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China - the latest development of the legal framework

Changes since Xi Jinping came to power

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The Chinese Communist Party (CCP) wrapped up its weeklong Congress and Chinese president Xi Jinping (hereafter referred to as Xi) has secured a third term as the Communist Party's leader. He also announced the six other members of the party's senior leadership, a group dominated by Xi loyalists, which solidified Xi's hold on power. Xi's rule has been renewed for five more years, making him the most influential ruler since Mao.

China had imposed a two-term limit on its president since the 1990s, which was explicitly stated in the Constitution. However, The Chinese Communist Party proposed amending the Constitution, for the first time after the last modification in 2004, including writing Scientific Outlook on Development and Xi Jinping Thought into the Preamble, and removing the provision that the President and Vice President "shall serve no more than two consecutive terms". The removal of the two-term limit on the presidency effectively allows Xi Jinping to remain in power for life and make this re-election happen.

1. The Continuity of Xi Jinping's Thought on the Rule of Law

The terms of "socialist rule of law with Chinese characteristics" and "Xi Jinping Thought on the Rule of Law" are keys to understand China's current judicial situation. The suffix "with Chinese characteristics" underlines China leadership's intention to create its own Chinese legal system that may draws on traditional Chinese legal concept as well as western legal system. On 18 October 2017, Xi proposed in his report to the 19th Party Congress that a central leading group for the comprehensive rule of law be established to strengthen the unified leadership of the construction of China under rule of law. To

govern the country according to the rule of law means to govern the country in accordance with the Constitution and the Law, which is the basic strategy of the Communist Party of China in leading the people. And Xi's Thought on the Rule of Law is the fundamental guiding ideology of the comprehensive rule of law.

a) *The Central Committee of the Communist Party of China for the Comprehensive Rule of Law*

The Central Committee of the Communist Party of China (CPC) for the Comprehensive Rule of Law was formed in 2018. In March 2018, the Central Committee of the Communist Party of China issued the Program for Deepening the Reform of the Party and State Institutions. The Program states that the comprehensive rule of law is an essential requirement and an important guarantee of socialism with Chinese characteristics. The main duties of the Central Committee of the Communist Party of China (CPC) for the comprehensive rule of law are to coordinate the work of the comprehensive rule of law, adhere to the joint promotion of the rule of law, rule by law and administration by law, adhere to the integrated construction of the rule of law state, rule by law government and rule by law society, study major matters and issues of the comprehensive rule of law state, coordinate the promotion of scientific legislation, strict law enforcement, fair justice and law compliance by all people, and coordinate the promotion of a socialist rule of law system with Chinese characteristics and a socialist rule of law state. The office is located in the Ministry of Justice.

b) *Plan on Building the Rule of Law in China (2020–2025)*

The plan to build the rule of law in China (2020-2025), issued by the Communist Party of China (CPC) Central Committee, states that the rule of law is a hallmark of human civilization's progress, as well as the basic way of governance. It is also an everlasting pursuit of the Party and the Chinese people. In its first "Plan on Building the Rule of Law in China (2020–2025)", the Chinese leadership has set out its vision for a coherent and genuinely Chinese legal system. The phrase "socialist rule of law with Chinese characteristics" is the key concept here and Marxist-Leninist legal concepts remain fundamental.

By 2025, it aims to:

- further develop the institutional framework for the rule of law in China;
- establish a more complete socialist legal system with Chinese characteristics (in which the Constitution plays a central role), a more solid governance system with clear administrative responsibilities defined by law and a more efficient judicial system;
- make progress on the formation of a "rule of law society";
- improve the application of internal party regulations.

By 2035, it ought to "essentially take shape" by aiming to

- have basically completed a state, a government and a society under the rule of

Law;

- have basically formed a socialist rule of law system with Chinese characteristics;
- fully guarantee the people's right to equal participation and equal development;
- modernize the national governance system and governance capabilities.

The whole aim is to use the law as a political instrument to make the state more efficient and to reduce the arbitrariness of law application for people.

The CPC's leadership is regarded as the most fundamental guarantee of the rule of law in the People's Republic of China (PRC) and "Xi Jinping Thought on the Rule of Law" is another term that the CPC is promoting in China's discourse on the rule of law. In the five-year plan, "Xi Jinping Thought on the Rule of Law" is summarized as follows: Strengthening the CPC's centralized and unified leadership, "scientific legislation", strict law enforcement, fair trials, a law-abiding population etc.

