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Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía,
Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 34, 2018, Especial N°

14

Revista de Ciencias Humanas y Sociales
ISSN 1012-1587/ ISSNe: 2477-9385
Depósito Legal pp 198402ZU45



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Maracaibo - Venezuela

Constitutional and legal status of the President of the Republic of China

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Abstract

The purpose of this study is the analysis of the institution of the head of state “with Chinese specifics” with use of comparative-legal and sociological methods. As a result, there is a substantial difference between the presidential powers set in the first Constitution and those defined in the effective one. The following conclusions should be outlined among others: The head of state in the People’s Republic of China is a sole authority; Political and state powers are transferred to the candidate prepared in advance; The procedure of the powers transfer from one generation to another starts at the congress.

Key words: Republic of China, state, Constitution, institution, legal.

Estatus constitucional y legal del Presidente de la República de China

Resumen

El propósito de este estudio es el análisis de la institución del jefe de estado "con detalles chinos" con el uso de métodos comparativos legales y sociológicos. Como resultado, hay una diferencia sustancial entre los poderes presidenciales establecidos en la primera Constitución y los definidos en la vigente. Se alcanzaron las siguientes conclusiones entre otras: El jefe de estado en la República Popular China es la única autoridad; Los poderes políticos y estatales se transfieren al candidato preparado por adelantado; el procedimiento de transferencia de poderes de una generación a otra comienza en el congreso.

Palabras clave: República de China, estado, constitución, institución, legal.

1. INTRODUCTION

The head of state, as a top executive, has a substantial scope of the powers set forth by the constitution as well as by the customs and practice in the political life of the country(Orlov and Slavkina, 2016). The scope of the powers vested in the head of state may have a considerable impact on such institution as the political regime of the state which is a criterion for determination of the form of government of a relevant state. In this context, the attention should be paid to the

statutory powers of the head of state and their practical implementation. The People's Republic of China (PRC), being one-of-a-kind, belongs to the Soviet republics, has a unique structure of the public bodies and denies the theory of separation of powers. Many legal institutions of the PRC inhere peculiarities which emerge everywhere: socialism with “Chinese specifics of the new era”, political pluralism, legal system with Chinese peculiarities, as well as a specific institution of the head of state. Since the establishment of the PRC, in particular, since the enactment of the first Constitution of the PRC in 1954, the position of the President of the PRC has been introduced. It lasted for twenty-one years: from the Constitution of 1954 till enactment of a similar legal act in 1975; this position was restored in accordance to the Constitution of 1982. One should note that in Chinese the head of state is called “主席” (zhuxi), which used to be translated into other languages as “chairman” until 1982. Subsequently, however, the official translation of the title of the Chinese head of state into English switched to “president”, of the People's Republic of China. As indicated by the chairman of the Standing Committee of the National People's Congress Peng Zhen in the report on the draft of the amended constitution during the fifth session of the 5th National People's Congress of 26 November 1982, since the time of PRC creation the practice shows that the establishment of the institution of the President of the PRC is necessary for the perfection of the state structure and also is in line with the customs and expectations of peoples of our country (Contemporary PRC Law, 1985). There is a collective head of state

which includes the Standing Committee of the National People's Congress and the President of the PRC. The Constitution clearly defines the powers of each of them. The fundamental law also distinguishes the functions of the governing bodies of the political party and the state. In particular, the Constitutions of 1975 and 1978 stipulated that the candidate of the premier of the State Council of the PRC was proposed by the chairman of the Central Committee of the Communist Party of China and was approved by the National People's Congress. According to the Constitution of 1982 the candidate of the premier of the PRC State Council is proposed by the President of the PRC and is approved by the National People's Congress succeeded by an order of the President of the PRC on the appointment of the premier. The supreme state authorities of the PRC have been formed and controlled from the very beginning by the Communist Party of China, supported by the United Front (Lunev et al., 1959). This could not fail to influence the political status of the top officials in China. Aiming to study the actual status of the head of the PRC, we are going to analyse the constitutional status of the President of the PRC.

