

*Сјао Венјун,
професор Правног факултета
Универзитета у Пекингу, Кина*

*Xiao Wei Yun,
Professr, Faculty of Law, University of Peking,
China*

RECENT DEVELOPMENT OF THE PEOPLE'S CONGRESS SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA

The People's Congress System is the Fundamental System of the People's Republic of China. The new Constitution of the People's Republic of China adopted in December, 1982 has made several further advances on the People's Congress System so as to strengthen it further.

I. The new Constitution has strengthened the National People's Congress in three ways: First, it adds a Law Committee, a Finance and Economic Committee, an Education, Science, Culture and Public Helth Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and some other special committees. Their tasks are to examine, discuss and draw up relevant bills and draft resolutions under the direction of the National People's Congress. To add more special day-to-day-working organs will surely make the National People's Congress operate much more effectively.

Second, it has adjusted some functions and powers of the National People's Congress. „To supervise enforcement of the Constitution”, „to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress” and „to decide on the establishment of special administrative regions and the systems to be instituted there”, are empowered to the National People's Congress in the new Constitution. These implementations have strengthened the supervising power of the National People's Congress over the enforcement of the Constitution, over the Standing Committee of the National People's Congress and the deciding power on establishing administrative regions. In the meantime, some powers which belonged to the National People's Congress before, has been transferred to the Standing Committee of the National People's Congress. The National People's Congress only amends the Constitution, enacts and amends basic statutes concerning criminal offences, civil affairs, the state organs and other matters, including Criminal Law, Civil Law, Procedure Law, Organization Law of the National People's Congress, the Organization Law of the State Council, Organization Law of the People's Courts, Organization Law of the People's Procuratorates, Law of Election, etc. . . . By doing so, the National People's Congress can operate more effectively, since it concentrates its energy on enac-

ting and amending those statutes which must be decided by it and those statutes which are not the basic ones may be left for its Standing Committee to enact and amend. Now, lots of statutes are to be adopted and enacted, but, to fulfill this in a somewhat short period is far beyond the National People's Congress' ability, therefore, to adjust some legislative power of the National People's Congress actually is to strengthen the National People's Congress.

Thirdly, it stipulates more definitely the term of office and the procedure of the National People's Congress. The new Constitution stipulates that the National People's Congress is elected for a term of five years; two months before the expiration of the term of office of a National People's Congress, its Standing Committee must ensure that the election of deputies to the succeeding National People's Congress is completed; should exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of more than two-thirds of all these on the Standing Committee of the incumbent National People's Congress; the election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances. The new Constitution also provides that the National People's Congress meets in session once a year; session of the National People's Congress may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies to the National People's Congress so propose. These rules mentioned above, being more definite and fixed than those in the old constitutions, will surely make the National People's Congress play more active role, instead of prolonging its term of office and postponing the opening of the session at will.

II. The new Constitution has strengthened the Standing Committee of the National People's Congress and expanded its functions and powers as well. The Constitution of 1954 stipulated the power of the Standing Committee of the National People's Congress in nineteen items. The Constitution of 1975, stipulating its functions and powers only in seven items, greatly weakened the Standing Committee of the National People's Congress and rescinded the special committees under the guidance of the National People's Congress and its Standing Committees. The Constitution of 1978 stipulated the functions and powers of the Standing Committee of the National People's Congress in thirteen items. The new Constitution stipulates the functions and powers of the Standing Committee of the National People's Congress in twenty-one items, adding more important functions and powers. Based on the Constitutions of 1975 and 1978, the main functions and powers of the Standing Committee of the National People's Congress are: 1, to interpret statutes and enact laws and decrees; 2, to decide, appoint and recall of the state personnel; 3, to supervise the work of the state Council, the Supreme People's Court and the Supreme People's Procuratorate; 4, to exercise such other functions and powers.

