

RULING
COMMUNIST
PARTIES AND
THEIR STATUS
UNDER LAW

Edited by
DIETRICH ANDRÉ LOEBER

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Party and State



The party group of the chair of hydraulic machines of the Leningrad polytechnical institute named after M.I. Kalinin discusses the plan of scientific works

Photo and text reproduced from: *V bor'be za tekhnicheskii progress. Iz opyta raboty partiinykh organizatsii predpriatii Leningrada*, Leningrad 1956 , 182



Office building in Moscow at 6, Shabolovka Street.

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РАЙОННЫЕ КОМИТЕТЫ КПСС

**Октябрьского р-на
Шаболовка, 6**

October Rayon Committee of the Mos-
cow City Committee of the Communist
Party of the Soviet Union

**МОСКОВСКИЙ ГОРОДСКОЙ СОВЕТ
НАРОДНЫХ ДЕПУТАТОВ**

**ИСПОЛНИТЕЛЬНЫЕ КОМИТЕТЫ
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**Октябрьского р-на
Шаболовка, 6**

October Rayon Executive Committee of
the Moscow City Soviet of People's De-
puties

Excerpts from: Ministerstvo svyazi SSSR. *Spisok abonentov Moskovskoi gorodskoi telefonnoi seti. Tele-
fony organizatsii..* 1978, Moscow 1978, 63,64,67,80,82

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FOREWORD

Dietrich André Loeber

I. The Issue

The ruling Communist Parties are the leading political force in one-third of the world. Yet, little is known about how these parties function under law. They operate within a legal framework that is almost invisible. Although the parties count millions of members, administer sizeable financial budgets, maintain a network of educational and economic institutions and engage in a multitude of activities at all levels of state and society, their status under law is covered by a veil hiding it from the eyes of outsiders. Communist Parties have revolutionized and mobilized societies in many corners of the globe. With a few exceptions, they have created stable systems of government and can claim remarkable success in selected areas. But the parties remain silent on the law which makes it all possible.

Characterized as the "brain, honor and conscience of our epoch",¹ a ruling Communist Party is portrayed as a unique institution. With its aura of supreme leader fulfilling historical tasks, the Party enjoys almost total immunity from legal research in socialist countries. Individual scholars in the non-communist world have tried to fill the gap, but the significance of the issue calls for a systematic effort.

A first step in this direction was taken by calling a Conference on Ruling Communist Parties and their Status Under Law. It was held at the University of Kiel in June 1984. About 35 participants from 10 countries attended. The papers presented at this gathering are assembled in the present volume. Without attempting to summarize or review the individual contributions, a few thoughts by the organizer of the Conference are offered as a brief introduction to the volume.

Insights into the status of a ruling Communist Party under law can be gained from the national law of the country in question and by means of comparative law analysis.

II. National Law

Given its size and significance, a ruling Communist Party enters into a wide range of legal relations in its day-to-day operations. These may relate to civil, labor, administrative, or financial law. But the published statutes fail to state explicitly that the Party is subject to legal principles and regulations like any other social

organization.² This is no doubt deliberate. Consequently, only rarely are documents found revealing the legal contours of the Party's operation in the state system. A few such materials have been assembled in the Document section at the end of the present volume. The photos facing this Foreword serve to visually illustrate the interface between Party and state.

The Party has good reasons not to be seen as operating on the same level as other agencies or even citizens. If the Party is treated like any social organization, it would lose some of its aura and uniqueness. Moreover, its function as a "guiding force" in lawmaking would be compromised.³ At the same time, the Party is not asserting prerogative *rights*, as sovereigns did in former times. It merely operates in ways which, in *fact*, allow the Party to enjoy a prerogative status.⁴

The simple question of whether the Party is a "juridical person" can serve as a case in point. It generated lively discussions at the Conference. As a number of papers in this volume show, the relevant regulations in socialist countries are ambiguous and the few statements which can be found in legal writings are contradictory. While Lenin stated expressly that his pre-revolutionary Party was not a juridical person,⁵ it is not at all clear whether the Party acquired such status after it came to power and after it grew into a body uniting 17 million members and administering a budget of several hundred million rubles.⁶ This does not mean that the Party uses the ambiguity of the law for the purpose of not fulfilling its obligations under civil law. On the contrary, the Party is likely to go out of its way to perform them and, if disputes arise, to settle them informally.

