

China and the EU

Chinese constitutional law in a nutshell

2025

Prof Dr Nicolas de Sadeleer



UCLouvain
SAINT-LOUIS BRUXELLES



Co-funded by the
Erasmus+ Programme
of the European Union

Comparative Law lectures – 2nd and 3rd grade

EUIndoPac Jean Monnet University Teaching Module

*The EU and the Indo-Pacific Region. Challenges and
Opportunities*

Historical introduction

Chinese law encompasses the legal history of China prior to the foundation of the People's Republic of China and the law of the country today

The thought of Confucius is central : the five relationships are the foundation of a well-ordered society : between ruler and subject, husband and wife, father and son, elder brother and younger brother, and friend and friend

Historical introduction

- + The initial imperial Chinese legal code of the Qin dynasty (221–206 BCE) influenced by Legalism sought to eradicate Confucianism
- + the Han dynasty (206 BCE–220 CE), filled the ranks of officialdom with Confucian scholars who in turn revised the law so as to reconstruct and reinforce the five relationships.
- + Imperial Chinese law was dynamic. Even as a core of the imperial code was retained over time, the remaining statutes did change.

Historical introduction

- + During the Cultural Revolution, the national legislature ceased meeting, and the constitution was rewritten to celebrate class struggle
- + Whereas substantive Chinese law was at best fragmentary at the end of the Cultural Revolution and even in the early years thereafter, China subsequently promulgated tens of thousands of legal measures designed to create a comprehensive framework.
- + The White Paper on Socialist Legal System with Chinese Characters issued in October 2011 announced that the “legal system with Chinese characteristics” has been established in China.

LEGAL FRAMEWORK

- + The legal system in China is “an organic, comprehensive and unified whole consisting of well-defined divisions or branches of law into which all laws maybe classified in an exhaustive manner”.
- + The categorization is viewed as the official method especially when it is reaffirmed by White Paper on Socialist Legal System with Chinese Character .

Constitutional law

Contains 39 pieces of laws (16 per cent of current laws) including the PRC Constitution (1982), currently in effect, and related laws. The PRC Constitution (1982) is the Constitution is 'the fundamental law of the state and has supreme legal authority'.

It has four chapters :

- the general principles of the country
- the legal system
- the basic rights and duties of the citizens
- the structure of the state.

Administrative law

The administrative law system dealing with government agencies and their responsibility. It could be categorized as general administrative law and specific administrative law includes:

- (1) organic law concerning the establishment, roles, powers and duties of administrative agencies and their personnel;
- (2) law concerning regulatory power of government agencies involving administrative permit, punishment, supervision and so forth;
- (3) law of administrative remedy involving the administrative litigation, reconsideration, and state compensation.

Civil and business law

- + The civil law system in China functionally encompasses various legal mechanisms covering property rights, marriage, inheritance, adoption, protection of intellectual property rights, tort, etc.
- + Commercial law encompasses such titles as company, tickets, insurance, securities and guarantee in the sphere of business transactions is another branch within the system.

Economic and social Law

- Economic law : the goal of establishing a market economy in China requires a uniform and impartial rule of law economy.
- Social law : China had enacted social laws regulating labour protection, social security, social work and charity to guarantee equality and justice of the society.

Criminal Law

The Criminal Law has two parts: general provisions and specific provisions :

- The general provisions mainly deal with basic principles of criminal law, definition of criminal offence, types, level and application of criminal sanction
- The specific provisions provides specific offenses ranging from crimes of counterrevolution and crimes of endangering public security to crimes of undermining the socialist economic order, crimes of infringing rights of the person and the democratic rights of citizens,...

Procedure Law

China has three major procedure regimes :

- the civil procedure law led by Civil Procedure Law surrounded by Arbitration Law and a serial of judicial interpretations on evidence, mediation, and execution of judgments;
- the administrative procedure law including Administrative Procedure Law, Administrative Review Law and the procedural provisions in other administrative substantive law;
- the Criminal Procedure Law in the criminal litigation system.

LEGAL BRANCH

- + **Article 98** of the Legislation Law : “The Constitution has the highest authority. No laws, administrative regulations, local regulations, autonomous regulations, separate regulations, or rules may contravene the Constitution.
- + **Article 99** of the Legislation Law : “Laws are superior to administrative regulations, local regulations, and rules. Administrative regulations are superior to local regulations and rules.”

LEGAL BRANCH

- + The NPC and its Standing Committee are accorded the supreme legislative power of the state in accordance with the provisions of the Constitution. (**Article 10** of the Legislation Law)
- + Other organs, such as the State Council and subordinate departments, the People's Congress and government of provinces and other authorized cities, People's Congress and government of Ethnic Autonomous Region, and Central Military Commission and its divisions share the legislation power in a certain sphere.

