THE STATUS OF THE CPSU WITHIN THE SOVIET LEGAL SYSTEM: A SURVEY OF CONCEPTS USED IN WEST GERMAN OSTRECHT* STUDIES

Dedicated to the Memory of Reinhart Maurach, who died ten years ago, on 11 June 1976

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1. Introduction

German Ostrecht research was founded by Michael Freund immediately after the Russian October Revolution and has produced excellent results during the 1920s and 1930s. Its importance even increased after the Second World War due to Soviet influence in one part of Germany. German Ostrecht research has always taken into account the results achieved by Anglo-American Ostrecht studies. Unfortunately, this has not been the case on the Anglo-American side — due mainly to language barriers. The purpose of this article, therefore, is to report on an issue which preoccupies German Ostrecht scholars.

The concepts to be discussed in this essay would probably seem strange, if not useless, to Anglo-American researchers on Soviet and East European law. In Anglo-American research on Soviet law, the identification of the actual holders of political power, and the ways in which this power is revealed are of primary concern. But a jurist's task is also to systematize these empirical results. To this end, studies of foreign law must of necessity use their own methodical devices, partly because the foreign law in question does completely without systematization, and partly because the foreign law's own classifications are "wrong" and inappropriate for historical or ideological reasons. These classifications, used by a foreign legal system, can be made the subject of special descriptive or critical studies of foreign law in their own right.

A comprehensive classification is not only a traditional task in scholarly research but it usually also opens up new perspectives and conclusions, promoting new ideas.

* Here and hereinafter the German term Ostrecht refers to the organized study of the law of the Soviet Union and the countries of Eastern Europe.
2. The Status of the CPSU in the Constitution of 1936

In the Soviet Constitution of 1936, references to the CPSU could be found in subsidiary passages. It was mentioned in the chapter on civil rights and duties: there, within the framework of the right of association, it was called the "vanguard of the workers in their struggle for strengthening and development of the socialist system and the leading core of all workers' social and state organizations" (art. 126). Another reference to it was found in the rules on the nominations of candidates, in the chapter on the electoral system (art. 141).

In the opinion of Western scholars, these rather hidden regulations were nothing but a disguise for the real power of the CPSU, in the same way as the extensive chapter on civil rights had been used to obscure the fact that these rights were retained.¹

However, the insignificant role assigned to the CPSU in the 1936 Constitution may have been the result merely of technical incompetence. As a matter of fact, Stalin, reporting on the draft of the Constitution at the Extraordinary Eighth Congress of Soviets on 25 November 1936, attacked a "group of critics" for having criticized the deference to the leading role of the Communist Party in the Soviet Union. He admitted that the draft of the new Constitution actually confirmed the leading role of the Communist Party in the Soviet Union [without modification]. The Bolsheviks, he said, considered this to be a major advantage of the draft of the Constitution. These statements provoked "peals of applause" in the auditorium.²

3. The Soviet Theory of Public Law

As a result, already in the first study to appear after the Constitution of 1936, the semi-official manual "Soviet Public Law" edited by "theorist-in-chief" A.Ia. Vyshinskii, Soviet research on public law integrated the CPSU into the system of public law. In its chapter I, the Constitution of 1936 deals with the "social order of the USSR". Within this framework the manual examines also the "leading role of the Communist Party"³, even though this had not been provided for in this chapter's outline.

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1. According to Brunner, it is characteristic of communist constitutions to serve as a means to deceive foreign public opinion, G. Brunner, B. Meissner, Verfassungen der kommunistischen Staaten, Paderborn/Munich/Vienna/Zurich 1980, 13.