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The Law-Based State and the CPSU

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NCSEER NOTE

This paper is #8 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. *This paper was written prior to the attempted coup of August 19, 1991.*
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."

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The Law-Based State and the CPSU

Hiroshi Oda

Executive Summary

The shift of real law-making power from the CPSU apparatus to the Congress of People’s Deputies and the Supreme Soviet is a development in the direction of creating a law-based state. Also important is the incipient de-politicization of the legal system.

"Socialist legality" was never a politically-neutral concept; it was compatible with the "leading role of the CPSU." The fact that the term socialist legality has almost ceased to be used is in itself significant.

The 19th Party Conference in 1988 was the beginning of major changes. And it is certainly true that in the beginning, the Party was the carrier of change. In a formal sense, this process culminated in March 1990, with the amendment of Article 6 of the Constitution, which had enshrined the leading role of the Communist Party.

But it is too early to conclude that the Party has ceased to exercise control over the state apparatus. In addition to well-entrenched Party machines in several republics, many provincial and local Party organizations have successfully resisted change.

At the central level, it is true that the Central Committee commissions of the Party have been largely inactive since late 1989. And it remains to be seen whether the nomenklatura system can be effectively dismantled. If one is to take seriously the provisions of the 1989 Law on the Status of Judges on selection of judicial personnel, their incompatibility with the nomenklatura system is clear. These are some of the matters which the legal system will
face in coming months. Their resolution will have a great deal to do with whether or not a
law-based state will be created.
Introduction

The concept of пра во во е г осуд ар ст во, which has now become a key term in legal reform, is not new to Soviet Russia. In the early 20th century, Constitutional Democrats yearned to restrain the power of the tsar and introduce a state governed by law. At that time, there were two possible models they could follow. Since the school of state law in Russia was heavily influenced by German theories, a majority of lawyers in Russia supported the German concept of Rechtsstaat, while some people referred to the Anglo-American rule of law. While the German theory of Rechtsstaat, which developed in the late 19th century, was not necessarily associated with a democratic regime, the concept of the rule of law was closely related to parliamentary democracy. However, by Russian standards, even the German concept was thought to improve the situation and be of use in restraining the power of the monarch.
The October Revolution and subsequent events brought an end to constitutionalism and the concept of Rechtsstaat. Russian constitutionalism failed to materialize except for the introduction of the duma and the abortive administrative court. In 1919, Goikhbarg, then one of the leading lawyers and later the author of the 1922 Civil Code, criticized constitutionalism and Rechtsstaat as reactionary concepts which in reality concealed class struggle. Thus the concept of revolutionary legality replaced that of Rechtsstaat in the early 1920s. With some modifications, this concept survived political changes and remained a cornerstone of the Soviet legal system until a few years ago.

One of the significant changes in the field of Soviet law in recent years is that the term socialist legality has almost ceased to be used; instead, discussion is focussed around the concept of the law-based state.

There are various elements which distinguish the concept of law-based state from socialist legality. The first and foremost is that socialist legality had nothing to do with the form and content of the law which people were required to obey. There were not very many laws (zakony) to be observed. The Supreme Soviet, which was supposed to be the supreme law-making body, was merely a ceremonial institution and adopted only major codes. Edicts of the Presidium of the Supreme Soviet or administrative rules enacted by ministries, neither of which had a democratic basis, were far more prevalent. The content of legal norms and their constitutionality were never questioned. This is demonstrated by the fact that even the most draconian laws, which served as instruments of terror under Stalin, such as the Law on the Protection of Socialist Property of 1932 and the Law on Crimes against the State of 1934, were required to be strictly observed under the concept of socialist legality.
By contrast, recent discussion concerning the law-based state presupposes parliamentary democracy and the concentration of the law-making power in the hands of democratically elected bodies. The shift of the real law-making power from the CPSU apparatus to the Supreme Soviet and the Congress of People's Deputies is a development in this direction. Furthermore, the practice of "administrative law-making," which was rampant under socialist legality, is now criticized and some reforms have been introduced.

