrarian Law provides only the expropriation of land, of appurtenances of the latter, and of agricultural stock, an expropriation of buildings can of course be effected only in so far as they must be regarded as appurtenances to the land. The rate of compensation for the land and the appurtenances, as well the methods of appraising their value, have not yet been legally laid down, but are supposed to be regulated in the future by a special law. Notwithstanding this fact, the government ordinance deals also with the appraisal and sale of expropriated buildings and thus forestalls in a most incisive manner the law which is yet to be enacted.

From the examples cited it can be seen that the activity of the government has supplemented the defectiveness of the Agrarian Law in a most precarious way, by amplifying and confusing legal conceptions which were defined in the existing civil law, and by increasing the number of litigations arising from the Agrarian Law. For the government ordinances interfered with the rights of the persons concerned. Not only the interests of the estate owners were injured, by increasing the number of objects to be expropriated, and by reducing the compensations. Also the recipients of land had cause to complain of the ordinances, because the latter were by no means suited to establish clarity as to the order in which the claims of persons privileged to receive land were to be considered. At best these ordinances establish a far-reaching privilege of the veterans who participated in the war of liberation, and do so to the detriment of those persons who had hitherto been the tillers of the soil, viz. the farm hands on estates. If one further bears in mind that the execution of this defective law and the contradictory ordinances has been entrusted to persons and committees whose grade of education, material situation, and political bias does not exactly vouchsafe perfect impartiality, then one will easily understand what chaos had to result when the attempt was made to put the Agrarian Law into effect, and that this chaos showed particularly in the legal field. Estate owner and settler, the dispossessed man and the recipient of the land, both appeal to the courts, but it appears that the legal means of redress of the one as well as of the other are equally inadequate, so that the feeling of legal security cannot grow strong in either of them.

#### The means of Redress.

The legal means of redress at the disposal of persons affected by the Agrarian Reform are not especially mentioned in the Agrarian Law, save in one exceptional case. From this fact it follows that they are to be deduced from the existing laws of general application. But these prove to be absolutely inadequate for the special matter in hand. The

lists of objects to be expropriated are made out by committees which consist of two representatives of the Ministry of Agriculture (the heads of the district and township offices) and one representative of the local peasant community. The estate owner is also entitled to sign, if present. But the representative of the peasant community must be regarded as an interested person inasmuch as the expropriated objects are ultimately destined to be distributed or bought by the community which he represents. It is but stating the truth to say that these committees, practically without exception, seek to increase as much as possible the number of objects to be included in the expropriation lists. Thus it happened that furniture, clocks, arms, household linens, and the like were expropriated as agricultural stock. The very numerous complaints of such encroachments are directed to the Ministry of Agriculture, which, consequently, has to pass judgment in its own cause and on the conduct of its own officials. But in the meantime the distribution of the expropriated objects takes its course. As the decision of the ministry usually is from 3 to 5 months, or longer, in coming, it does not help the owner toward recovering his property, even when it is in his favor, because by that time the property in question has long been allotted to settlers or auctioned off. If the decision is adverse, then the first and only court of resort comes into consideration: the owner may within a month appeal from the decision of the Ministry to the Supreme Court of the state. It is self-evident that the described possibilities of suing for redress do not furnish an adequate guaranty for a thorough legal treatment of the disputed matters. For there is only one court of higher resort, which is, moreover, very inaccessible. Besides, the procedure of administrative jurisdiction — the only one admissible — is very imperfectly developed, being based on an extremely scant law which was enacted only in 1919. The Supreme Court has decided that disputes of the kind in question cannot be brought into the courts of civil law, which afford a greater possibility of appeal. If one further considers that the only accessible court of justice is unmistakably inclined to interpret the Agrarian Law so as to widen the scope of its applicability, then one will understand why a goodly number of the afflicted persons prefer not to bring suit at all; for even a favorable decision could, in most cases, lead only to another legal action, viz. to a suit for indemnification for the property adjudicated, but no longer in existence.