LEGAL BRANCH

- + The PCR Constitution (1982)
- + The State legislation
- + The local legislation

First source : The PCR Constitution

- It is the fundamental law within the legal system providing for the basic rights and duties of citizens and the structure of the state.
- It establishes the fundamental principles of governance, the structure of state institutions, and the rights and duties of citizens.

First source : The PCR Constitution

The rule of law

Constitution **article 5** : “The People’s Republic of China shall practice law-based governance and build a socialist state under the rule of law.”

- The principle of the rule of law means that laws provide meaningful restraints on state power. In a rule of law system, every person is subject to the law and no one is above it.
- The Chinese Communist Party’s conception of the rule of law means “law-based governance. The CCP ultimately sees the law as a tool to ensure stability and order, as well as being a means to justify and maintain Party rule.

First source : The PRC Constitution

Democracy

Article 2 of the Constitution allows citizens to elect delegates to People's Congresses, China's legislative organs, on the county and district levels.

Articles 1 and 3 make it clear that the PRC is a socialist state under the sole leadership of the CCP, whose hold on power was further strengthened in the 2018 constitutional revisions.

In the political system of "socialist democracy with Chinese characteristics", citizens in China can vote for their local representatives, the CCP is constitutionally defined as the sole ruling party, preventing any transfer of power. It has guiding power over all legislative and state organs, allowing top-down policy implementation.

First source : The PCR Constitution

Freedom of assembly and association

Article 35 of the Chinese Constitution grants Chinese citizens the right to freedom of assembly and association.

- Similar to Article 20 of the Universal Declaration of Human Rights.
- the CCP leads in respect of everything codified in Article 1 of the Chinese Constitution. This principle is reflected in both vocabulary and types of actors. The Chinese leadership has never embraced the term “civil society” in domestic political communication.

First source : The PCR Constitution

Freedom of speech

Article 35 of China's Constitution states that "[c]itizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration."

- In practice, the ruling Chinese Communist Party places substantial restrictions on the exercise of freedom of speech, which is regarded as potentially destabilizing to the regime.
- The CCP has developed a vast human and technological apparatus to ensure that it can monitor and control information through all channels.

First source : The PCR Constitution

Fundamental rights

Article 33 of the Constitution : “All persons holding the nationality of the People’s Republic of China are citizens of the People’s Republic of China. All citizens of the People’s Republic of China are equal before the law. The state shall respect and protect human rights. Every citizen shall enjoy the rights prescribed by the Constitution and the law and must fulfill the obligations prescribed by the Constitution and the law”

- China promotes a state-centric and relativist conception of human rights “with Chinese characteristics”, according to which stability, harmony, subsistence and economic development take precedence over human rights, especially civil and political rights.

Second source : The State legislation

National People's Congress

Article 2 of the Organic Law: "The National People's Congress is the highest organ of state power, and its permanent body is the Standing Committee of the National People's Congress."

- The Constitution and Legislation Law endow the NPC to decide the most fundamental issues in the country.
- It has the power to amend the Constitution; to enact basic laws; and to enact other laws if necessary.
- The NPC has the authority to amend or abrogate any laws enacted by its Standing Committee and to nullify any autonomous decree or specific rule in Ethnic Autonomous Region.

Second source : The State legislation Standing Committee of the NPC

- + The Standing Committee is the permanent body of the NPC.
- + The Standing Committee can exercise the supreme legislative power supervised by the NPC and has the power to interpret the Constitution and laws.
- + the Standing Committee has the power to enact and amend 'other laws' except those enacted by the NPC. (**Article 48** : "The power of legal interpretation belongs to the Standing Committee of the National People's Congress.")

