

A Brief Analysis of the Relation between the Ruling Party and the Rule of Legislation in China

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Abstract

The relation between the ruling parties and the legislative structure, that is, the relation between the ruling party and the national legislation, is a contemporary issue with the universal significance in political science, and this problem has a special significance in China. China's socialist law must hold the lead of the Chinese Communist Party (CPC), and the socialist lawmakers support the Chinese Communist Party's leadership. This paper examines the following several problems: what is the essence and characteristics of the ruling Communist Party rules? What is the main content? How are they related to national laws? What is the relation between the Chinese Communist Party policy and the national law? This discussion about these issues will help to deepen the understanding of the ruling parties and the legal relations between China and China.

Key words: *The Ruling Party, Rule of Law, CPC, The Relation Between the Ruling Party and National Legislation.*

1. Introduction

The link between the party in power and the rule by law is key point of the relation between the party in power and domestic law, which is not a specific problem unique to China or socialist countries, but a modern issue with universal significance.¹

¹ Huang Wenyi. (2022). On the Normative Principle of the Relationship between the Party and Law, Political Science and Law Forum, No.1.

On the basis of the particularity CPC, the relation between the ruling party and the legislation in China differs from that in the West. In western political science and law system, the relation between the Party in power and law is usually not the explicit subject of academic research. This is because, in Western ,two-party or multi-party systems, political parties usually govern by recommending their own party members to run for or hold public office, and having their own party members implement their ideas in parliament or government. Therefore, political parties do not directly lead national legal affairs, but mainly manage national legal affairs through their members who hold public office.² But in fact, under the modern party politics, party politics have profound influence on the rule by law of country. Even if in the western judicial field, which claims having no involvement in political parties and is politically neutral, cannot get rid of the gravitational pull of party politics. As some scholars have revealed, behind the "explicit distance" between political parties and the judiciary in the United States, there is also an "implicit relationship".³

Nowadays, the cause of China's comprehensive rule by law is in full swing, and centralized and unified leadership is the ruling style of the CPC. The lead of the party is closely connected to the rule by law, among which the relation of the party and the rule by law is important.⁴

2. The formation of ruling party laws 's the System

² Huang Wenyi. (2022). On the Normative Principle of the Relationship between the Party and Law, Political Science and Law Forum, No.1.

³ Feng Lixia. (2021). On the relationship between Party and law in Xi Jinping thought on rule of law. Journal of Shandong University (Philosophy and Social Sciences), No.6.

⁴ Xi Jinping. (2020). On upholding the rule of law in all respects, China Central Academic Press, p. 91.

The formation of the party's internal laws system and rules has roughly gone through the following four stages:⁵

Stage 1: 1921 – 1949. It is the stage that the consciousness of regulations and laws of the Party in power began to sprout. The main way of the ruling Party's regulations and laws was the program and constitution.⁶

1949-1990: when the New China establishment, during the first 50 years, the ruling Party's regulations and laws started to develop in a systematic direction. Since the reform and open-up policy was implemented, with the Party Constitution as center, the CPC came to established the party's rules and laws. Party's rules and laws are more closely related to legal policy.

1990-2012: The Party's internal regulatory structure which put the Party Constitution at the core stage has been further improved. In July 1990, the *Interim Regulations on the Procedures for Formulating Intra-Party Regulations of the Communist Party of China*, which clearly defined the "Inner-Party regulations" as well as specified the name firstly, scope of application, subject and regulations' making procedure, was formally institutionalized. In January 2006, the Central Committee put forward to enhancing the development of the structure of internal party regulations with the Party Constitution as the core firstly.

2012-present: In 2012, the task of all-round and governance of the Party strictly began to be implemented, and the establishment of an internal party regulatory system became an inevitable requirement. In 2012, the first large-scale centralized review of laws, regulations and normative

⁵ Shen Weiwei, Long Shuting. (2019). History of the Formation of the THE COMMUNIST PARTY OF CHINA's Internal Laws and Regulations System. People's Court Daily, June 28 / Edition 005.

⁶ Guo Yue. (2022). Standard and orderly: the internal logical structure of China's new political party system, Explore, No.5, October 01.

documents within the CPC was officially launched. After a comprehensive review of approximately 23000 central documents issued from the set up of the People's Republic of China (PRC) to June 2012, 1178 internal party regulations and normative documents were sorted out. Among them, 487 internal party rules and regulatory documents are valid, while 42 require modification. In addition, 322 party's clauses and normative documents were abolished, and 369 were of no avail, which totally reached 58.7%. Through the aforementioned review work, it is beneficial for coordinating and implementing internal supervision of the Party.

