
CHINA

OUTLINES OF THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA

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Preface



The People's Republic of China has persevered with the development of socialist democracy and the improvement of its legal system ever since it adopted the reform and opening policy. Over the decades it has constantly sped up its legislative process, improved legislative quality and initiated a primary socialist legal system with Chinese characteristics. At the same time, it has also made remarkable progress in justice administration, law enforcement, legal supervision, publicity of and education on law, and legal services. The process of governing the country according to law and making it a socialist country ruled by law has been strongly pushed forward, and the construction of democracy and legal system has also been conscientiously enhanced. All these achievements have attracted world attention.

This book offers a general introduction to China's process of the establishment of its legal system, legislative system and major branches of the law, etc., displaying the principal aspects of Chi-

na's socialist legal system. The contents of this book cover China's constitutional law, administrative law, civil, commercial and economic law, criminal law, procedural law, State compensation law, judicial system, and judicial cooperation between China and foreign countries and the relevant systems thereof, etc.

It is expected to help the readers achieve an objective understanding of China's construction of its legal system and of the legal system itself.

Editorial Team

June, 2004

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Chapter I

China's Legal Structure



Governing the country according to law is a basic policy of the Communist Party of China (CPC) in its leading the Chinese people to administer the country. The People's Republic of China has been actively building and perfecting its legal system since its foundation. From the Third Plenary Session of the Eleventh Central Committee of the CPC in 1978, China has attached more importance to the role of law in the State administration and social life; especially with the policy of "governing the country according to law and making it a socialist country ruled by law" being written into the Constitution of the People's Republic of China (hereinafter referred to as the Constitution) in 1999, China's socialist legal system has started a new stage of development. The State attaches importance to and strengthens the legislative work, steadily perfects the legislative system, improves legislative procedures, lays stress on legislative techniques and improves the quali-

ty of legislation, and a socialist legal system with the Constitution as its core and with Chinese characteristics has taken shape.



I

Legislative System



China is a unitary country. According to the Constitution, China implements a unified legislative system, i. e. there is only one legislative system of multiple levels in the country. The Constitution stipulates that the National People's Congress and its Standing Committee exercise legislative power of the State to enact laws; the State Council formulates administrative regulations according to the Constitution and laws; the people's congress and its standing committee of each province, autonomous region or municipality directly under the Central Government formulate local regulations, which must not contravene the Constitution, laws or administrative regulations; the people's congress of each national autonomous area has the power to enact regulations on the exercise of autonomy and separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the area concerned; departments of, and agencies with administrative functions directly under, the State Council formulate rules according to the laws and administrative regulations of the State Council; and the people's government of each province, autonomous region or municipality directly under the Central Government, as well as the people's government of the city where the people's government of a province or autonomous region is loca-

ted, of the city where a special economic zone is located and of larger city designated by the State Council may formulate rules according to the laws, administrative regulations and local regulations of their respective province, autonomous region or municipality directly under the Central Government. As to a special administrative region, according to the principle of "one country, two systems" and the provisions of Article 31 of the Constitution, the systems (including legislative system) practised in a special administrative region shall be stipulated by law enacted by the National People's Congress.

The sources of Chinese law include the Constitution, laws, administrative regulations, local regulations, regulations of national autonomous areas, regulations of special economic zones, rules, basic laws of special administrative regions, international treaties and practices.

(I) The Constitution

The Constitution is the fundamental law and basic source of law of the country and has the supreme legal authority. The Constitution is the symbol or sign of the highest State power, and the authority of the Constitution originates directly from the people.

The Constitution provides for the fundamental social, economic and political systems, basic principles, policies and missions of the State, the fundamental rights and duties of citizens, and formation, functions, powers and duties of various major State organs, which involve the most fundamental and most significant respects of each field of the social life. The Constitution is enacted and amended by the National People's Congress, the highest organ of State power. The authority of the Constitution decides that its enacting and amending procedures are stricter than those of or-

dinary laws. Any amendment to the Constitution is to be proposed by the Standing Committee of the National People's Congress or by at least one-fifth of the deputies to the National People's Congress and adopted by a vote of at least two-thirds of all deputies to the Congress. The Constitution has the supreme legal authority, which may not be contravened by any laws, administrative regulations or local regulations. The National People's Congress shall supervise the enforcement of the Constitution, and the Standing Committee of the National People's Congress shall be responsible for interpreting the Constitution and supervising its enforcement, and make investigations with regard to any act contravening the Constitution.