2. METHODOLOGY

In accordance with Article 79 of the Constitution in force of 1982 there are three obligatory requirements for the candidates for the position of the president and vice-president of the PRC: first – the

candidate shall be a PRC citizen; second – he or she should have passive and active voting rights; and third – he or she should be above the age of forty-five. According to the Constitution of 1954 the president of the PRC could have been a PRC citizen older than thirty-five years old. The Constitution of 1982 reviewed the article of the Constitution of 1954 in relation to the age of the candidate and increased it from thirty-five to forty-five years old. Such increase most probably is due to the fact that the candidate should have enough life experience, broad-based knowledge, high reputation and authority for such position. Pursuant to the existing practice in the PRC, the position of the president in the PRC has been occupied by the persons with not only huge life experience, but also with a political experience. Such candidates started their careers from the lowest positions in the Communist Party of China. All candidates and afterward presidents of the PRC were around sixty years old (note 1). The term of office of the president of the PRC in accordance with the Constitution of 1982 is five years and corresponds to the one of the National People's Congress. Thus, pursuant to the principle of the National People's Congress' sovereignty, the dependence of the activities of the president of the PRC from the NPC's members and policy is emphasized. One person shall not serve more than two consecutive terms (ten years). Neither the Constitution nor the Electoral Law of the National People's Congress and Local People's Congresses of the PRC (<http://www.people.com.cn/GB/14576/28320/39838/39842/2947944.html>) regulates the procedures of nomination and election as the president and the vice-president of the PRC (there is no indication,

inter alia, who can put the candidates in nomination). The only mention is that the president and the vice-presidents are elected by the deputies of the NPC. However, in accordance with the Regulations on the Work of Selecting and Appointing Leading Party and Government Cadres Gudoshnikov (2004), the candidate for the president shall meet the following requirements:

- 1) Attain the level of knowledge of Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory necessary for the performance of their duties and responsibilities, faithfully implement the important concept of the “Three Represents” of the Party, aim to analyse and solve practical issues from the Marxist standpoint, viewpoint and methods, adhere to the position of “Three Emphases” on study, political views and be able to pass the various risktest (note 2);
 - 2) Respect great ideals of communism and have a solid confidence in socialism with Chinese characteristics, resolutely implement the Party's strategic direction, its line and policies in different fields, pursue a policy of reform and openness, devote oneself to modernisation, contribute to the building of socialism, succeed in practice;
 - 3) Adhere to the emancipation of the ideology, to the distinct and business approach, keep in step with the times, be innovative, perform research, effectively carry out his work,
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speak the truth, achieve practical results, strive against formalism;

4) Be highly devoted to the cause of the revolution, have a high sense of political commitment, have practical experience, possess organisational skills for the successful fulfilment of administration duties, cultural and professional knowledge;

5) Properly use the power granted by the people, act in accordance with the law, be honest and incorrupt, be diligent in work for the people, set a personal example, overcome difficulties, be modest, maintain close contacts with the masses, perform the Party's mass line, conscientiously accept criticism and supervision from the Party and the masses, strive for self-respect, self-defence, self-motivation, fight against bureaucracy, all kinds of abusing power and personal gain;

6) Uphold and protect the system of Party's democratic centralism, democratic style, bear in mind the concept of overall interests, be able to unite faithful colleagues, including those with differing opinion on work in one direction.