In 2013, an inner-party "legislation law", the *Regulations on the Formulation of Inner-Party Regulations*, was also introduced. Since 2012, more than 90 inner-Party regulations have been revised and promulgated, covering such areas as improving organizational systems, drawing red lines for discipline, strengthening oversight and enforcement, and focusing on the selection and appointment of competent personnel. This has strengthened the Party's ability to govern according to rules, strengthened and improved its leadership over organs of state power, and ensured that rules-based Party governance and law-based governance complement each other.

In February 2018, the *Second Five-Year Plan for the Formulation of Intra-Party Regulations of the Communist Party of China Central Committee (2018-2022)* was promulgated. In 2018, 74 Intra-Party regulations were formulated, among which, *The Regulations on the Work of Party Branches (Trial)*, *the Regulations on the Work of Cadres and Personnel Archives*, and *the Regulations on the Work of Political and Legal Affairs of the Communist Party of China*, which came into effect in January 2019, are the most representative. The second round of centralized examination of ruling party regulations and normative documents also began in November 2018 and was completed by April 2019, with 54 annulled and 56 declared invalid. 14 intra party 's regulations which involved the reform of party and state institutions have been revised

3. The nature and basic contents of the Party Law

Party laws are mainly intra-party regulations. In this article the Party law means regulations of the Party.

3.1. The nature of the Party law

Article 3 of the *Regulations on the Formulation of Inner-Party Regulations of the Communist Party of China* stipulates:

"The Party Constitution is a specialized regulation and system formulated by the central organization of the Party, the Central Commission for Discipline Inspection, the working organs of the Communist Party of China Central Committee, and the Party committees of provinces, autonomous regions, and municipalities directly under the Central Government, which embody the unified will of the Party, regulate the Party's leadership and Party building activities, and ensure their implementation by relying on Party discipline."

According to this concept, "intra-party regulations" include six elements as follows:

- i. Party rules reflect the unified desire of the CPC.
- ii. Standardizing the leader role and construction actions of the ruling Party is internal regulations within the Party's core purpose.
- iii. Intra-Party regulations shall have a specific name and a specific form of expression, and should be formulated according to prescribed authority and procedures.
- iv. Intra-Party laws take the form of rules and regulations, which is the fundamental attribute of it.

Inner-party norm and customary law are of some similarity, since the source of Party law is customary law. Customary law means that some very important and inherent social or economic system is regarded as law, whether in practice or belief. Customary law is handed down from generation to generation in the form of unwritten law, although it usually ends up in codified laws.

The Party law is also a statutory law. People know that a series of norms within the Party, led by the Party Constitution, do not belong to the law, but if the emphasis is placed on its compulsion

and social impact, there is no doubt that people believe that it is the Party constitution and so on regulate the law.

The Party law has no precedent in the past, but now there is a principle and a consensus, and that is "Party law must be stricter than state law". The phrase "Party law will be stricter than state law" has been expressed by the Party in its official documents and on various important occasions.⁷ If there is vacancy of laws or regulations in the national law making, then the Party law can fill the blank; but if there are collision between the Party law and state laws, it worth to research deeply and carefully, and there must be a theoretically defensible thing to explain.

3.2.The contents of the party's legislation

The party's legislation is the general term for the normative documents within the Party formulated by relevant organs to govern the activities and conduct of party organizations and members. The Party Constitution is foundation and most fundamental internal regulations of the Party. Specifically, the Party law mainly includes the following categories:

i. The Party Constitution. *The Party Constitution* provides fundamental provisions on the following issues: Party's character and goal, the route and guiding principle of the Party in power, the guiding thoughts and aims of the ruling party, the organizational principles ,the structures, obligations and rights of party 's member, as well as party discipline.

ii. Code of Conduct. The Code of Conduct lays down basic regulations on the Party's politics, Party's organizational activities and the behavior of all party members.

⁷ Huang Wenyi. (2022). On the Normative Principle of the Relationship between the Party and Law, Political Science and Law Forum, No.1.

iii. Regulations. The internal party regulations are to make comprehensive provisions on the important relations or important work of the Party in specific field.

iv. Measures and detailed rules. These party regulations are formulated by relevant authorities to make specific provisions on the significant work or matters of the party in a certain field.

3.3. The role of the party law

Party's lead is a relatively systematic and extensive power. On the basis of relevant clauses of *the Constitution of the Communist Party of China*, the party's lead role can be divided into the lead of politics, ideology and organization.

The primary content of standing on the Party's lead is to agree to the party's political lead, which means to uphold the party's comprehensive leadership of the country's political direction, line, principles, and major policies, such as the right to propose constitutional amendment and legislation.