(II) Laws

In China the term "law" may be understood either in a broad or narrow sense. In the broad sense, "law" generally means all regulatory documents in China's legal system; and in the narrow sense, it just means regulatory documents formulated by the National People's Congress and its Standing Committee. We take its narrow sense here. Among the sources of Chinese law, laws are inferior immediately to the Constitution in authority.

Laws may be classified based on the legislative organs into two categories: basic laws, i. e. regulatory documents concerning criminal matters, civil matters, State organs and other matters that are formulated by the National People's Congress, such as the Criminal Law of the People's Republic of China (hereinafter referred to as the Criminal Law) and the Criminal Procedure Law of the People's Republic of China (hereinafter referred to as the Criminal Procedure Law); and laws other than basic laws, i. e. regulatory documents formulated by the Standing Committee of the

National People's Congress, such as the Law of the People's Republic of China on the Protection of Cultural Relics (hereinafter referred to as the Law on the Protection of Cultural Relics) and the Trademark Law of the People's Republic of China (hereinafter referred to as the Trademark Law). The Standing Committee of the National People's Congress has the power, when the National People's Congress is not in session, to partially supplement or amend laws enacted by the National People's Congress provided that the basic principles of these laws are not contravened.

According to the Legislation Law of the People's Republic of China (hereinafter referred to as the Legislation Law) , the following affairs shall be regulated only by laws: matters concerning State sovereignty; formation, organization, and the functions and powers of the people's congresses, the people's governments, the people's courts and the people's procuratorates at different levels; the system of regional national autonomy, the system of special administrative region and the system of self-government among people at the grassroots level; crimes and criminal punishment; deprivation of political rights of citizens and coercive measures and punishment involving restriction of personal freedom; requisition of non-State-owned property; basic civil system; basic economic system and basic systems of finance, taxation, customs, banking and foreign trade; litigation and arbitration systems; and other matters which must be regulated by laws enacted! by the National People's Congress and its Standing Committee.

When enacting a law, China also pays great attention to the formulation of rules for the implementation of the law and other laws matching the law. Generally, rules for the implementation of laws are more detailed and concrete.

(III) Administrative Regulations

Administrative regulations mean regulatory documents formulated by the State Council, the highest organ of State administration, which are inferior to the Constitution and laws in authority. Presently, the number of China's administrative regulations has far exceeded that of laws enacted by the National People's Congress and its Standing Committee.

No administrative regulations formulated by the State Council may contravene the Constitution or laws. The Standing Committee of the National People's Congress has the power to annul those administrative regulations formulated by the State Council that contravene the Constitution or laws.

According to Article 56 of the Legislation Law, administrative regulations may be formulated to govern the following matters; matters that need to be regulated by administrative regulations for the purpose of implementing any provisions of laws; and matters concerning the administrative functions and powers of the State Council as provided for in Article 89 of the Constitution, such as matters relating to the functions, powers and duties of State administrative organs in their administrative activities, and relations between State administrative organs performing administrative activities and other State organs, social organizations, enterprises and institutions and citizens.

According to Article 4 of the Regulations on Procedures for the Formulation of Administrative Regulations as promulgated by the State Council in November 2001, administrative regulations shall be named "regulations", "provisions" or "measures".

(IV) Local Regulations, Regulations of National Autonomous Areas and Regulations of Special Economic Zones

These three kinds of regulations are all regulatory documents

formulated by local organs of State power.

Local regulations are regulatory documents formulated by certain local organs of State power in the light of the circumstances and actual needs of their respective administrative regions and for the implementation in such administrative regions. According to the Constitution, the Organic Law of the Local People's Congresses and Local People's Governments, and the Legislation Law, the people's congresses and their standing committees of provinces, autonomous regions and municipalities directly under the Central Government have the power to formulate local regulations; people's congresses and their standing committees of the cities where the people's governments of provinces or autonomous regions are located, of the cities where special economic zones are located and of comparatively larger cities designated by the State Council may, in the light of the circumstances and actual needs of their respective cities, formulate local regulations provided that they shall not contravene the Constitution, laws, administrative regulations or local regulations of their respective provinces or autonomous regions, and that they shall be subject to the approval of the standing committees of the people's congresses of their respective provinces or autonomous regions before implementation. Local regulations shall have no effect if they contravene the Constitution or any laws or administrative regulations.

Local regulations may regulate the following matters: matters that need to be regulated in the light of the circumstances of the relevant administrative regions for the implementation of any provisions of any laws or administrative regulations; and matters of local nature that need to be regulated by local regulations.

The titles of local regulations shall be preceded by the names