The functions and powers of the Standing Committee of the National People's Congress expanded in the new Constitution are as follows: 1, to exercise state's legislative power, in other words, to enact and amend statutes with the exception of those which should be enacted by the National People's Congress, to enact, when the National People's Congress is not in session, partial supplements and amendments to statutes enacted by

National People's Congress provided that they do not contravene the basic principles of these statutes. It cancelled the functions and powers to enact laws and decrees given to the Standing Committee of the National People's Congress stipulated in the old Constitutions. According to these rules, the Standing Committee of the National People's Congress has become a legislative body, in the meantime, its legal status has been raised. 2, to examine and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development and to the state budget that prove necessary in the supervising power of the Standing Committee of the National People's Congress over the State Council. 3, to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions or the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier of the State Council, and, upon nomination by the Chairman of the Central Military Commission, to decide on the choice of others on the Commission except for Chairman of the Central Military Commission. These rules have expanded functions and powers of the Standing Committee to decide, appoint and recall of state personnel. These three aspects have shown us that the main parts of the functions and powers of the Standing Committee of the National People's Congress are expanded and strengthened.

The new Constitution has strengthened the organization of the Standing Committee of the National People's Congress, it makes it a rule that no one on the Standing Committee of the National People's Congress can hold any post in any of the administrative, judicial or procuratorial organs of the state. Such a rule has actually provided that most members of the Standing Committee of the National People's Congress would be full-time members, and that the staff members working in those state organs can not hold any post on the Standing Committee of the National People's Congress may help the Standing Committee of the National People's Congress supervise these state organs more effectively. In the past, few special committees operated under the guidance of the Standing Committee of the National People's Congress, but the new Constitution stipulates that when the National People's Congress is not in session, each special committee shall, under the direction of the Standing Committee of the National People's Congress, examine, discuss and draw up relevant bills and draft resolutions. The new Constitution also stipulates that chairmanship meetings with the participation of the Chairman, Vice-Chairman and Secretary-General of the Standing Committee of the National People's Congress handle the important day-to-day work of this Committee. Undoubtedly, these rules have strengthened the organization of the Standing Committee of the National People's Congress.

In accordance with China's real situation, once was considered that too large a number of deputies to the National People's Congress would make the regular work cumbersome, therefore, the number of deputies should be reduced. But as China is a big and populous country, and is composed of more than fifty nationalities and over twenty hundred counties, each class, nationality, party and locality should have considerable amount of deputies in the National People's Congress. The number of deputies to the National People's Congress should not be too small. Since many

statutes are urgently needed to be enacted, waiting the National People's Congress to be in session for more than half a year to decide is no good. Through careful consideration, some functions and powers belonged to the National People's Congress now have transferred to its Standing Committee based on the new Constitution. All members of the Standing Committee actually are executive deputies to the Congress. They are to be selected by the National People's Congress, represent every field, the amount of their number is proper, therefore, it is convenient to the regular meeting frequently. Are the functions of the National People's Congress reduced by transferring some powers from the National People's Congress to its Standing Committee as stipulated in the new Constitution? The answer is no. Some functions and powers which must be exercised by the National People's Congress are still existing and have even increased: 1, to amend the Constitution to enact and amend basic statutes concerning criminal offences, civil affairs, the state organs and other matters; 2, to elect the President and the Vice-President of the People's Republic of China, the Chairman of the Central Military Commission, the President of the Supreme People's Court, the Procurator-General of the Supreme People's Procuratorate, to decide on the choice of the Premier and all the others of the State Council, and of all the others on the Central Military Commission; 3, to examine and approve the plan for national economic and social development and the reports on its implementation, to examine and approve the state budget and the report on its implementation; 4, to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress; 5, to decide on important questions of war and peace and others; 6, to exercise such other functions and powers as the highest organ of state power should exercise. All functions and powers mentioned above can only be exercised by the National People's Congress, instead of by its Standing Committee. Now, it is clear that the functions and powers of the Standing Committee do not exceed those of the National People's Congress although they are enlarged and expanded. The rules concerning the functions and powers of the National People's Congress in the new Constitution can not only make the National People's Congress better play its role, but also strengthen its Standing Committee.

III. Concerning the rights of and the requirements for the deputies to the National People's Congress, following new rules are stipulated in the new Constitution: 1, deputies to the National People's Congress have the right, in accordance with procedures prescribed by law, to submit bills and proposals; 2, deputies to the National People's Congress may not be called to legal account for their speeches or votes at its meetings; 3, deputies to the National People's Congress must play an exemplary role in abiding by the Constitution and the law and keeping state secrets and assist in the enforcement of the Constitution and the law, and should maintain close contact with the units which elected them and with the people, listen to and convey the opinions and demands of the people and work hard to serve them. These rules can make deputies play more effective role, bring their initiatives into better play and strengthen the National People's Congress and its Standing Committee as well.