Another major difference between socialist legality and the law-based state is the depoliticization of the legal system, i.e., the diminution of the control exercised by the CPSU. Socialist legality has never been a politically neutral concept; it was compatible with the "leading role of the CPSU." Both the principle of socialist legality and the doctrine of the leading role of the CPSU were incorporated into the Constitution. In fact, procurators, who were supposedly guardians of socialist legality, were required by law to have the "necessary political qualifications."¹

Current discussion concerning the law-based state do not necessarily cover the role of the CPSU in an explicit way. Few people openly claimed that the leading role of the CPSU was not compatible with the law-based state. Instead, discussion centers around the independence of the courts. An exception is a round table discussion concerning the "law-based state" which was published in the Party journal Kommunist. A participant frankly admitted that in the past, everything had been decided by the party apparatus, and that when exercising controls, the apparatus did not necessarily recognize the necessity of complying with the law.²

Despite the absence of an open discussion, during the course of perestroika, some
significant changes have been introduced in this respect. The general framework of the party-state relationship has undergone considerable change. On the occasion of the 19th Party Conference, which took place in 1988, the issue of the separation of powers between the party and the state was raised. The Conference endorsed the notion that the party's role should be limited to the formulating of general policies instead of meddling with details and replacing the state apparatus. The notion of the separation of the party and the state is not new; it has been repeated from time to time in the past. However, at the Conference, the expansion of the role of the soviets, particularly the Supreme Soviet, was endorsed. More substance was to be given to the power of soviets. This was a marked difference from the past.

The 19th Party Conference was merely the beginning of major change. It was immediately followed by the reform of the Supreme Soviet and the founding of the Congress of Peoples' Deputies. Unlike the former Supreme Soviet, which was a ceremonial body (despite its constitutional status as the supreme body of the state), these representative bodies started to play a major role in political decision-making. They have taken over some functions which hitherto had been monopolized by the Party. Furthermore, the status of the Politburo itself underwent a radical change when the Presidential Council was founded in March 1990 in order to assist the already powerful presidency. It ceased to be an equivalent of a Western cabinet and became a body involved with purely party matters.

In this process, the "leading role" which the Communist Party enjoyed in the political, economic and social life of the Soviet Union has been considerably eroded by the shift of power to the state apparatus and the emergence of various political groups competing
with the Communist Party within and outside parliament. The process culminated in March 1990 with the amendment of Article 6 of the Constitution, which had enshrined the leading role of the Communist Party.

However, it is too early to conclude that CPSU has ceased to exercise control over the state apparatus and ceased to be a political power. Despite the changes in the last couple of years, the various new arrangements are yet to be fully implemented. The all-union academic conference on the formation of a law-based state (its recommendation was published in April 1990) still had to repeat that functions of the party and the state apparatus should be strictly distinguished and that there should be institutional guarantees against unlawful interference.

As is the case with past reforms, the local party and state apparatus are reluctant to implement the changes. For instance, at the provincial level, despite the recommendations from the center, the power of the party has not yet been transferred to the soviets. The economic departments of the provincial party committee were indeed dropped, only to be restored as sub-departments of the remaining departments.

The aim of this article is to document the developments which occurred in the party-state relationship, with special attention to the changes in the involvement of the CPSU in the administration of justice, and to examine to what extent these changes in the overall relationship between the party and the state are reflected in the relationship between the courts and the procuracy with the party apparatus.
Changes in the CPSU-State Relationship

Before examining the changes which occurred in the last couple of years, let us first examine the party-state relationship which existed until recently.

It is no secret that for the past seventy-plus years the Soviet judicial system operated under the strict control of the Communist Party. The primary means of control exercised by the Communist Party over the courts and the procuracy were as follows: 1. a monopoly of power in appointing key personnel (the *nomenklatura* system), 2. participation of the party apparatus (via the department of the Central Committee and its local affiliates) in the decision-making of these bodies, 3. monitoring and supervision of the implementation of party policy through the party apparatus, namely party committees and primary party organizations within the courts and the procuracy.