2. The fully implement of the Constitution

The full implementation of the Constitution is the primary task of building a socialist state under the rule of law. To govern according to the rule of law is first to govern according to the Constitution. By adhering to the Constitution as the fundamental guideline of activities, improving the system of implementing and monitoring the Constitution, and strengthening the publicity and education of the Constitution, the implementation of the Constitution has made groundbreaking achievements, and the constitutional system is delivering great performance and has a powerful effect in governing the country.

a) *National Constitution Day and the constitutional oath system are established.*

December 4 is designated as National Constitution Day in China and constitutional education is widely carried out in various ways so that the provisions, principles and spirit of the Constitution can take root in society as a whole. The constitutional oath system has been universally implemented, and all state officials elected and appointed by the National People's Congress and its Standing Committee, as well as those appointed by the People's Government, the Supervisory Committee, the courts and the Procuratorate, are required to take the constitutional oath when they take office.

b) *A governmental body is established for constitutional supervision.*

The National People's Congress has established a Constitutional and Legal Committee to undertake the responsibilities of promoting the implementation of the Constitution, carrying out constitutional interpretation, promoting constitutional review and strengthening constitutional oversight. This is the committee specifically responsible for the implementation and supervision of the Constitution which is clearly stipulated in the Constitution.

c) *Strengthening the work of constitutionality review and filing review.*

The constitutionality review system and the filing review system are constitutional oversight systems with Chinese characteristics, also are the two cornerstones of China's constitutional oversight system. A constitutionality review system has been established to study issues relating to the Constitution raised by The National People's Congress deputies, members of the Standing Committee and various parties during the legislative process, and to propose opinions on constitutionality review. It also strengthens the review of normative documents for the record and takes effective measures to urge the enacting authorities to amend or repeal in a timely manner those normative documents found to be unconstitutional or illegal.

3. A more complete system of legal regulation

a) Codification of the Civil Code

The Civil Code of the People's Republic of China (hereinafter referred to as the "Civil Code"), promulgated in 2020, is the first fundamental law named "Code" since the founding of New China, marking the true maturation of China's civil legal system. This Civil Code embodies the Chinese concept, Chinese spirit and Chinese values of national governance, and is a major tool for promoting the construction of national institutions and the modernization of national governance.

b) New breakthroughs in legislation of key areas

Focusing on the shortcomings of national security legislation, the overall national security concept is introduced and a number of important laws were enacted, including the National Security Law, the Anti-Espionage Law and the Anti-Terrorism Law. Also, in response to risk points and gaps in new emerging areas, other laws such as the E-Commerce law, the Data Security law and the Personal Information Protection Law have been passed in a timely manner to encourage the application of the rule of law to prevent and resolve market risks.

4. Judicial system reform

a) Deepening the reform of the judicial management system

Justice is the "last line of defense" to safeguard social justice, and reform of the judicial system is a must path to build a fair, efficient and authoritative socialist judicial system. As the most important part of judicial system, court system has been further developed. The establishment of Circuit courts of the Supreme People's Court, cross-administrative courts and procuratorates, as well as specialized courts such as intellectual property courts, internet courts and financial courts make litigation convenient and efficient.

b) Deepen the reform of the judicial responsibility system.

The core essence of the judicial accountability system is that whoever handles a case is responsible for it, so as to achieve the unity of power and responsibility. Firstly, the authority of judges and prosecutors in their posts to handle cases has been clarified to exclude illegal interference and to ensure the independent and impartial exercise of their powers in accordance with the law. To this end, "three regulations" have been established and implemented to prevent illegal interference in judicial cases by party and government leaders and cadres, to ensure that internal members of the judiciary are held accountable for interfering in cases, and to regulate the contact and interaction between judicial personnel and lawyers and clients, which built three institutional "dams" to prevent illegal interference in the judiciary. The second is to implement a system of accountability for wrongdoing and to improve the judicial supervision and management mechanism to ensure that power is not arbitrary.

c) Strengthening judicial guarantees of human rights

The judiciary adhered to the principles of seeking truth from facts. They have rectified mistakes and corrected a number of major unjust and wrongful cases. The re-education through labor system and the sheltered education system have been abolished and the reform of the trial-centered criminal procedure system is stressed. Legal principles such as the exclusion of illegal evidence and the prohibition of confessions extracted by torture and illegal evidence have effectively prevented the occurrence of new unjust and wrongful cases.

d) Deepening procedural reforms and accelerating the application of modern technology.

