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NCSEER NOTE

This paper is #4 in the series listed on the following page. The series is the product of a major conference entitled, In Search of the Law-Governed State: Political and Societal Reform Under Gorbachev, which was summarized in a Council Report by that Title, authored by Donald D. Barry, and distributed by the Council in October, 1991. The remaining papers will be distributed seriatim.
1. GIANMARIA AJANI, "The Rise and Fall of the Law-Governed State in the Experience of Russian Legal Scholarship."

2. EUGENE HUSKEY, "From Legal Nihilism to Pravovoe Gosudarstvo: Soviet Legal Development, 1917-1990."

3. LOUISE SHELLEY, "Legal Consciousness and the Pravovoe Gosudarstvo."

4. DIETRICH ANDRE LOEBER, "Regional and National Variations: The Baltic Factor."

5. JOHN HAZARD, "The Evolution of the Soviet Constitution."

6. FRANCES FOSTER-SIMONS, "The Soviet Legislature: Gorbachev's School of Democracy."

7. GER VAN DEN BERG, "Executive Power and the Concept of Pravovoe Gosudarstvo."

8. HIROSHI ODA, "The Law-Based State and the CPSU."


10. ROBERT SHARLET, "The Fate of Individual Rights in the Age of Perestroika."

11. NICOLAI PETRO, "Informal Politics and the Rule of Law."


15. WILLIAM B. SIMONS, "Soviet Civil Law and the Emergence of a Pravovoe Gosudarstvo: Do Foreigners Figure in the Grant Scheme?"

16. KATHRYN HENDLEY, "The Ideals of the Pravovoe Gosudarstvo and the Soviet Workplace: A Case Study of Layoffs."

17. Commentary: The printed versions of conference remarks by participants BERMAN, SCHMIDT, MISHIN, ENTIN, E. KURIS, P. KURIS, SAVITSKY, FEOPANOVI, and MOZOLIN
# Regional and National Variations

*The Baltic Factor*

Dietrich Andre Loeber

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Executive Summary

Public statements and published sources in the Baltic states on building a law-based state (pravovoe gosudarstvo, Rechtsstaat) reveal the relevance of the Baltic heritage. It includes West and East European values as well as national values which were respected and cherished in the period of independence (1918-1940). The record shows many telling references to the past, but one of the striking findings is the widespread view that the issue of pravovoe gosudarstvo is inextricably linked with independence.
Introduction

The concept of pravovoe gosudarstvo is now hailed as progressive and "socialist" in the Soviet Union after having been denounced for almost seven decades as a device of the reactionary classes. A veritable avalanche of journal articles and books has begun to be published on the subject. One aspect in the heated debate has been largely ignored--regional variations. I am not aware of any single Soviet piece of research addressing this issue explicitly. This is surprising since we are justified in expecting such variations. In the West, for instance, we do not have a uniform concept of Rechtsstaat, but witness several types at work, one of them being the rule of law-concept in common law countries.

In order to detect different concepts of the pravovoe gosudarstvo within the Soviet Union, one would have to scan publications of all regions with potential variations. We would search, for instance, in areas which formed separate legal systems in the past or which constitute Union republics at present. If these areas are grouped into "families," at least 15 legal sub-system could be identified tentatively: Russia, the Ukraine (including the former area of the Don Cossacks and the North-Bukowina, a former Rumanian territory), Belorussia (both the Ukraine and Belorussia with former Polish territories); Estonia and Latvia (which--similar to Finland--lived under a separate legal system until 1917) and Lithuania, now jointly known as Baltic states; Moldova (including Bessarabia); Armenia, Azerbaijan and Georgia in the Caucasus; the five republics in Soviet Central Asia.

This listing shows that it is beyond the capacity of one person to survey publications for all those regions. A selection has to be made. Materials on the Baltic area are more readily available than on other republics. Therefore, and for linguistic reasons, I have chosen the Baltic region as the subject for my study.
The essence of the pravovoe gosudarstvo as advocated in the Baltic states conforms to the generally recognized concept as understood in modern constitutional law and legal theory. It includes at least three essential elements:

1. Supremacy of the law. This means that the state is bound by its own legal acts and that it observes a hierarchy of laws.

2. Division of legislative, executive, and judicial power. This requires, among other things, an independent judiciary, the judicial review of administrative acts, and a mechanism for constitutional supervision.