Second source : The State legislation State Council

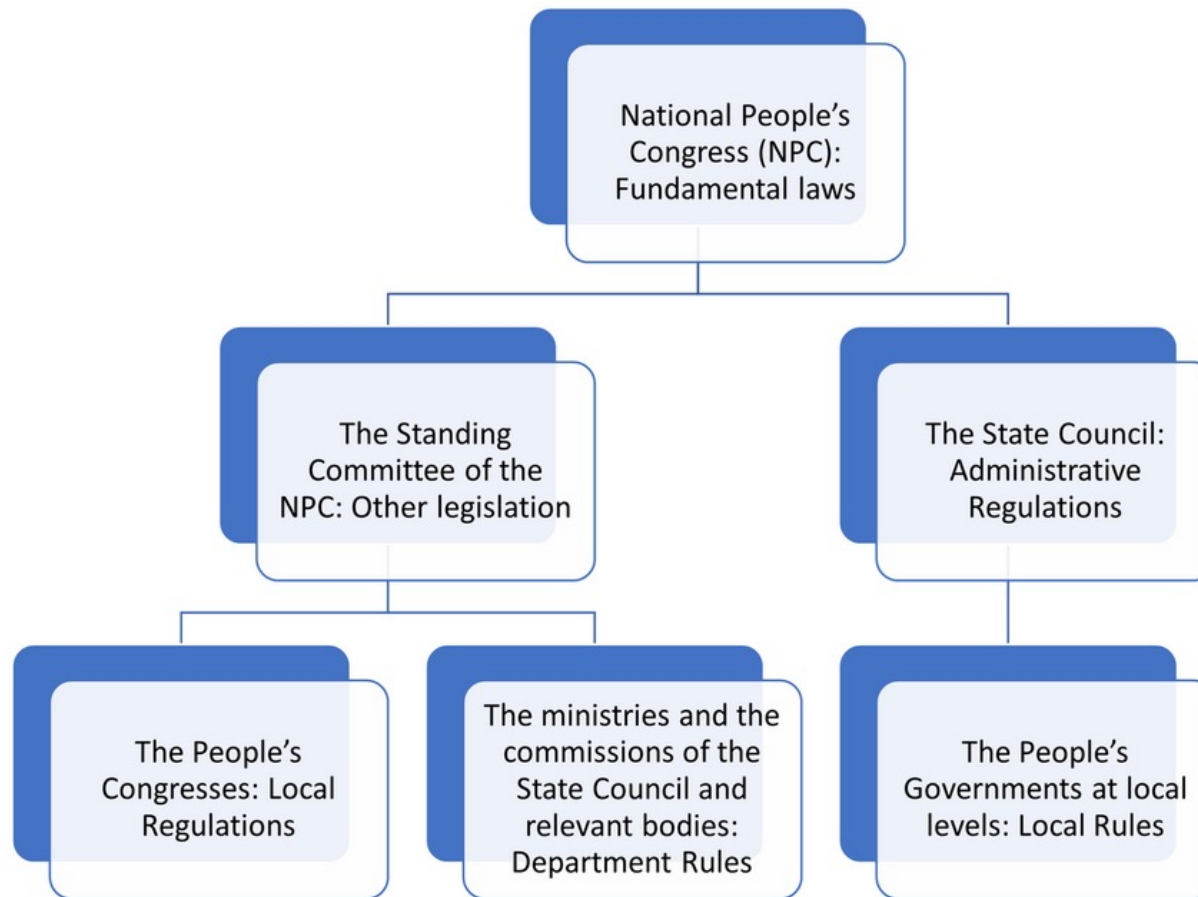
It is the supreme administrative organ implementing the Constitution and laws.

According to **article 56** of the Legislation Law and **article 89** of the Constitution (1982), the State Council was entitled to enact administrative regulations when: (1) necessary to implement law; (2) required by its responsibility stipulated in **article 89** of the Constitution; and (3) delegated by the NPC or its Standing Committee.

Third source : The Local Legislation

Local legislation in China refers to the promulgation, modification and nullification of local decree, local rules, autonomous regulation and rule, as well as the laws in the Special Administrative Region.