First, the CPSU exercised control over the selection and removal of personnel within the courts and the procuracy. Even the judges, who were guaranteed independence by the Constitution, were mostly, if not all, CPSU members. Personnel in the procuracy were almost 100% CPSU members. Furthermore, in order to staff the courts and the procuracy with politically reliable persons, the CPSU controlled the appointment of personnel to most of the positions within the courts and the procuracy through *nomenklatura*. This practice was called cadre policy. From a people’s judge and assistant procurator to the chairman of the Supreme Court and the Procurator-General, candidates were selected and vetted by the CPSU. The Law on Court Organization provided for the free election of judges, but there were no multiple candidates and the selection of the candidates themselves was controlled by
Second, the CPSU apparatus, namely the Administrative Organs Department and sometimes the Politburo, took part in formulating legal policy and law-making. The practice of issuing joint decrees by the Central Committee of the CPSU and the USSR Council of Ministers is one such example. Most laws had to be endorsed by the Politburo before being submitted to the Supreme Soviet. It is also well-known that the course of the Law on Administrative Litigation was changed in late 1986 as a result of instructions from the party apparatus. Campaigns such as the campaign against unearned income were always initiated by the CPSU and implemented by the courts and the procuracy.

Third, through party organizations set up on either a territorial or a departmental basis, the CPSU monitored the implementation of the policies it formulated. The performance of judges and procurators were assessed in the light of their eagerness in carrying out the directives of the CPSU. In theory, the CPSU could not interfere in the disposal of a specific case by a judge; the party organizations were merely authorized to give general directions. However, in practice, judgements and decisions rendered by individual judges were collected and assessed by the party organization. If the judgements and decisions failed to meet the standard set by the CPSU (for instance, if they showed excessive lenience towards the offender), judges could be reprimanded and even removed.

Furthermore, interference with the disposal of a specific case-- which was dubbed telephone justice--was rampant.

This system started to change gradually in late 1988, after the Central Committee Plenum. In terms of organizational arrangements, the body within the Communist Party
responsible for overseeing legal policy and the administration of justice was the Administrative Organs Department, which was supervised by a member of the Party Secretariat. At the September Plenum of the Central Committee in 1988, radical changes were made to the structure of the Central Committee and the apparatus. First, six commissions, including the commission for problems of legal policy, were established within the Central Committee. Reportedly, while other Central Committee commissions merely function as channels through which information is disseminated, the commission on legal policy plays a more significant role.

The commission has 20 members, including the Minister of Internal Affairs, Bakatin (recently replaced by Pugo, chairman of the party control committee) and Logunov, the vice president of the Academy of Science, as well as the First Secretary of Latvian Communist Party.

In the session which took place in May 1989 under the chairmanship of Chebrikov, the Procurator General as well as responsible officials of the party apparatus and representatives of the law enforcement agencies took part (In the November session, the first deputy chairman of the KGB, the Head of the Main Political Administration of the Military, and the Head of the MVD Academy were also present). The commission heard a report from the Procurator General and the Minister of Internal Affairs on the state of crime control. It was noted that along with a general increase in the number of crimes, some “extremists” were using the process of democratization as a pretext for creating social instability and breaches of discipline. This view certainly had the imprint of Chebrikov, who expressed similar views elsewhere. The commission prepared a draft law on the protection
of law enforcement officials, which increased the penalties for assaults on such officials. The draft, discussed at the session, was not adopted.\textsuperscript{10}

As was the case with this kind of party decision in the past, the commission singled out several agencies, namely the procuracy and the Ministry of Internal Affairs and criticized them for their serious failures in effectively coping with the increasing number of crimes.\textsuperscript{11} It should be noted that such criticisms of state agencies by the party apparatus have become rarer recently. The commission on the problems of legal policy, since its inception, has functioned as a forum where representatives of the party and the state apparatus meet and discuss matters of importance. In a way, it was an upgraded and expanded "conference for the prevention of crimes," which had been held occasionally with representatives of the party and state apparatus.