3. Respect for basic human rights and the machinery for their protection.

If there are differences in emphasis and approach in the debate on the Rechtsstaat in the Baltic media, they can be explained by the plurality of opinion rather than by national or regional characteristics. For this reason the present study is focused not so much on a survey of individual views about what constitutes a pravovoe gosudarstvo, but rather on why a Rechtsstaat is thought to be necessary. Here I shall explore where its roots are, and whether continuity with some pre-Soviet thinking is in evidence. Except in the final sentence, I will not consider it my task to pass judgment on the extent to which attempts to realize the goal have been successful and what is still needed to achieve it. This would probably require another paper.

The Baltic Heritage

The idea of a law governed state has its own history in the Baltic states. Before
becoming independent in 1918, all three Baltic countries were parts of the Russian Empire, but the history of their political and cultural developments followed different paths.

Administratively, the territories which later became Estonia and Latvia were able to preserve some degree of autonomy dating back to the Treaty of Nystad (1721). They formed the provinces (gubernii) of Estland, Livland, and Courland, which were jointly called the Baltic provinces. Lithuania, on the other hand lacked such privileged status. Lithuania, the only Baltic country with a previous record of independence (in the 14th-18th centuries), was divided into three provinces: Vilna, Grodno, and Kovno (in Lithuanian: Kaunas). Latgale, located in the south-east of present-day Latvia, was also excluded from the Baltic provinces. It was administered as part of the Vitebsk province. Latgale, also known as Polish Livonia, was under Polish rule until 1792.

The Lithuanian territory was governed by general Russian law. The territories of the Baltic provinces, on the other hand, enjoyed the right to live under a legal system of their own. This legal system was based on Roman law and codified in the "Law of the Baltic Provinces" of 1864.⁴

Ethnically and linguistically Latvians and Lithuanians are related, but they profess different religions: Lithuania is a Catholic country whereas the Latvians as well as the Estonians are predominantly Lutheran. Estonian is a Finno-ugric language.

In 1918 Estonia, Latvia, and Lithuania won independence. This period lasted until 1940 when, as a consequence of the infamous German-Soviet Secret protocols of 1939, the three countries were incorporated by the USSR. During the 21 years of independence, their legal systems worked effectively, but each of them experienced two types of government:
(1) a liberal-democratic government, based on parliamentary rule. This was the foundation upon which the new states were established; and

(2) authoritarian rule, to which Lithuania was subjected first (1926). After the world economic crisis, authoritarian regimes were also set up in Estonia and Latvia (1934). The Estonian variant of authoritarianism was less rigid, permitting Estonia a partial return to parliamentary rule in 1937.

After becoming Soviet republics, the law of Estonia, Latvia, and Lithuania was changed in its totality three times within five years. In 1940 a Moscow Edict (Ukaz) ordered the application of RSFSR codes in the newly incorporated territories, thus replacing the respective national laws. In addition, Soviet federal (all-Union) legislation became operative. In 1941, when the three countries were occupied by Germany, the Reichskommissar fur das Ostland reversed the Moscow Edict and ordered a return to the pre-war national laws, subject, however, to the statutes of the occupying powers. In 1944/45 Estonia, Latvia, and Lithuania were re-occupied by the USSR with the result that Soviet legislation, introduced in 1940, resumed its effect. Presently, the fundamental changes in the Baltic countries have produced a new major reversal in their legal orders.

Baltic Efforts of Building a Law Governed State

Building a law governed state has almost become a goal of national policy in the Baltic states. But none of the Constitutions of the three countries uses the term Rechtsstaat or its equivalent. Estonia, in 1988, inserted a provision in its Constitution of 1978 which comes
close to expressing one of the essential features of a Rechtsstaat. The relevant sentence in the amended version reads: "The judicial protection of constitutional rights in the Estonian SSR is safeguarded." The Constitution of the Latvian SSR of 1978, which is still applied to the extent that it does not contradict the Declaration of Independence of 1990, fails to address the question of pravovoe gosudarstvo. Lithuania, according to its Provisional Basic Law of 1990, is a "sovereign democratic state." In a draft, published in 1988, Lithuania, was described as a "sovereign socialist law-governed state" (pravovoe gosudarstvo).

Policymakers in all three countries are on record as supporting the idea of pravovoe gosudarstvo. In its 1990 Program of Activities, "the Supreme Soviet of the Estonian Republic sets the goal of . . . forming a legal state, where all human rights are guaranteed . . . The basis for the political structure is parliamentary democracy and the division of powers." The Minister of Justice of Estonia, Juri Raidla, elaborated on this task in a challenging article in the Ministry’s law journal in 1990.