A new model of Internet justice is developing to compatible with the Internet era, further enhancing the convenience and efficiency of litigation. The reform of the judicial system with the application of modern technology such as big data, artificial intelligence, blockchain and other modern technologies to judicial work creates new models such as Internet justice, Smart policing, Digital prosecution and Digital legal services, etc.

5. Strengthen legislation in foreign-related areas.

a) Improve legislation in foreign-related areas

In response to the frequent imposition of "long-arm jurisdiction" by certain countries on relevant institutions and individuals in China, the improvement of the legal system to counter sanctions, interference and "long-arm jurisdiction" is necessary. Export control laws, anti-foreign sanctions laws, and regulations on the list of unreliable entities have been enacted to improve the national security for foreign investment and accelerate the construction of a legal system for the extraterritorial application of China's laws.

b) Improve the foreign-related rule of law service system.

Wherever China's interests expand, rule of law protection and services will follow. An overseas rule of law and security protection system have been constructed to safeguard the legitimate rights and interests of China's overseas institutions, enterprises and personnel. A sound legal system for foreign-related work is developed and legal counsellors and police liaison officers in embassies and consulates abroad are set up to provide timely security and legal services to personnel going abroad, supporting relevant enterprises and personnel in defending their rights abroad in accordance with the law. Also China is encouraging and supporting large domestic law firms to develop overseas legal service markets through setting up branches abroad, overseas mergers and acquisitions, and joint ventures. Focusing on regions where China's overseas interests are dense and overseas security issues are prominent, such as the "Belt and Road" construction, the assessment and prevention mechanism of overseas legal and security risks are established to ensure the safety of China's overseas investment projects.

c) Improving the rule of law in international relations.

China has fully participated in the international rule-making process in areas such as anti-corruption, climate change, oceans and polar regions, and have continued to hold major events such as the China International Rule of Law Forum, promoting transnational legal and jurisprudential exchanges, and increasing China's discourse in international legal affairs. It is still promoting compliance with international law and the universally accepted basic principles of international relations, and have used uniformly applied rules to clarify right and wrong, promote peace and seek development, while opposing infringement of the legitimate rights and interests of other countries and undermining peace and stability in the name of "rule of law".

6. Expand Legal talent pool

a) First, strengthen the construction of specialized teams for the rule of law.

The rule of law specialized team mainly includes the team engaged in legislation, law enforcement and judicial work. It has been continuously improved the qualification examination, selection, management and guarantee system of the legal profession, continuously improved the political quality, professional ability and moral standards of the specialized rule of law team, and significantly improved the quality of legislative, law enforcement and judicial work.

b) Secondly, strengthening the legal service team.

The legal service team, consisting of lawyers, notaries, forensic appraisers, arbitrators, people's mediators, grassroots legal service workers and legal service volunteers, plays an important role in protecting the legitimate rights and interests of clients,

safeguarding social justice, carrying out publicity and education on the rule of law. China has comprehensively deepened the reform of the lawyer system, steadily increased the number of notaries, legal aid personnel, arbitrators and people's mediators with professional backgrounds, so that the structure of the legal service team has been continuously optimized and the quality and level of public legal services have been significantly improved.

- c) *Strengthening the team of legal experts and improving the mechanism for training rule of law talents in universities.*

More and more Chinese jurists are publishing their research results internationally and engaging in academic cooperation and exchanges abroad, bringing new faces, new voice and new elements to the world of jurisprudence, and are becoming a new force in changing the landscape of world jurisprudence.

7. Conclusion

General Secretary Xi Jinping pointed out that "comprehensively promoting the rule of law is a long-term and significant historical task and is bound to be a profound social change and historical transformation." The Party Central Committee has clearly proposed a long-term strategy of "three steps" for the construction of a China governed by the rule of law, namely, the initial formation of a socialist rule of law system with Chinese characteristics by 2025, the basic establishment of a state, government and society governed by the rule of law by 2035, and the full establishment of a state, government and society governed by the rule of law by the middle of the 21st century. In general, all initial intention and system design are beneficial, but the results of the implementation still need to be tested by time.

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