The problem was that all these commissions, not the least the commission for the problems of legal policy, obviously overlapped with the committees of the Supreme Soviet.

In the November 1989 session, which was chaired by Pugo, the draft all-union program for the control of crime was discussed. It is interesting to note that in this session, the chairman of the Supreme Soviet committee on legislation, legality and law and order as well as the chairman of the provisional committee on crime control were present. Evidently this was an attempt to coordinate with the committees of the Supreme Soviet. Apart from discussing the draft program, participants agreed that a fundamental reform was needed of the existing Criminal Code, the Criminal Procedural Code, and the laws on law enforcement agencies. It was specifically pointed out that measures against "crimes of greed" and organized crime should be strengthened. Thus, this was an occasion in which responsible
officials and advisers on crime control got together and exchanged views.

The commission endorsed the draft program as a whole, but recommended that the ministries involved in law enforcement revise the draft program by taking into account the views expressed in the session. In contrast to the May session, criticisms of the activities of the courts were conspicuously missing from the recommendations endorsed at the November session. It is likely that some self-restraint on the part of the party in relation to the courts has gradually developed.\textsuperscript{12}

A resolution of the Supreme Soviet on curbing organized crime was endorsed soon after the November session.\textsuperscript{13} The fact that the draft program and the reform of the codes were discussed in advance within the party indicates that at this stage, the party was not ready to relax control over legal process.

However, since November 1989, these Central Committee commissions seem to have become inactive. Between January 1989 and June 1990, the commissions have met four to six times. The commission on the problems of legal policy had four sessions in 1989. However, no session took place in the first half of 1990.\textsuperscript{14} It is likely that after some attempts to keep the commission going, the idea was finally abandoned and the discussion of legal policy was left entirely to the Supreme Soviet committee. The fact that a new chairman has not been appointed since the fall of the first chairman, Chebrikov, in 1989, seems to support this view.

Another change in the party apparatus is the reorganization of departments attached to the Central Committee. Some of the 20 departments were reorganized and others were abolished in 1989. The Administrative Organs Department, which was in charge of
overseeing the legal apparatus and the KGB, survived the reforms and was renamed the State and Legal Policy Department. The department maintained its local affiliates which existed above the province level. The head of the Administrative Organs Department, Savinkin, has retired and was replaced by a new head, A. Pavlov, formerly a sector head within the department. Pavlov originally came from the procuracy, where he was the party secretary in the late 1970s.

The department seemed to be acting as a secretariat to the Central Committee’s commission on the problems of legal policy. In the May 1989 session of the commission, the department was instructed by the commission to prepare a revised draft law on the protection of law enforcement officials.

One of the primary functions of the officials of this department was to take part in various meetings of courts and the procuracy as well as other significant bodies and, if necessary, to represent the view of the party. They would also coordinate the activities of different agencies. Thus, at the founding conference of the All-Union Association of Jurists, Pavlov was present, together with Lukianov, who long supervised the department as a member of the party secretariat. Lukianov delivered a speech and “answered various questions.” In the expanded collegium meeting of the USSR Procuracy in July 1989, in which all procurators above district level took part, Chebrikov, who was still in charge of the commission for legal policy of the Central Committee, as well as Pavlov and the secretary of Moscow City Party Committee, were present. At the All-Union Conference of leading personnel of courts and judicial agencies, the Chairman of the Party Control Committee, Pugo, as well as Pavlov, were present.
However, there have also been some changes here. First, in the collegium meeting of the procuracy which took place in early 1990, no mention was made of the participation of a party representative. Instead, the deputy chairman of the Supreme Soviet committee on glasnost, rights and complaints of citizens was present.\textsuperscript{18} Previously it was unusual for a representative of the Supreme Soviet to take part in an ordinary collegium meeting. From 1986 to June 20th, 1990, the department has considered 48 problems in total. While all Central Committee departments were fairly active in 1987, the number of problems handled by them dropped significantly the following year. Whereas the department dealt with 18 cases in 1987, in 1988 it had only 5 problems and in 1989, 13 problems. In the first half of 1990, it handled only 5 problems. Taking into account the feverish pace of legislative activity in the Soviet Union at present, this number seems extremely small.\textsuperscript{19}