In Latvia the Council of Ministers ordered a series of measures with a view to raising "the general legal education in the republic." This was done for the express purpose of "creating a law-governed state", as envisaged by the 19th All-union Conference of the CPSU in June 1988. Appeals for achieving this goal have also been issued by the Minister of Justice of Latvia, Viktors Skudra. In 1988 he declared that the "Ministry of Justice is beyond any doubt for the creation of a law-governed state." He urged the country’s jurists not to "stand by the ruins" of the Rechtsstaat, but to actively work towards the goal. In an article entitled "On the Road to a Law-Governed State" he outlined the basic features of this concept and described the practical steps to be taken in the future.
Leaders of political parties and movements have similarly focused on the issue of Rechtsstaat. Creating a law-governed state is one of the goals of the People's Front of Estonia. It is inscribed in its Charter, adopted in 1988. The People's Front views itself as a "social guarantee" for a law-governed state. This is stated in the General Program of the People's Front adopted in 1988.

The People's Front of Latvia, in its 1988 Program, has proclaimed a law-governed state to be one of its main "General principles." It has also advanced concrete demands for its realization. The idea was further elaborated by leading members of the People's Front of Latvia, such as Dainis Ivans and others. The Statute of the People's Front adopted in 1990 reconfirmed the establishment of a law-governed state as one of its main tasks, demanding at the same time the liquidation of the "authoritarian state structure." The Social Democratic Party of Latvia devoted a whole section of its Program of 1989 to the question of a law-governed state, while the National Independence Movement of Latvia (LNNK) expressed support for the Rechtsstaat-concept in its 1990 Program in just one sentence. The Communist Party of Latvia mentioned pravovoe gosudarstvo in its Action Program of 1989 as one of the bases on which a rejuvenated socialist society should be built.

In 1990 one faction of the party declared itself independent of the CPSU and shortly thereafter adopted a new name: "Democratic Labor Party of Latvia". In its Fundamental Principles of 1990 the party states as one of its aims the "building of a democratic...society in a free, independent and law-governed Latvian state." The "Interfront" of Latvia, on the other hand, which is seen by the People's Front as a conservative force, proclaims in its
1990 Statute the "promotion of. . .legal. . .culture" as one of its tasks. The term pravovoe
gosudarstvo is not used.

The Communist Party of Lithuania had voted for independence from the CPSU
already in 1989. Its Central Committee established a "commission for the Evaluation of the
Work of the Communist Party of Lithuania in the Period of 1918-1989". In the evaluation,
"it is necessary", emphasized the chairman of the Commission, "to proceed from a clear
orientation towards a democratic and law-governed Lithuanian state." 28

Sajudis, the political organization in Lithuania which won the election and has formed
the government since 1989, stated in its pre-election Platform of 1990: "Free Lithuania is
established as a legal state reviving the democratic traditions of the Lithuanian Republic." 29
This declaration is in line with the policy proclaimed at the founding congress of Sajudis in
1988 when Arvydas Juozaitis, a spokesman of Sajudis, linked the future of Lithuania with the
formation of a law-governed state. 30

In addition, organizations of lawyers are in the forefront of those who support the
idea of a law-governed state. A courageous initiative was taken by the primary party
organizations of lawyers' collectives of Estonia in May 1988. It was probably one of the first
attempts to formulate the essential prerequisites of a "socialist legal state." 31 The Lawyers
Association of Latvia followed soon thereafter by founding an Association which unites
lawyers who "take part in the building of a legal state" (1988 Statute Article 1). 32 A month
later the jurists of Lithuania published a draft statute of a professional society which "actively
supports...the formation of a sovereign legal socialist state in Lithuania" (Article 1). The
epithet "socialist" in the notion was omitted in a Declaration adopted by the organization in
1989. At the same time a Resolution was passed specifically devoted to a "tiesines valstybes" (legal state).³³