Adhere to the organizational lead of the CPC, which means give empowerment to the party organization to recommend cadres for core positions to state organs, and it is also the way to specifically implement "the party governs cadres", it also covers the right to supervise the administration of the cadres.

The ideological lead of the CPC aims to guide the masses of party members and people to strengthen learning of advanced theories, and the whole Party and the people to strengthen their understanding of the basic line and spirit of one party, so as to internalize the party's assertions into practical actions for the vast number of Party members. These advanced theories refer to Marxism, Thought of Mao Zedong, the theoretical system of socialism with Chinese

characteristics, and the ideology of socialism with distinct Chinese characteristics in the new era of Xi Jinping.

For the function of the party's legislation is to ensure the above whole lead of the party from the aspects of political one, organizational one as well as ideological one. And the Party laws should cover all of these aspects.

3.4.The link between the party's policies and the country's laws

In China, it is one of the most remarkable features of Chinese legislation to translate the policies of the CPC into the content of state's law. According to the statistics of some scholars, in the 270 laws currently in effect in China, more than 250 provisions in more than 80 laws directly contain national policy provisions, including industrial policy, tax policy, price policy, employment policy, fiscal policy, social insurance policy, family planning policy, national monetary policy, foreign exchange control policy, free trade policy, cultural policy, sports policy, cultural relics policy, shipping policy, education policy and almost all other policy types.⁸ And in China the national policy provisions to most extent is the reflection of the Party's policies, or we can say that national policy should implement the Party's policy. It is through the continuous confirmation of legislation that many policies outside the law have been transformed into policies within the law.

In today's era of rule of law, the legal ideas, legal spirits and legal principles of a state are increasingly written into the decision documents of political parties and translated into the policies of political parties governing the whole country. During the new era, the CPC has paid more attention to translate its new ideas and thoughts on comprehensively and law-based governance

⁸ Huang Wenyi. (2022). On the Normative Principle of the Relationship between the Party and Law, Political Science and Law Forum, No.1.

into basic policies for Party and state's governance. For instance, facing the problem of capital's wild growth and disorderly expansion, the Central Economic Work Conference in 2021 clearly came up with a new policy on capital supervision, that is, "we should strengthen the legal supervision of capital to ensure its legal and reasonable operation".⁹ This new policy is an example of the embodiment of rule by law.

3.5.The similarity of the internal party regulations and the state legislation

This core point is not only of great significance but also with obvious Chinese characteristics. We should firstly understand the common place and the difference between inner-party regulations and state's legislation.

In socialist countries, the ruling party's rules are not only the internal norms of the party. Since the force of the party in power is not limited to the field of intra-party affairs, but often penetrates into the field of state affairs and community affairs dominated by the state law. In China, during its long term in power, the CPC has established a more systematic and comprehensive inner-party rules system and regulations consisting of more than 3000 laws and regulations. Therefore, the party rules and state legislation are more closely related, not only have a common border in the adjustment of the affairs, but also interlaced in the content of the code.¹⁰

Firstly, the Party's Constitution is basic for the party's governance and the foundation for its governance. Both national laws and party regulations will become China's contemporary legal system.

⁹ Editor. (2021). Central Economic Work Conference held in Beijing, People's Daily, 1st edition, December 11.

¹⁰Huang Wenyi. (2022). On the Normative Principle of the Relationship between the Party and Law, Political Science and Law Forum, No.1.

Secondly, the party's internal regulatory system constitutes an essential and important component of the national juridical structure and the rule by law structure with distinct Chinese characteristics.

Thirdly, in the construction of the rule by law with Chinese way, according to the basic path of China's rule of law construction, Party internal regulations and national legislation have the characteristics of coordination and unity. Party governance and state governance are closely linked, mutually reinforcing and mutually premising, while intra-party rules and national laws are also mutually supportive, coordinated and connected. Party internal regulations and national laws complement, promote, and guarantee each other.

The reasons that the internal party rules and the state's legislation are highly complemented, promoted and guaranteed each other are based on the following aspects:

Firstly, they have a common economic foundation. Against the backdrop of China still in the elementary phase of socialist development, China's economic structure implements socialist public ownership. Specifically, China's basic economic structure is dominated by socialist public ownership, supporting the mutual development of various forms of ownership. In terms of distribution system, China insists on taking distribution on the basis of labour as the main body and developing multiple allocation methods together. Therefore, both party regulations and national legislation are based on the aforementioned economic system.

Secondly, they have common class will. Because “the CPC on the behalf of the interests of the most of the Chinese people”¹¹ thus fundamentally Speaking, both the internal party regulations and the state legislation are all reflecting the demand of the numerous of Chinese people.