In fact, some other departments of the Central Committee have become inactive and have lost their power. For example, the role of the International Department in formulating foreign policy seems to have diminished, while the Foreign Ministry has gained power under Gorbachev.\textsuperscript{20} The decrease in the number of matters considered by the Department of State and Law may well be a sign of its demise. If, as will be discussed in the next section, the role of nomenklatura is being narrowed, the raison d’être of the department will certainly be undermined.

 Previously, a major threat to the genuine independence of judges came not only directly from the CPSU apparatus; it also came via the procuracy. The procuracy enjoyed higher status than the courts because of its closer links with the CPSU. In fact, one of the purposes of founding the procuracy in the early 1920s was to supervise the courts. At that
time, judges were elected by free election, and, therefore, had to be supervised by appointed
officials. Procurators, who were virtually watchdogs of the CPSU, were the most suitable for this purpose. Since then, procurators exercised control over the judiciary by way of
"judicial supervision".

Recently, during discussions concerning the independence of the judiciary, it has been proposed that the authority of the courts should be increased and the courts should be placed above the procuracy. For example, previously, on occasions where the party was represented, the head of the Central Committee department was treated as the most senior person. This has not changed, but it is worth noting that now, after the head of the Department of State and Legal Policy, the Chairman of the Supreme Court comes second, followed by the Procurator-General. This clearly demonstrates the intention to increase the authority of the courts and to reverse the existing relationship between the courts and the procuracy. 21

It should also be noted that in periodicals such as Sovetskaia iustitsiia and Sotsialisticheskaia zakonnost', references to the party apparatus have become rarer. Previously, articles written by local party officials appeared from time to time in these periodicals. This has now become extremely rare. Also, there used to be reports on how courts and the procuracy were implementing a specific party policy. Often a particular court or local procuracy would be singled out and criticized by the party for being inactive or lax. Since 1989, although the courts and the procuracy are still occasionally criticized as a whole, there have been few cases where a specific court or local procuracy was criticized. It seems that it is now left to the Supreme Court and the procuracy to take measures instead of the
party intervening in such cases.

Furthermore, in the past, the procuracy, the courts, and the police, as well as the KGB, were categorized as law enforcement agencies. This symbolized the Soviet view that these agencies were serving the same purpose—implementation of the policy of the CPSU as embodied in the law. However, the notion of the courts being "law enforcement agencies" is obviously incompatible with the independence of the judiciary. This term is now rarely used in connection with courts.

As for the local and departmental party apparatus, so far there has been little change. The department of state and legal policy still exist at the republican level; the USSR Procuracy still maintains its party committee and its secretary.22

The most recent developments in this regard are the new Law on Social Organizations and the draft RSFSR Constitution. The Law on Social Organizations prohibited interference by social organizations (which include political parties) in the activities of government bodies or officials (Article 5). Furthermore, military personnel and people who work in law enforcement agencies are to be guided by law and are not bound by decisions of any political party (Article 16).23 The draft RSFSR Constitution goes further and rejects the existence of any political organization within the state apparatus, the military, and the law enforcement agencies.

The Diminishing Role of Nomenklatura

Probably the most significant change in party-state relations in the field of law involves the nomenklatura system. The resolution of the 19th Party Conference referred to
the nomenklatura system as being obsolete and stressed that a career system should be introduced. The resolution, however, fell short of proposing the abolition of this system, although such views were voiced elsewhere. The resolution itself was rather vague on this issue. So far, there is no sign that the nomenklatura for judges and procurators has been totally abolished in practice.