Important contributions advancing the idea of a law-governed state have also been made by legal scholars. Reference could be made to the works of U. Lohmus,³⁴ Ilmar Rebane³⁵ and E. Ridamae³⁶ in Estonia, and to Ilmars Bisers³⁷ and Edgars Melkisis³⁸, and Juris Bojars in Latvia and to an unsigned lead article in Socialistine teise, the law journal of the Ministry of Justice of Lithuania.³⁹ Estonian scholars abroad, like Ilmar Tammelo, contributed earlier to the discussion.⁴⁰ Henn-Juri Uibopuu of the University of Salzburg published pertinent articles in Estonia’s law journal in 1989 and 1991.⁴¹

A seminar of jurists from the Baltic republics, which took place in November 1988 in Tallinn, adopted a Resolution which states that the "judicial protection of constitutional rights" is one of the "revolutionary steps on the road to forming a law-governed state."⁴² At the same time (Fall 1988) at least four conferences were held in Latvia on the subject of pravovoe gosudarstvo⁴³

Ilmars Bisers emphasized that the pravovoe gosudarstvo concept has to take into account specifics of the republic, for instance, historic peculiarities.⁴⁴ This is done in practice. Baltic efforts are linked in some way either to the Baltic heritage in the past and/or to the Baltic struggle for independence at present.

Links to the Baltic Heritage

The Baltic heritage is composed of a variety of elements. Three of them are singled
out in the context of our discussion of pravovoe gosudarstvo:

(1) West European values shaped by the reformation, enlightenment and parliamentary democracy;

(2) East European values, inherited from pre-revolutionary Russia, an empire caught between autocratic rule and liberal tradition;

(3) national values which found their fulfillment and most authoritative expression in independent statehood (1918-1940).

**West European Values**

The idea of *Rechtsstaat* originated in Western Europe. The philosophical foundations for it were laid by Immanuel Kant in the 18th century. The concept was then developed by legal scholars. Among the first were Robert von Mohl (1799-1875) and Friedrich Julius Stahl (1802-1861). By now the concept is a fundamental notion in Western constitutional law and theory.

Evidence of a link between the Baltic efforts to build a *Rechtsstaat* and the values originating in West Europe can be seen in recent publications. Viktors Skudra (the above-mentioned Minister of Justice of Latvia) singled out Kant in an article in Kommunist Sovetskoi Latvii in 1988. "I mention him," said Skudra, "mainly because it was he who was one of the first in the world history who started to talk about the legal state."\(^{45}\) Kant’s *Prolegomena* appeared in Latvia in a Latvian translation 1990 with a print run of 15,000 copies.\(^{46}\) Robert von Mohl and his basic work on the *Rechtsstaat* was the subject of an
article published in Estonia. It is significant that Mohl’s work was available in a Russian translation as early as 1868.

The printed word is the most important channel in the Baltic for the communication of West European values. Input through personal experience of life in a Rechtsstaat is minimal. Up until recently, the present generation of Baltic lawyers was deprived of the opportunity to gain professional experience in Western Europe or in America. The period of isolation from the outside world under Soviet rule set in 50 years ago. This means that the last cohort of lawyers which could have studied or practiced abroad was born before 1915 and is now more than 75 years of age. The isolation during the Soviet period is in contrast with the pre-1940 years, when jurists from the Baltic states often traveled abroad for legal training or work. This was in line with a tradition among the youth and the intelligentsia to continue education or to gain professional experience in a foreign country.

East European Values

The legal heritage of Russia was kept alive in the Baltic states for almost two decades after it was extinguished in Soviet Russia in 1917. Some Russian laws and statutes remained in force in the Baltic region until replaced by national legislation. They included, for instance, the Judicial reform laws of 1864, the Civil and Criminal procedure codes and the Statute on Notaries. The Russian 1903 draft of a Criminal code became law in the Baltic states (it was in effect in Latvia until 1933). Commentaries to pre-revolutionary Russian codes and law textbooks appeared in new editions in the Baltic republics in the 1920s. The
publication activities extended to such fields of law as civil and business law,\textsuperscript{50} civil and criminal procedure law,\textsuperscript{51} international law\textsuperscript{52} and Roman law.\textsuperscript{53} Of particular interest in the present context are publications in the field of state law and legal theory.\textsuperscript{54}

It seems significant to note that some prominent pre-revolutionary Russian scholars who advocated the idea of pravovoe gosudarstvo were of Baltic origin. This is true, for instance, of S.A. Korf, author of a fundamental work on administrative justice,\textsuperscript{55} Boris Baron Nol'de, who is known for his work on international law and legal history,\textsuperscript{56} and Mikhail Reisner, who wrote a frequently cited article on pravovoe gosudarstvo in 1903.\textsuperscript{57} He later became one of the early Soviet legal theorists. Another scholar of Baltic heritage was the "well-known jurist" V.N. Rennenkampf.\textsuperscript{58}