² The USSR Constitution of 1977 merely states in Art. 6: "All party organizations shall function within the framework of the Constitution of the USSR". The interplay between state law and "party law" has recently been discussed by, among others, O. Luchterhandt, "Die Rechtsnatur des Parteistatus der KPdSU", in *Sowjetsystem und Ostrecht. Festschrift für Boris Meissner*, Berlin 1985, 364-369; C. Osakwe, in M.A. Glendon, *et al.*, *Comparative Legal Traditions*, St. Paul, Missouri 1985, 677-679, 715-721. The relationship between the legal system and a ruling Communist Party can be perceived as having a dualistic or monistic nature, both existing parallel to each other or the one enjoying a supremacy over the other. Similar concepts are used to define the relationship between international and national law.

³ For many of the thoughts discussed in this section on national law I am indebted to Donald D. Barry.

⁴ On the prerogative status of the CPSU, see C. Osakwe, 23 *Columbia Journal of Transnational Law* 1985, 331-352; and *idem*, *op.cit.*, note 2, 679, 720, 855-856, 882-888. The term "prerogative" apparently derives from Ernst Fraenkel and has been discussed in relation to Soviet law also by J.N. Hazard and F.J.M. Feldbrugge in *Soviet Law After Stalin, Part I: The Citizen and the State in Contemporary Soviet Law*, (D.D. Barry, G. Ginsburgs, P.B. Maggs, eds.), No. 20(1) *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), Leiden 1977, XII, 47-48.

⁵ Lenin in a letter of 26 May 1913 to A. Kahn, a lawyer in Stuttgart. For the text, see *Leninskii sbornik* Vol. 38, Moscow 1975, 97. Kahn's reply of 10 June 1913 was written as a legal brief and is published in D. Geyer, *Kautskys Russisches Dossier*, Frankfurt/New York 1981, 636-637. Kahn holds that "the party in question..., without doubt, is not a juridical person".

⁶ A rare glimpse into the interaction between Party and state budgets is provided by sec. 12 of a CPSU Decree of 1957, reproduced in the Document Section in this volume (Doc. 6).

III. Comparative Law

The papers cover a total of 14 ruling Communist Parties. They invite comparison. The reader will try to find an answer to such questions as to whether and where the Soviet model has been copied. He will look for variations on the prototype and for new, independent solutions.

Discussions of these problems during the Conference failed to identify distinct "models". The participants could agree only on a negative finding: the three basic types of a communist *state* (the Soviet Union, Yugoslavia, and China) do not correspond to the existing types of a ruling Communist *Party*. The characteristic features of the parties probably suggest other groups or "families".

Further work is needed to justify conclusions. It should extend to the non-communist world. While imitations and variations of the Soviet model in developing countries have been the subject of a number of studies,⁷ two early cases of a reception almost escaped attention. The CPSU served as a model for the Party of Kemal Atatürk in Turkey in 1919⁸ and for the Kuomintang of Sun Yat-sen and Chiang Kai-shek in China in 1924. The dominant Party in Taiwan is still patterned after the Party in the Soviet Union.⁹

IV. The "Party" – A Misnomer

It is widely realized that the term "Party" is a misnomer if applied to a ruling Communist Party.¹⁰ The very term implies the presence of other "parts", but they are missing in one-party systems. More importantly, the concept "Party" distorts

⁷ See, e.g., H. Bienen, "One-Party Systems in Africa", in *Authoritarian Politics in Modern Society. The Dynamics of Established One-Party Systems*, (S.P. Huntington, C.H. Moore, eds.), New York 1970, 99-127; H. Rogge, *Die Verfassung des afrikanischen Einparteienstaates*, Frankfurt 1974; *Pravo v stranakh sotsialisticheskoi orientatsii*, Moscow 1979; *The New Communist Third World*, (P. Wiles, ed.), London 1982; *Politicheskie sistemy v stranakh sotsialisticheskoi orientatsii*, Moscow 1985.

⁸ J. Domes, *Vertagte Revolution. Die Politik der Kuomintang in China 1923-1937*, Berlin 1969, 4. No mention of the reception of the Soviet model in Turkey is made by Huntington in his discussion of the one-party-system in Turkey: Huntington (ed.), *op. cit.*, note 7, 22.

⁹ Domes, *op. cit.*, note 8, 89, 92-95; *idem*, *Zeitschrift für Politik* 1978, 257-259. Mussolini's Fascist Party also seems to have borrowed certain elements from the Bolshevik Party.