However, as regards the courts, there have been attempts to introduce some openness and an "electoral principle" in the selection process of people's judges. This is demonstrated in the Law on the Status of Judges of 1989. This law has, for the first time, laid down the procedural rules for the selection of candidates for the position of judges. The novelties of this law are as follows: 1. the requirements for office are set out; a candidate has to be over 25 years of age, must have had higher legal education, must have worked for two years in legal profession and must pass an examination. Candidacy is determined on the basis of a recommendation from the workers' collective where the candidate has worked and on the opinion of a qualification committee of judges. While candidates for office below the autonomous province are selected by the republican supreme courts and ministries of justice, candidates for the higher courts are recommended by the USSR Supreme Court and the USSR Ministry of Justice. Candidates forwarded by these bodies are elected by the respective executive committees and supreme soviets.

The Minister of Justice reported in 1990 that 189 qualification committees had already been founded. The total number of judges who are committee members is around 2000. There will be approximately 16,000 judges who will be elected soon, including 2,000 newly-elected ones.
Members of the qualification committees are elected by a conference of judges, which is convened annually above the provincial level. At the all-union level, a qualification committee for judges of the Supreme Court and the military tribunal was formed on the basis of the statute enacted in the autumn of 1989. Members of this committee are elected at the Plenum of the Supreme Court from among the judges of the Supreme Court. The Chairman of the Supreme Court and his deputies may not be members of the committee. If this rule is also adopted in the lower courts, members of the qualification committees will be relatively free from pressures from above.

Qualification committees give opinions on the possible candidacy of judges, conduct attestation, and recommend the recall of judges. They also consider disciplinary action against judges. Committees are empowered to obtain information from the chairmen of courts, the ministries of justice, and other state and social organizations. The reference to social organization indicates that they may make inquiries of the party or komsomol organizations as to the political reliability of the prospective candidate.

A committee must convene within three months after receiving a proposal to consider someone as a candidate. In scrutinizing a prospective candidate, relevant documents are studied and the person himself is called in and questioned. The committee reaches a conclusion by a majority vote and forwards its recommendation to the chairman of the court.

The new laws also presuppose an examination for those who, for the first time, are considered for the position of a judge. This includes an oral examination, solving practical questions, and joint discussions.
In addition to the Law on the Status of Judges and the Statute on the Qualification Committee for the USSR Supreme Court and the Military Tribunal, a new statute on the attestation of judges was enacted. Unlike the statute on the qualification committee, this statute applies to all levels of courts. While the performance of higher court judges is reviewed by the qualification committee on the initiative of the chairman of the respective court, peoples' judges are reviewed by the qualification committee of the respective level on the initiative of the department of justice and the chairman of the court. In the attestation procedure, the kharakteristika of the judge, which should reflect an evaluation of his professional conduct, practical abilities and moral character, is studied.

As is the case with other laws enacted in the course of perestroika, this law has yet to be fully brought into practice. The Minister of Justice has acknowledged that the election of judges from multiple candidates has been rare. The candidate is selected by the qualification committee and there is no choice given to the members of the local soviet. In a roundtable discussion published in Sovetskaia iustitsia in 1990, a correspondent asked a representative of the Ministry of Justice why, in contrast to party organizations, soviets and trade union committees, election from multiple candidates has yet to be introduced for judges. The answer was that a qualification committee usually considers several candidates, and therefore, there are de facto alternatives. In addition, it was pointed out that judges should be professionals and, at the same time, active in the social life of the community. Professional qualifications have to be assessed by the qualification committee in advance of election. Local soviets are entitled to reject the candidate recommended by the committee and ask for another candidate. Qualification committees are referred to in the Soviet Union as a
body of social self-administration of the judicial corpus, together with the newly-introduced conference of judges at each level. The Minister of Justice commented that the introduction of these institutions would enhance the autonomy of judges.

There is no doubt that these arrangements will limit the scope of influence exercised by the party, especially the impact of nomenklatura or its equivalent. As the former Minister of Justice, V. Iakovlev, pointed out, the Ministry of Justice has adopted a definite policy of democratizing cadre practices. According to Iakovlev, “we are gradually doing without the so-called nomenklatura system . . . [O]ur fundamental duty lies in the organization of training for judges instead of preparation of the nomenklatura. In the selection process, once the prospective candidate has been forwarded to the committee, he or she will be reviewed, mostly from the viewpoint of his professional ability and suitability for the job. The problem is that the procedure of selecting a candidate who is to be forwarded to the committee is not clear. In most cases, the Ministry of Justice and the chairman of the respective court seem to decide the issue. It is at this stage that the party organization may be able to intervene.