¹¹ Xi Jinping. (2021) Speech at the conference celebrating the 100th anniversary of the founding of the Communist Party of China. <https://baijiahao.baidu.com/s?id=1705335067073151308&wfr=spider&for=pc>, visited at Sep. 9, 2023.

Thirdly, they have a common Guiding ideology. And

Fourthly, they have a common value orientation.

3.6.The distinction between the internal party regulations and the country's law

However, there are many differences between the internal party rules and national legislation. For party regulations and rules of nation, the formulation organ, the formulation procedure, the adjustment objects, the scope of application and the implementation methods are all different.

First of all, for the formulation organ and procedure, inner-party regulations and basic discipline are created by the ruling party's central organization, central institutions, the party committees of provinces, autonomous regions, and municipalities directly under the Central Government according to inner-Party legislative process; while national laws are formulated by the national legislature according to the legislative process.

Secondly, they have different forms of expression. The internal party's regulations mainly rely on party's discipline as the implementation guarantee, while national laws mainly depend on coercive power of the state to ensure their implementation.

Thirdly, the legislative process is different. From the main point of view, the National People's Congress and its Standing Committee have entitle to formulate laws, while the Central Committee of the CPC, the Central Commission for Discipline Inspection of the CPC, all departments of the Central Committee of the Communist Party of China, provincial party committees, autonomous regions and municipalities directly under the Central Government have the right to make intra party regulations. From a legal perspective, national laws are based on the Legislative Law of the PRC, while party's rules are based on the Regulations on the Formulation of Party Rules.

Fourthly, the internal party regulations and the state legislation apply to different subjects. State laws are applicable to all citizens including Communist Party members, all social organizations and legal persons, including all levels of CPC's organizations ; while inner-party regulations are applicable only to all levels of CPC's organizations and all CPC members.

Fifthly, the way of implementation is different. Intra-party regulations mainly rely on Party discipline as the implementation guarantee, while national laws mainly depend on national coercive force to ensure implementation.

Sixthly, standards of them are different. The standard of the Party regulations in adhering to rules governing the Party exceed the standard of "legislation" in the rule by law, and its implementation procedure is stricter than that of the national law

3.7.Practice path of realizing the theoretical link between the Party and Law with Chinese way

The CPC is both the leading party and ruling party. It leads the state and also exercises state power.¹² The radical guarantee of the law-based administration of the country in a whole way is the Party's leadership. Huntington famously observed in his book *Political Order in Changing Societies* that "In a modern society, the political stability of a country is decided by the strength and ability of the party." (Samuel, 2008).¹³ The lead and authority of the CPC can keep China in a relatively stable social order and achieve steady reform and development in the process of stability.

¹² Zhu Daixuan. (2022). On the Consent Constitution of the Party-Law Relationship with Chinese Characteristics, Practice and Theory of Special Zones, No.3, 2022.

¹³ Samuel P. Huntington. (2008). *Political Order in a Changing Society* [M], translated by Wang Guan-hua, Liu Wei, proofread by Shen Zongmei, Shanghai: Shanghai people's publishing house.

There are two familiar ideologically-inflected characterizations of PRC system of governance: (i) from liberal West, casts PRC as authoritarian or an autocracy or a dictatorship – this characterization is rooted in liberal-democratic self-understandings which asserts that the ‘free west is the model for all countries’; and (ii) the other from the PRC’s spokespersons, thus, the PRC is an example of socialism oriented to the real interests of ordinary workers and peasants. Here an approach rooted in institutional and culture critical analysis is used – it posits a political system built around a ‘double bureaucracy’ – party and state - both elements are bureaucracies – hierarchical – entry to junior level by examination – promotion to higher positions by achievement, and so on. In this party-state system the party-bureaucracy deals with policy making; whilst the state-bureaucracy deals with policy execution. In this system where the elements interact at all levels, the party machinery is the dominant player and so, in this sense, the system could be labelled a ‘party-led state’. Whichever formulations is preferred it is clear that the system is not a liberal-democratic system; it functions according to its own logic.

This double-bureaucracy is present in core elements of system, that is, inside the Beijing’s government machineries; it is repeated at province level – it is repeated at prefectural level – it is repeated at county and township levels.

3.8.The development and contemporary functions of the party-state system

The Party has its institutional roots in war and revolution – politics has been in command but recent decades have seen attempts to regularize procedures - one aspect of this is increasing the role of law. The system involves very many players. In the core policy can be pursued through the ministries or via ‘small groups’ or ‘leading small groups’; the core of the system has a supportive network in the ‘Beijing policy community’. The system is top-down and one concern of Beijing

core has been to have its policies translated into practice (the issue is of the effectiveness of the machinery of the state in a country of 1.3 billion). Historically, there is a shifting balance of effective power between the Beijing core and the various provinces. The system has built-in tensions and these can turn into political crises (for example, ‘Gang of Four’ or more recently Bo Xilai and the Chongqing model).