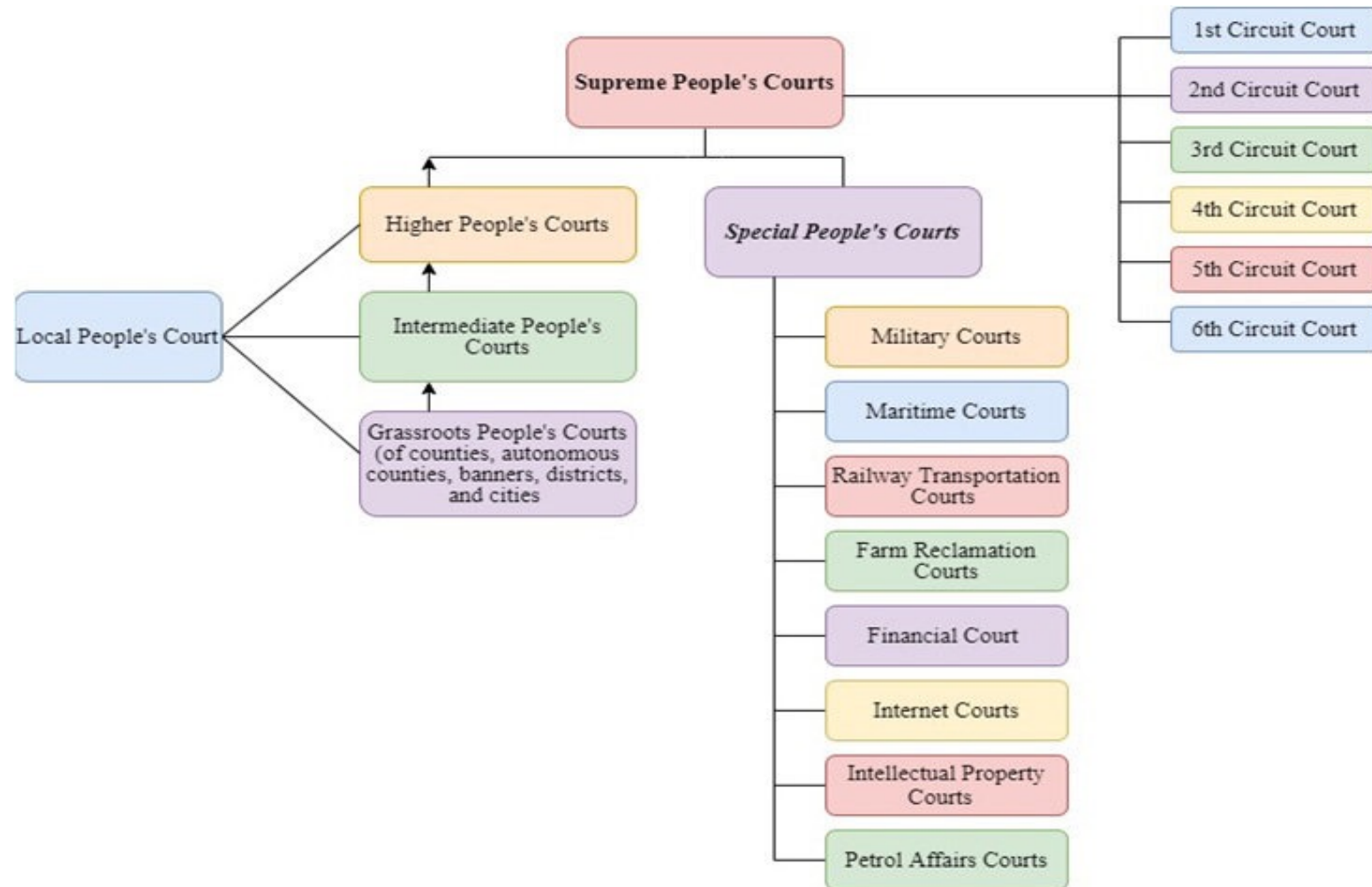
Legal branch



JUDICIAL BRANCH

- The judicial branch of the legal system in China is mainly composed of courts and procuratorates responsible for the enforcement of laws.
- In terms of the structure of the judicial system, courts and procuratorates are divided into four levels and two trials are needed to finalize a case. The supreme people's court and supreme people's procuratorates have the power of legal interpretation on the application of laws.

Courts



Courts

The Supreme People's Court

Its jurisdiction is superior to all lower and special courts, and it serves as the supreme appellate court

The President of the Supreme People's Court is elected by the NPC and its Standing Committee.

The main responsibilities of the Supreme People's Court are hearing cases with the most far reaching influences, appeals or protests against adjudication of Higher People's Courts and specialist courts, as well as cases it deems necessary to take to trial. It also has the power to supervise judiciary in local People's Courts and specialist courts.

Courts

The local People's Court

- + Basic People's Court : criminal, civil and administrative cases at first instance
- + Intermediate People's Courts : cases of first instance within the category set by laws and decrees, cases of first instance transferred from Basic People's Courts, and appealed and protested cases from a lower court.
- + Higher People's Courts : cases of first instance within the category set by laws and decrees, cases of first instance transferred from people's courts at lower level, cases of appeals and of protests lodged against judgments and orders of people's courts at lower level, and cases of protests lodged by People's Procuratorates.

Courts

The Specialized courts

Specialized judicial organs including military courts, maritime courts, railway and transport courts, forestry courts, oil courts, etc, with jurisdiction over a certain area.

Procuratorate System

- + As legal supervision organs exercising the power of prosecution in China's legal system, consisting of the Supreme People's Procuratorate and the local People's Procuratorate.
- They exercise procuratorial authority in cases of treason, of attempts to split the country and of other major crimes ;
- They investigate cases involving graft, infringement of citizens' democratic rights, violation of duty and other cases ;
- they review cases investigated by the public security organs and state security agencies and decide whether to approve arrest and to prosecute; supervise the investigation activities of public security organs and state security agencies to determine whether violation of law has occurred.

EXECUTIVE BRANCH

The legislative power of the competent governments or their constituents is also to implement legal norms. The sovereign state power resides in the central level authorities

- 1) State Council
- 2) Local Governements

State Council

- + The State Council is the executive organ at national level within the legal system.
- + The State Council is responsible for carrying out the principles and policies of the CPC.
- + Under the Constitution, the State Council exercises the power of administrative legislation, the power to submit proposals, the power of administrative leadership, the power of economic management, the power of diplomatic administration, and other powers granted by the NPC and its Standing Committee.

Local Governments

- + The governors of the provinces and autonomous regions and mayors of the centrally governed municipalities are appointed by the State Council after approval of the NPC.
- + The municipalities are directly subordinated to the State Council.

CHINA'S STATE STRUCTURE