A new law which is aimed at increasing the authority of the courts should also be mentioned here. This is the Law on Responsibility for Contempt of Court, enacted in 1989. The law provides for penalties for exercising influence on a judge or a people’s assessor, irrespective of the form this might take, for the purpose of obstructing a full and objective examination of the case. However, it is not clear what constitutes undue influence. For instance, even before perestroika, interference with a specific case by party organizations was considered, at least theoretically, to be inappropriate. Is the present law applicable to such
occasions? Is general guidance given by a party organization to the court regarded as contempt of court? At least from the wordings of the law, the answer to the second question seems to be negative.

In fact, the application of this new law seems to be limited to such influence as is exercised by government officials or private persons and does not include CPSU officials. Examples cited in Sovietskaja iustitsiia seem to support this.33

As regards the procuracy, in contrast to the judiciary, there is no legislative change in the selection and appointment of personnel. On the other hand, there are some differences in the pattern of their selection. In the past, out of thirty to forty senior procurators whose appointments were announced in the periodical Sotsialisticheskaja zakonnost', thirty percent came from the party apparatus. However, in 1989, out of twenty seven appointments, only four procurators had worked in the apparatus. From January to July 1990, twenty seven appointments at senior level have been reported. None of them had experience in the party apparatus. It is interesting to note that even the procurator in charge of supervising the KGB has no former links with the party apparatus. This position had been previously occupied by someone who had had a long career in the apparatus.34

Concluding Remarks

One of the main components of Rechtsstaat is the political neutrality of law in general and the independence of the judiciary in particular. The concept of law-based state as discussed in the USSR also acknowledges that the impartiality of the judiciary is a key
element. However, considering the enormous control mechanism devised and implemented by the CPSU, the de-politicization of the judiciary is a formidable task.

It is possible that until well into 1989, party leaders had not envisaged any significant relaxation of control over the courts and the procuracy. A prominent lawyer who was involved in law reforms pointed out in 1988 that it was their intention to develop a legal system which embodied the leading role of the party by means of more or less well-defined legal norms. However, this was superseded by the removal of the "leading role" of the Communist Party from the Constitution. The fate of the Central Committee commission on the problems of legal policy and the reduced role of the Department of State and Law seem to suggest that the firm grip the party had over the courts and the procuracy is gradually loosening.

It is not only the rapid erosion of the power of the Communist Party that has made it impossible for the party to retain its previous level of control. There seems to be conscious efforts on the part of the party leaders and their legal advisers to introduce some self-restraint on the power of the party over the courts and the procuracy. This is demonstrated in the changes in the last couple of years discussed in the present article. The Minister of Justice of the RFSFR referred to "deideologizatsiya" of justice in a conference which took place in February 1991. He reported to the conference that the Ministry of Justice had asked the leadership of the RSFSR Communist Party to terminate the practice of intervening in the activities of the courts via local party organizations.

The seemingly diminishing role of the nomenklatura system as regards judges and procurators is particularly indicative of the changes now taking place. An article by a
prominent lawyer which was published in early 1991 even suggested that since the CPSU ceased to assume a leading role in the society, discussions regarding the interference of the CPSU in the course of justice has lost the target. On the other hand, it should be noted that, at the local level, changes are yet to take root.

If the changes initiated in the last couple of years do continue, there is a fair chance, in the long run, that a genuine judicial corpus which is relatively free from political power might emerge.
NOTES

2. "‘Tsel’--pravovoe gosudarstvo,’’ *Kommunist* 1988 No. 18, 32.
15. *Sov.Iust.* 1989 No. 16, 11-12
29. op.cit. note 26, 2.
34. Sots.Zak., 1989, No. 12, 22.