An important role in preserving the Russian legal heritage was played by Zakon i sud, a law journal in Russian which established its home in Riga, Latvia. It was published by the Society of Russian Jurists in Latvia and appeared from 1929 to 1938. One of its editors was the pre-revolutionary lawyer Oskar Gruzenberg (1866-1940) who became famous for his part in the Beilis case. He settled in Riga in 1926.\textsuperscript{59} The journal Zakon i sud earned a reputation of meeting high professional standards. It contains a wealth of materials, some of which have preserved their relevance to this day. Another prominent Russian jurist who found refuge in the Baltic region was the civilist Professor Igor M. Tiutriumov (1865-1943), formerly of Petrograd University. He was invited by the University of Tartu/Iuryev and taught there 1920-1930.\textsuperscript{60} A further example is Professor David Grimm (1864-1941), an authority on Roman law, and a former Rector (President) of Petrograd University, who likewise taught in Tartu (1927-1934).\textsuperscript{61}
The time period which separates the present generation of Baltic jurists from its pre-1917 roots is roughly 20 years shorter than that for Soviet jurists. This may have relevance to the development of the concept of a *pravovoe gosudarstvo* in the Baltic region. It is probably not a coincidence that a 1983 study on the sociological school in Russian pre-revolutionary legal thought was published by a scholar in the law department of the Latvian Academy of Sciences in Riga.\(^6^2\)

**National Values**

The number of persons with a living memory of the years of independence (1918-1940) is limited to those who now are 70 or older. Even fewer people can remember life under conditions of a parliamentary democracy. This is so because the Baltic states were subject to authoritarian rule in the last years of their independence. A Latvian citizen, for instance, who may have witnessed the last parliament in session in 1934 at 21 is now 78.

This means that national values which could be of relevance in shaping a future *Rechtsstaat* have to be learned or internalized mainly from published sources. Before 1940 the concept of *Rechtsstaat* was discussed by legal scholars in all three Baltic countries, first and foremost by academic teachers of constitutional law. Among them professor Nikolai Maim of Tartu University,\(^6^3\) professor Karlis Dislers of the University of Latvia\(^6^4\) and professor Mykolas Romeris of the University of Kaunas\(^6^5\) deserve mention. After the incorporation of the Baltic countries into the Soviet Union, Maim emigrated and died in the USA, Dislers was deported by Soviet authorities and died in a labor camp in Siberia, and
Romeris was retired and died in a small village in Lithuania. In the present discussion of a law-governed state we occasionally find references to the works of these authors. Excerpts from Dislers' studies and a textbook by Romeris on constitutional law were reprinted in 1990 in Riga and Vilnius respectively. A memorial plaque devoted to Maim is displayed at the Law Faculty of Tartu University.

The Baltic states lived up to the standards of a Rechtsstaat during their parliamentary phase. In the treatment of national minorities Estonia and Latvia were even hailed by the international community as models of tolerance and cooperation. The cultural autonomy in Estonia and the autonomy of educational institutions in Latvia were examples of a liberal and effective solution of the national problem after World War One. The present Minister of Justice of Latvia, Viktors Skudra, is well aware of this achievement. Independent Latvia, he said in 1989, "in the area of education was (if one could say so) a more legal state than the sovereign republic is in our days."

The quotation shows that national values, to some degree, have entered the present discussion of a Rechtsstaat in the Baltic region. This is also true of the Baltic emigre community. The question whether the parliamentary rule in Latvia, for instance, has proved to be a positive experience, was answered in the affirmative in a convincing article by Janis Penikis, a political science professor at Indiana University. The article was reprinted twice recently in Latvia. While the input from the past is somewhat limited, the linkage of the concept of Rechtsstaat to the present Baltic struggle for independence is more clearly in evidence.
Links to the Baltic Struggle for Independence

The pravovoe gosudarstvo idea has become a weapon in the Baltic struggle for independence. It is used as an argument both by the government in power and by the opposition represented by the "Interfront" movements in Estonia, Latvia and Lithuania. The debate frequently centers on issues of topical significance. In some cases the references are formulated in negative terms, pointing to situations which are said to be incompatible with a pravovoe gosudarstvo.