IV. The new Constitution has not only emphatically strengthened the functions and powers of the National People's Congress, especially those of

its Standing Committee, but also stressed on improving and executing functions and powers of the local people's congresses at different levels. This is specifically shown as follows: 1, the new Constitution has strengthened the functions and powers of local people's congresses at and above the county level by stipulating that local people's congresses at and above the county level establish standing committee. The circumstances now are quite different from those when the Constitution of 1954 was adopted. In the localities, population has highly increased, the building of economic and cultural affairs has made great progress and the task of constructing legal system has been placed on the order of the day. What was stipulated in the Constitution of 1954 that local people's governments operate as the standing organs of the local people's congresses is not suited to the circumstances today, therefore, it is necessary to set up standing committee of a local people's congress at and above the county level. In the meantime, setting up standing committee of a local people's congress at and above the county level can also help more effectively supervise people's government, people's court and people's procuratorate at the same level, and strengthen the work of local executive, judicial and procuratorial organs. 2, the new Constitution stipulates that the people's congresses of provinces and municipalities directly under the Central Government, and their standing committees, may adopt local regulations, which must not contravene the Constitution, the statutes and the administrative rules and regulations. This rule enlarges the functions and powers of the organs of state power of provinces and municipalities directly under that Central Government, and makes it convenient to them for solving problems in their local place with local conditions. 3, the new Constitution puts the organ of state power at the county level directly under the people's supervision by stipulating that the direct election is expanded to the county level. 4, the new Constitution separates township from the rural people's commune. People's congresses are established in townships and rural people's communes are only collective economic organizations. This rule can help improve the work of the political power in townships and the development of collective economic organizations. 5, the new Constitution has restored nationality townships stipulated in the Constitution of 1954. The people's congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the peculiarities of the nationalities concerned.

V. The new Constitution has not only strengthened people's congress at every level, but also consolidated state executive, judicial and procuratorial organs established by the people's congress at the same level. The purpose to do this is to improve and make further advances on the People's Congress System as a whole.

In brief, the new Constitution has reformed and set lots of new rules on the People's Congress System of our country and it will surely improve the development of the People's Congress System.

РЕЗИМЕ

НАЈНОВИЈИ РАЗВИТАК СИСТЕМА НАРОДНИХ КОНГРЕСА У НАРОДНОЈ РЕПУБЛИЦИ КИНИ

Нови кинески устав је вишеструко унапредио систем народног конгреса. Нови устав је: 1) учврстио Национални народни конгрес, увео још неке специјалне комитете, прилагодио неке функције и овлашћења и прописао одређенија правила о дужини мандата и поступку Конгреса; 2) учврстио ауторитет, проширио функције и овлашћења и консолидовао организацију Сталног комитета Националног народног конгреса; 3) прописао нова и одређена правила о правима депутата и условима за стицање својства депутата Националног народног конгреса; 4) учврстио функције локалних народних конгреса на различитим нивоима; 5) учврстио државне органе извршне и судске власти, као и јавног тужилаштва, на различитим нивоима, установљене од народних конгреса на тим нивоима.

RÉSUMÉ

LE DÉVELOPPEMENT RÉCENT DU SYSTÈME DES CONGRÈS POPULAIRES EN RÉPUBLIQUE POPULAIRE DE LA CHINE

La nouvelle Constitution chinoise a apporté de multiples améliorations au système du Congrès populaire. La nouvelle Constitution:

1.) a consolidé le Congrès Populaire National, introduit quelques comités spéciaux de plus, accomodé certaines fonctions et pouvoirs, et prescrit des règles concrètes relatives à la durée du mandat et à la procédure du Congrès;

2.) a consolidé l'autorité et élargi les fonctions et pouvoirs du Comité Permanent du Congrès Populaire National, en consolidant en même temps son organisation;

3.) a adopté une nouvelle réglementation concernant les droits des députés, ainsi que les conditions requises pour obtenir la qualité de député;

4.) a consolidé les fonctions des congrès populaires locaux de niveaux différents;

5.) a consolidé les organes du pouvoir exécutif et judiciaire de l'État, ainsi que les organes du ministère public aux niveaux différents établis par les congrès populaires des mêmes niveaux.