The matter of compensation is in no better shape. The appraising of the stock is effected by a committee consisting of one representative each of the Ministry of Agriculture, of the district administration, and of the peasant community. Experience has taught that these committees are far from impartial. They are guided in their work by a highly impeachable instruction of the Ministry of Agriculture, regarding which the state Court has declared itself incompetent to annul the illegalities contained therein. This results in such absurdities as these: the practical value of articles made of iron set down at 2% of their real worth; perfectly fit horses are appraised at a value that does not even equal the value of the animal's hide, etc. To this must be added the fabulously low rate at which the appraised values are converted into Estonian currency. The Agrarian Law refers briefly to the existing possibility of seeking redress: a Main Appraisal Committee of five, made up of



members of various ministries, can be appealed to. The working instruction of this Main Committee was not issued until a year after the enactment of the Agrarian Law, and has never been published. So the plaintiff is absolutely ignorant of the order of business which regulates the procedure. The incoming complaints were at first examined after the expiration of from 6 to 12 months, later on a little more promptly. Only such complaints are entertained as are based on a violation of the precepts regulating the appraisal, i. e. complaints made on formal grounds. But, apart from the two brief paragraphs referred to at the beginning of this paper, no such regulations for the appraisal work have at all appeared. For the afore-mentioned instruction of the Ministry of Agriculture has been designated by the latter in a circular as not absolutely binding. As a matter of fact the committees have always followed this faulty instruction, but owing to the circular it is impossible to base any complaints on it. The minutes of the effected appraisals frequently do not get into the possession of the owners until several months afterwards. But the time limit for entering a complaint is two weeks, and the Main Appraisal Committee does not count these two weeks from the day on which the appraisal record is submitted to the owner, but from the date of the appraisal itself. In this way many proprietors are deprived right from the start of the possibility of entering a complaint. The Main Appraisal Committee never does any appraising itself; its verdicts either uphold the appraisal or order a new one to be made by the sub-committee. A new appraisal is, however, out of the question, because in the great majority of cases the stock is no longer on hand, but has been distributed. Therefore the stock is usually sold to the new settlers, at a price from 25 to 100% higher than the appraised value, even before the appraisal has been confirmed. Consequently the legal means of complaining to the Main Appraisal Committee has only a fictitious value. It looks as if a favorable result of the complaint is not reckoned with at all, for the verdict is not even waited for. Nor is the Ministry very much out of the way with this assumption, for the new appraisals have, almost without exception, turned out lower than the original ones. Not only that the stock which could still be located was much more depreciated through additional wear and tear; but in innumerable instances the committees reduced the appraisal figures without even so much as seeing the objects appraised: The verdict of the Main Appraisal Committee can be appealed from to the Supreme Court for a new trial; but this possibility is of no practical value, because complaint would have to be made that rules had been violated which did not even exist, and because the objects of complaint would by the time of the hearing or new appraisal most likely not be on hand, or their condition at the time of the expropriation no longer determinable.

The allotment of the expropriated land is done through the community and is confirmed by the district administration. Against the decisions of the latter, action can be brought in court, and the verdict of the court can be appealed from to the Supreme Court of the State. So there seems to be a better possibility of control here than in the cases discussed before. But here, too, the slowness of procedure has a paralyzing effect. For in practically all cases the final verdict is not passed until the agricultural work of the current year is finished, i. e. too late. And yet the pro-

visions dealing with the allotment of the land are most decidedly capable of varying interpretation.

The great defectiveness of the Agrarian Law cannot be emphasized enough. The legal means of redress available to the persons concerned are exceedingly meagre, not to say — valueless; and the interpretation of the law is either quite one-sided, or it is denied altogether, the practical effect of which is sometimes even worse. The legal conditions resulting from these factors are almost equivalent to complete lawlessness in this matter. The following example may serve to illustrate this assertion: The government-appointed manager of an estate which had been taken into compulsory management bought, for the account of the owner, 70 800 Marks' worth of horses. Four months later, when the estate was expropriated, the same horses were appraised at 13 600 Marks and sold. A complaint to the Main Appraisal Committee elicited no action on the part of the latter, because no formal error could be proven; a complaint to the Supreme Court was useless, for the same reason. The passive attitude of the injured persons, so understandable in view of the hopeless legal conditions, encourages the executive organs in their illegal doings, and the sense of right among the people, who are looking on in astonishment, is most seriously shaken.

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