In 1990 the Estonian democratic association "Vaba Eesti" issued a statement of its basic principles, which includes a section entitled "Pravovoe gosudarstvo". After listing a number of traditional features of a law-governed state, the statement adds a new element: the condemning of the crime of mass repressions. Extending the concept of a pravovoe gosudarstvo to this question of criminal law can be explained by the fact that repressions and the wave of terror which swept Estonia under Soviet rule is an explosive issue there.

Another burning problem was raised and linked to the pravovoe gosudarstvo discussion in Latvia when Aleksandr N. Iakovlev visited Riga in August 1988. In a public meeting with Iakovlev, one of the participants exclaimed: "In a legal state non-citizens are excluded from taking part in elections; this right is reserved to citizens." The People’s Front of Estonia considers elections to be in conformity with the "principles of a legal state" if they are general, equal and direct.

Another area thought to be relevant for building a Rechtsstaat is citizenship. The Estonian Lawyers’ organization insists that each republic should have its own citizenship and
regulate the manner by which it is acquired. According to the same document, the recognition of state language for each republic is equally a feature of a Rechtsstaat.

Details about the attitudes of federal authorities vis-a-vis republican lawmaking organs in the past are revealed in an article by Ilmar Rebane, a law professor of Tartu University. In the article, entitled "On the Drafting and Putting into Effect of Normative Acts in a Legal State," Rebane describes the mechanism used by Moscow to force republics into abandoning their drafts and adopting versions prepared by Moscow. The working atmosphere in these situations, he says, was less than friendly and was characterized by a contempt for republican wishes and traditions. Rebane's point is that republican lawmaking without interference from the center is a crucial element of a pravovoe gosudarstvo.

The concept of pravovoe gosudarstvo is also endorsed by the opposition. Janis Dzenitis, Deputy Procurator General of the USSR, a Latvian, who previously had served as the Procurator of the Latvian SSR, attacked his countrymen in the pages of Pravda in 1990. He came out against the thesis that republican laws take precedence over federal law or—as he put it—tha lower ranking statute overrules a higher ranking act. This, he wrote, "turns everything upside down. And it happens in a country which aims at becoming a law-governed state in the future."

In-migration is another sensitive issue in the Baltic region. In 1989 the Latvian government enacted a decree on stopping an unjustified increase of the population and on regulating migratory processes. This statute is characterized by the opposition in the "Interfront" paper of Latvia Edinstvo as an undemocratic act which "does not serve the idea of forming a law-governed state."
A strike committee in Estonia which is in opposition to the government likewise refers to pravovoe gosudarstvo. In 1989 it made two propositions to the Estonian parliament in relation to the "formation of a law-governed state":

(1) to repeal the Estonian Declaration of Sovereignty and the Constitutional amendments of November 16, 1988, and;

(2) to exclude from commissions of the Supreme Soviet those "members of the Union of jurists of Estonia who support its platform" on the "so-called priority of the indigenous nation." 79

The Strike Committee in Estonia in effect demands a thought control in the name of pravovoe gosudarstvo. The idea of a law-based state was also compromised in a document of the Central Committee of the CPSU, entitled "On the Results of Meetings and Conversations with Party Aktivs, Communists, and Workers of the Lithuanian SSR". In this confidential memorandum of 29 August 1990 the CPSU leadership details its plans for Lithuania. Section 7 of the document reads:

The State and Legal Department of the CPSU Central committee, through Communists in charge of the country's law-enforcement bodies, is to organize work to institute criminal or administrative proceedings against the leaders of various nationalist and anti-Soviet public formations, extremists, and deserters who have violated Soviet laws. to this end, [the department is] to coordinate the activities of the USSR Prosecutor-General's Office, the USSR Ministry of Internal Affairs, the USSR KGB, and the USSR Supreme Court. 80

The instruction amounts to interference with the administration of justice incompatible with the notion of a Rechtsstaat. In neighboring Latvia Ilmars Bisers, Deputy Chairman of the Council of Ministers and a law professor, aptly observed in 1990: "We are still very far from a law-governed state. Under conditions of a one-party system it is impossible to create
a law-governed state."81