The system provides an effective system of governance – formal machineries at core and throughout country – a hierarchy – plus contributions from those outside the party-state - Beijing policy community – private sector business – big cities such as Shanghai or Guangzhou or Shenzhen – online media.

The country has just experienced recent rapid domestic growth, it has recently been seen has attained a global status as nascent super-power, one of the important reason is that China has rapidly uplifted their people’s material levels of living, the living standard of its population has memorably and dramatically improved.

The double-bureaucracy shapes the system. But in this system the party and state have different roles – the dominant institution is the party, this means that, first of all, the Party's functions have the highest status. The Party totally has membership around 90 million, it also has formal procedures for membership, has formal duties of members, the core of the Party focused on policy making. Secondly, the role of the country is to translate the policies of the leading Party into practice. The country has multiple ministries, its core pattern is reproduced down the administrative hierarchy: from province down to prefecture, down to county, then down to city/township – to realize its core task – the translation of policy into practice. Taking tourism as a typical case, Chinese people’s outbound tourism has become impetus for economic growth for

many countries in the world. The purchase of luxury goods by Chinese people has also become the main driver of luxury economy in many countries, and the overseas study of Chinese students has greatly benefited the British education industry.

3.9.Perfect the relation between Party and country in the ‘party-state system’

In China, there is a popular saying that ‘there would be no new China without the CPC’. This is not just a slogan, but also has rich practical connotations. The CPC is a party with the working class as the main body, leading all affairs of the country. It represents not only the profit of the proletariat in China, but also the benefits of all of the Chinese ethnic group and the entire Chinese people.

In terms of formal organizational matters, in China's party-state system the party leads the state rather than replaces it. The CPC does not represent the minority interests. It represents the common interests of the whole Chinese people and nation since modern world. The CPC is the highest force for political leadership. The Party leads the state, but does not replace it, and a structure of the Party leading the country has been established. When the Party leads the country, not only can it arouse the initiative and creativity of all sectors through the principle of democratic centralism, but also it can form a unified will so that avoiding fragmentation of national governance, and cultivating strong national capacity.

As for the link between the party and the state, the highest level of state power office is the National People's Congress. The administrative organization, supervisory, judicial authority and the administrative institutions of the country are all elected by the People's Congress. The CPPCC is a united front organization, not a state authority. Governments at all levels are national administrative institutions under the centralized lead of the State Council and are subordinate to

the central government. The CPC and the state organs at all levels are essentially political organs and must accept the lead of the CPC. The Party, according to the provisions of laws and regulations, exercises lead over state organs and non Party organizations through the basic organizational leadership system of democratic centralism, the Party member leadership group, deliberation and coordination organs, and other Party work institutions.

All the issues related to the national economic development and people's better live discussed during the annual NPC and CPPCC sessions, including the various development directions outlined in 14th Five Year Plan, demonstrate fairness and justice. The realization of fairness and justice will ultimately be implemented by the rule by law, by legislation distribution of social justice, by law enforcement implementation of social justice, by the judiciary to correct social justice, by law-abiding to promote individuals to obtain justice.

4. Conclusion:

The relation between the party in power and the legislation in China is a key topic in creating socialism with Chinese way, a core issue in establishing rule by law in China, and necessary condition for the success when it comes to China's modernization drive in the future. The socialist rule by law in China is the rule by law under the guide of the CPC. Meanwhile, only through the socialist rule by law can we ensure the standing stability of the party's lead. The question of 'Party Congress or Law Congress is a questionable proposition. Firstly, the ruling party and the legislation are concepts at different levels. The former is a political organization, while the latter is a system of behavior rules. Therefore, the two simply compare size and height. Secondly, the relationship between the two is not in opposition, let alone conflict, but highly unified. In terms of

legal system hierarchy, in China, national laws are superior to party laws; In regard to the strictness of governance, the Party law is stricter than the state law.

It should pay attention to the connection with Party law and ordinary law. Where the current legal concept can be adopted, "we must unswervingly adopt the idea of the existing law! If without exception of the Party law, it should adhere to the existing law and law enforcement system of supervision and constraints

The range of the implementation of the Party Law “must be strictly limited to the scope of Party members”, and even should further divide “ordinary Party members are subject to lower requirements” and "Leading officials, especially those in key positions, are subject to strict restrictions”.

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