¹⁰ C.J. Friedrich, Z.K. Brzezinski, *Totalitarian Dictatorship and Autocracy*, 2nd ed., Cambridge, Mass. 1965, 45; P. Hollander, *Soviet and American Society*, New York 1972, 44; A.L. Unger, *The Totalitarian Party*, Cambridge, Mass. 1974, 5; I. Lapenna, "Dictatorship of the Proletariat and the All-People's State in the Light of Original Marxism", in *Perspectives on Soviet Law for the 1980s*, (F.J.M. Feldbrugge and William B. Simons, eds.), No. 24 *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), The Hague 1982, 35; W.E. Butler, *Soviet Law*, London 1983, 152; D.A. Loeber, "On the Status of the CPSU Within the Soviet Legal System", in *The Party Statutes of the Communist World*, (William B. Simons and Stephen White, eds.), No. 27 *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), The Hague 1984, 8 and the sources quoted at pp. 20-21 in note 121; Osakwe, *op. cit.*, note 2, 715.

the essence of this body and causes confusion. The papers read at the Conference confirm this, but no new short word has been coined by the participants which could be used in place of "Party".

In an effort to identify characteristic features of individual ruling parties many concepts have been suggested in the literature. They mainly focus on the CPSU and reflect thinking in terms of political science. The Party has been characterized, for instance, as a "political watchdog"¹¹ and a superbureaucracy. Students of management detect resemblance to a "modern matrix organization".¹² Some see the Party sharing features with the church, others with the military. Stalin was explicit by comparing his Party to a "fighting staff"¹³ whereas Krushchev preferred a peaceful metaphor: he found parallels with the conductor of an orchestra.¹⁴ Soviet writers frequently portray the Party as "coordinator", "catalyst", "accelerator", "organizer" or "tutor".¹⁵ A former Soviet "red professor" introduced the word "partocracy"¹⁶ which seems to have gained some currency. The middle level party agencies have been aptly compared to "prefects", a notion derived from the French administration system under Napoleon.¹⁷

Attempts to grasp the essence of a state ruled by a Communist Party in legal terms have not gained wide acceptance. According to one school of thought the Party lies "outside the legal frame".¹⁸ Others have concluded that a state ruled by a Communist Party is a "police state"¹⁹ or "party state".²⁰ One scholar holds that the relationship between Party and state may be likened to that of principal and agent.²¹ He explains that the Party is "to a legal system what the brain is to the body". He also compares the role of the CPSU within the Soviet legal system to

¹¹ D. Shieler, *Russia. Broken Idols, Solemn Dreams*, New York 1983, 258. Cf. also Osakwe, *op.cit.*, note 2, 725 and *idem*, *op.cit.*, note 4, 337 ("political guardian").

¹² P. Cocks in *Soviet Society and the Communist Party* (K.W. Ryavec, ed.), Amherst 1978, 52.

¹³ I.V. Stalin, *Voprosy leninizma*, 11th ed., Moscow 1941, 66; the English edition uses the word "General staff" (quoted by W.W. Kulski, *The Soviet Regime*, Syracuse 1954, 160). Kim Il-sung, the leader of North Korea, has also referred to this Party as the "general staff" (Lee, in this volume at p. 399).

¹⁴ Khrushchev on 8 March 1963, quoted in *The Soviet Political System*, (E. Cornell, ed.), Englewood Cliffs N.J. 1970, 24.

¹⁵ R.J. Hill, P. Frank, *The Soviet Communist Party*, 2nd ed., London 1983, 2, see also 138-140. Cf. also Osakwe, *op.cit.*, note 2, 720 and *idem*, *op.cit.*, note 4, 337 ("moral tutor"). For a recent important study of the Polish Party, cf. E. Erasmus, *Spór o kształt partii*, Warszawa 1982.

¹⁶ A. Avtorkhanov, *The Communist Party Apparatus*, Chicago 1966; cf. also *idem*, *Tekhnologiya vlasti*, 2nd ed., Frankfurt am Main 1976. Before World War II the author was at the faculty of the Institute of Red Professors in the USSR.

¹⁷ J.F. Hough, *The Soviet Prefects*, Cambridge, Mass. 1969, 2-3.

¹⁸ V. Gsovski, *Soviet Civil Law*, Vol. 1, Ann Arbor 1948, 79.

¹⁹ G. Guins in *Zapiski russkoi akademicheskoi gruppy v S.Sh.A.*, Vol. 5, New York 1971, 234 (241).

²⁰ K. Westen, *Die Kommunistische Partei der Sowjetunion und der Sowjetstaat*, Köln 1968, 292.

²¹ Osakwe, *op.cit.*, note 2, 678.

papal infallibility in Roman Catholic theology.²² In the early years, Soviet leaders allegedly referred to the Party as an agency of the state.²⁸ Later, on one occasion, agencies of the Party *apparatus* were criticized for having developed into “peculiar people’s commissariats of people’s commissariats”.²⁴ These remarks reveal perceptions which come close to the view that the CPSU, in fact, performs the role of a “superagency²⁵ for political affairs” in the governmental system.²⁶ Paraphrasing a statement in the Soviet Party Program on the bourgeois state, the Party could be said to have “become a committee for the management of the working people”.²⁷

Whatever concepts deserve preference over the misnomer “Party”, they should convey the notion of a leading political body acting within the legal system of the state. Three recent examples can serve to illustrate the role of the Party in the field of national and international law.