The relationship between a law-governed state and international law is of crucial importance in the Baltic case. In an address to the USSR President, the Supreme Soviet of Estonia pointed out in 1990 that the "formation of a law-governed democratic state in the Soviet Union is possible only by restoring historical justice" to Estonia.82 This is a reference to the illegal division of Europe in 1939 into Soviet and German spheres of influence. As a result of this secret agreement Estonia (and the other two Baltic states) lost their independence a year later. The link between pravovoe gosudarstvo and international law is also stressed by I.A. Teder, Vice-President of the Bar of Estonia. A Rechtsstaat in Estonia can only be built, claims Teder, after Estonia has ceased to be a Soviet republic. "It seems absurd to combine aggression and a law-governed state" he writes explaining his thought as follows: the Estonian SSR was created as a result of an aggression committed by the USSR against Estonia in 1940 and, consequently, lacks a legal basis. "No law", Teder concludes, "can be built on an illegal foundation."83

A similar view, but coined in positive terms, can be found in the Conception for Restoring an Independent State of Latvia, adopted by the Board of the Union of Scholars of Latvia and published in 1990. One of its central theses is: "A law-governed state can be created faster in an independent Latvia rather than in the USSR federation which lacks a democratic tradition."84 But independence is not easily won. The dilemma is eloquently expressed in 1989 by Anatolijs Gorbunovs, Chairman of the Presidium of the Supreme Soviet of the then Latvian SSR. He cautioned his listeners that "we have taken only the very first steps on the road to a law-governed state." Our task is so difficult, he explained, "because
the concepts 'republican sovereignty' and 'law-governed state' are inseparable."85

When the Baltic states began to take steps to restore their independence, they were warned in the West not to destabilize the Soviet Union and not to cause trouble for the new reform-minded leadership. They were advised to move slowly and cautiously. The Supreme Soviet of Lithuania has taken a stand against such views and insists on the generally-recognized right of self-determination. In a letter to President Gorbachev in 1990 it stressed: "The re-establishment of an independent state of Lithuania. . .cannot harm. . .attempts to create a law-governed state in the Soviet Union."86 The Supreme Soviet of Lithuania has its doubts, however, as to whether the attempt in the Soviet Union has been successful. In an address to all peoples and governments of democratic states participating in the Conference for Security and Cooperation in Europe it observed in 1990: "Some politicians and means of mass information try to portray the Soviet Union as a democratic and law-governed state whereas its attitudes towards Latvia, Lithuania and Estonia demonstrate the opposite."87

The Record in Perspective

The substance of the Rechtsstaat concept in the Baltic states does not differ markedly from traditional features, as recognized in legal theory and practice in Western democracies. If there are deviations, they relate to the political sphere where the Rechtsstaat concept is used--or abused--as an argument for and against independence.

The issue of a Rechtsstaat in the Baltic region reflects conflict, mainly between the federal power and republican claims to independence. The confrontation manifests itself in
the legislative, executive and judicial spheres and consequently affects all areas relevant to
the functioning of a pravovoe gosudarstvo. Union power is most visibly represented by the
presence of armed forces and internal security troops and by the claim of federal agencies to
exercise authority in the republics. The federal agencies rely on the inherited system of
subordination and on a network of federal regulations which they try to enforce by using the
financial and material leverage at their disposal.

There is room for a more profound and systematic treatment of the concept of a
Rechtsstaat in the Baltic countries. Several reasons come to mind as to why this has not been
done yet. First, there is the instable political situation which dictates its own priorities.
Second, fifty years of Soviet rule over the Baltic have left their imprint. The concept of a
pravovoe gosudarstvo was treated with a peculiar (svoeobraznyi) "immunity" for decades, as
two Soviet authors from Rostov have euphemistically called the outright condemnation of this
"bourgeois" idea. The process of rehabilitation of the concept has been lengthy and
painful. A third reason is the Soviet "heritage." For some citizens on Soviet territory,
pravovoe gosudarstvo is nothing more than a successor to "socialist legality." Frequently it is
promoted in the same way—in a "campaign" style. E. Ridamae, an author in Estonia, puts
this observation into the following words:

"As regards pravovoe gosudarstvo, we are probably still at the level of
pronouncing declarations from high tribunes...Let us remember how (socialist)
legality was devalued: Despite its permanent strengthening and safeguarding, it
became a mass (socialist) lawlessness, as it turns out now after the fact
(zadnim chislom). We probably do not yet know what a pravovoe gosudarstvo
actually means...First we have to find out...how to liquidate collisions between
the right of self-determination and superpower interests."89

This point is missed by John Lloyd, writing in the Financial Times in 1990. For him
the "process of the creation of a law-governed state in the Soviet Union is the success story
of the five years of President Mikhail Gorbachev. Not just successful: breathtakingly
successful...". Ridamae, I submit, is closer to reality than John Lloyd.
NOTES

1. The terms pravovoe gosudarstvo, Rechtsstaat, law-governed state and the literal translation "legal state" are used in this paper synonymously.


7. Law, 16 November 1988, **Vedomosti Verkhovnogo Soveta Estonskoi SSR** 1988 No. 48, item 684 (Article 2).


14. Viktors Skudra, **Cina** (Riga) 21 October 1988, 2. See also "sozdaem pravovoe gosudarstvo. Interv'_iu s Ministrom iustitsii Latviiskoi SSR Viktorom Skudroi", 
Kommunist Sovetskoi Latvii 1990 No. 1, 48.


18. Ibid., 171.


34. U. Lohmus, in Oigusriik. Oigusloomingu probleemid, Tartu 1989, 9-17; see also L. Auvaart, ibid., 54-60.


37. Ilmars Bisers, "Esmu optimists. Ar Ilmaru Biseru sarunajas Santa Strupisa," Temida (Riga) 1990 No. 2, 20-21. See also idem., "Razmyshleniia o demokratii,
sotsialisticheskom pliarizme i sozdani pravovogo goddarstva," Rigas Balss 14 September 1988, 4-5.


42. Rezoliutsia seminara iuristov respublik sovetskoi Pribaltiki, Vozrozhdenie (Vilnius) No. 8, 22 November 1988, 7.
43. The conferences were organized in Riga by the People's Front of Latvia (Cina, 9 October 1988), the Association of Jurists of Latvia (Padomju jaunatne, 24 November 1988), the Procuracy of the Latvian SSR (Cina, 16 December 1988) and at the University of Latvia as an "Olympic competition" for law students (Padomju jaunatne, 15 October 1988).

44. Ilmars Bisers, op. cit. note 34, 21.


48. Ibid. 145.


57. M.A. Reisner, "Chto takoe pravovoe gosudarstvo," *Vestnik prava* 1903 No. 4, 85-86. Mikhail Andreevich Reisner (von Reusner), (1868-1928) was born in the family of a government official of Baltic noble descent in the Vilnius guberniia. His biography can be found in *Deiateli SSSR i Oktiabr'skoi Revoliutsii*, Part 2, Moscow 1926, col. 197-205.


60. On publications by Tiutriumov see notes 50 and 51.


66. Vecvagars, op. cit. note 64, 6-7.


68. Viktors Skudra, in *Latvijas PSR Tautu foruma materiali 1988*, g. 10, un 11. decembri,
Riga 1989, 63; Russian edition: Materialy foruma narodov Latviiskoi SSR 10 i 11

69. Janis Penikis, Atmoda (Riga) 1989 No. 4 (30 January), 4-5; Kulturas Fonda avize (Riga),
March 1990, 15-18; the original version appeared in: Akademiska dzive (Minneapolis,

70. Sovetskaia Estoniia, 6 February 1990, 1.

71. A. Bels, in Par realismu domasana...Materialu krajums par...A. Jakovleva uzturesanos
Latvijas PSR..., Riga 1988, 36; Russian edition: Za realizm mysli...Sbornik materialov
o prebyvanii chlena politbiuro sekretaria TsK KPSS A.N. Jakovleva v Latviiskoi SSR 8-

72. Narodnyi kongress, op. cit. note 17, 194; see also 216.

73. Mneniia, op. cit. note 31, 250.

74. Ibid.

75. Rebane, Voprosy..., op. cit. note 35, 14-25; idem, in Oigusriik, op. cit. note 34, 18-28.


77. Decree of the CM of the Latvian SSR, 14 February 1989, "On Measures for Stopping
an Unjustified Mechanical Increase of the Population and for Regulating Migratory

78. G. Morozli, "Budet li pravovoe gosudarstvo?", Edinstvo (Riga) 5 April 1989, 1.


84. Zinatne un mes (Riga) 1990 No. 1, 7 (continued in No. 2); also in: Tevzemes avize (Riga) 1990 No. 6-7, 10-11.

85. A. Gorbunovs, Cina (Riga) 31 March 1989, 1.


87. Address, 22 November 1990, Vedomosti Litovskoi Respubliki 1990 No. 34, item 826.


89. Ridamae, op. cit. note 36, 222.