(1) Leading Party officials in Azerbaidzhan were forbidden in 1981 “to construct summer houses, to purchase personal cars and to defend dissertations for earning academic degrees”. The decision was taken on the motion of Geidar Aliev, then First Secretary in Azerbaidzhan, as a measure to combat corruption.²⁸

(2) The Central Committee of the Chinese Communist Party directed lower level Party Committees around 1983 to organize “working conferences” with leading officials of the local police, procuracy, and courts. The task of the conference is to discuss major and difficult criminal cases, in order “to unify views, to coordinate

²² Ibid, 714, 717-718 and Osakwe, *op.cit.*, note 4, 338; *idem*, in *Comparative Legal Traditions in a Nutshell*, St. Paul, Minn. 1982, 287.

²³ L. Revesz, *Fünfzig Jahre Weltkommunismus. Die Rolle der KPdSU*, Bern 1967, 97, quoting Kuibyshev and Zinov'ev.

²⁴ Shtykov, in *XVIII s'ezd VKP (b). Stenograficheskii otchet*, Moscow 1939, 571-572; see also L. Schapiro, *The Communist Party of the Soviet Union*, London 1970, 454.

²⁵ In Russian: *nadvedomstvennyi organ*.

²⁶ Loeber, *op.cit.*, note 10, 8, 10.

²⁷ Program of the CPSU of 1961, Part I, Chapter IV. The sentence in the Program reads: “The [bourgeois] state has become a committee for the management of the affairs of the monopoly bourgeoisie”.

²⁸ G.A. Aliev, *Literaturnaia gazeta*, 18 November 1981, 10. In 1982 Aliev was appointed First Deputy Chairman of the USSR and elected a Member of the Politburo of the CPSU Central Committee. For an account of Aliev's anti-corruption campaign in Azerbaidzhan from the perspective of a Soviet emigré, see I. Zemtsov, *Partiia ili mafia*, Paris 1976, 72-110.

action and to raise efficiency in the handling of cases". The goal is to ensure "a better application of the law".²⁹

(3) In 1982 the CPSU concluded an agreement on cooperation with the ruling Party in Grenada, called the New JEWEL Movement. In the Agreement the parties declared their intention, *inter alia*, to develop contacts between mass-communication media (sec.5), to conduct consultations on international matters (sec.3)³⁰ and to promote inter-state relations (sec. 6). The Agreement was not published by the parties, but the text has been released by the US State Department in 1984. It is reproduced in the Document section at the end of this volume (Doc. 10).

Do these examples show that the Party operates outside the legal framework or do they demonstrate a linkage between Party and law? The question is not merely an academic one. It poses a challenge to lawyers and non-lawyers alike. The papers which follow are offered as a first attempt to find an answer.

²⁹ Li Zhihui, in *Zhongguo zhengfa daxue xuebao*, Beijing, German translation *WGO-MfOR*, Hamburg 1983, Vol. 25, 294 (with introduction by F. Münzel, 291). Cf. K. Nishimura, "The Chinese Constitutions and Inseparability of the Party from the Government", *Comparative Law Review*, Tokyo 1982, Vol. 16, No. 2; English summary: 7-9. For an analysis of the 1982 Chinese Party Statute and its background, see T. Hsia, C.A. Johnson, *The Chinese Communist Party Constitution of 1982*, Washington D.C. 1984.

³⁰ Cf. also the Agreement between the CPSU and the Social Democratic Party of the Federal Republic of Germany of March 1984 on Talks about Ways to Reduce the Arms Burden. The talks were held in Moscow in July 1984 and in Bonn in March 1985. See: *SPD Tagesdienst*, Bonn, 15 July 1984 and 14 March 1985.

V. Acknowledgements

The present volume forms one whole with the collection *The Party Statutes of the Communist World* which appeared as Vol. 27 in the series *Law in Eastern Europe*. Vol. 27, edited by William R. Simons and Stephen White, was prepared for use at the Conference on the Ruling Communist Parties and Their Status under Law, held at the University of Kiel in 1984. The collection of Party Statutes has proved to be a basic source for any research on the ruling Communist Parties.

My thanks go, first of all, to the contributors of the present volume. I wish to recognize in particular Donald D. Barry, Georg Brunner, Ferdinand J.M. Feldbrugge, George Ginsburgs and Peter B. Maggs, who each chaired a panel during the Conference. I am grateful to the editors of the individual papers whose help was crucial in producing this work. They have set an example of fruitful cooperation.

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