Currently the procedure of the election of the president and vice-presidents of the PRC is as follows: the NPC presidium, elected from among its deputies, proposes during a session of the NPC the list of candidates for the president and vice-president for deliberation at

meetings of delegations(Orlov and Kremyanskaya, 2013). The session presidium presents to the session the candidates for the President and his deputy who obtained the majority of votes in delegations. An unopposed voting on these candidates is then being performed. The presented candidates shall be considered elected if they secure a simple majority of votes. Three stages of president's and vice-president's appointment can thus be roughly outlined: 1) forming a list of candidates and identifying those with the highest ranking; 2) voting; 3) appointment. According to the Regulations on the Work of Selecting and Appointing Leading Party and Government Cadres, the appraisal of candidates for the president and vice-president shall be performed based on the deputies' propositions for different leading positions by thorough assessment of candidates' moral qualities, skills, diligence, achievements, honesty, integrity; special attention is paid to their actual achievements. Pursuant to established practice in China, the candidates are put in nomination by the heads and deputy-heads of delegations. The list of candidates is then being deliberated during delegations' meetings (Gudoshnikov, 2004). The session presidium presents to the session an official list of candidates who obtained the majority of votes(Yurkovsky, 2004). The presidium familiarises the session with candidates' biographies and provides clarifications on questions raised by the deputies. The deputies may express their opinions on the candidates and may jointly propose another candidate(Xueyuan and Zhongjing, 2004).

The presidium, in accordance with the opinion of the majority of the delegations, formally adopts the list and issues the ballots. An unopposed voting at an NPC session is performed, i.e. the number of candidates is equal to one of the persons to be elected. This method is widely criticised by foreign experts and is compared to the procedure of mandatory appointment or to the sham elections. Chinese researchers have a differing opinion: they believe that the State is not ready for a system of pluralistic democratization yet. Still, China strives for it. In the process of democratization of state political life, this procedure will be gradually replaced with contested elections. Upon the decision of the presidium the voting is performed either secretly or by raising a hand, or by other means, whereas the NPC's Rules of procedure prescribe exclusively to vote secretly, i.e. the NPC's session shall conduct a secret ballot (note3).

A candidate who is supported by more than a half of the votes of all deputies shall be considered to be elected. The chairman immediately proceeds with a vote count and announces the results. With regard to the presidential appointment practice in the PRC, a mention should be made that only two out of seven presidents of the PRC were appointed in compliance with the Constitution. At the 1st session of the 1st NPC Mao Zedong was unanimously recognized as the leader of the Chinese people, the other presidents were successors of the former ones, yet all the succeeding presidents came through the appointment procedure similar to the one described above. The institution of continuity is therefore established in China. It serves as a

tool for minimizing risks in political, economic and social systems. The policy of the state becomes more predictable. The political mentor is obliged to give his knowledge of political wisdom, including the skills of political manoeuvring, to his successor. In contemporary China the successor intuition is the one of a specific kind functioning in the newly established institutions (parties, labour unions) as well as in the traditional social institutions (religious associations, local communities, etc.). Taking the oath is an important constitutional issue since of this moment the head of state takes on the responsibilities for exercising his powers. The obligation of taking oath by the president and the other senior officials was previously lacking in the Chinese Legislation State system of the People's Republic of China (1988), the situation is different in the Hong Kong and Macao special administrative regions of the PRC where the chief executives take the oath approved by the NPC committees. The lack of taking the oath stemmed from the continuity of this office and a tradition that the head of state had been accountable to the heavens or a unicameral parliament since time immemorial. On the occasion of their accession to the office the public servants appointed by the NPC and its Standing Committee and elected at all levels, including the newly elected president and vice-president, shall take the constitutional oath since 1 January 2016. The oath represents the basis for the exercise of power, one of the means to ensure the legality and ethics, and a safeguard of public servants' activities during the performance of their official duties. Further to the guideline "governing the country, according to law" the 4th Plenary Session of the 18th Central Committee of CPC

adopted in October 2014 the decision to impose the obligation of taking the constitutional oath on all public servants. This novelty was enshrined in law on 1 July 2015 at the 15th session of the Standing Committee of the 12th NPC. In accordance with the Standing Committee decision of 01.07.2015, as of 01.01.2016 all public servants, elected or appointed by people's congresses at different levels and by the standing committees of these congresses at the county level and above, as well as those appointed by people's governments, courts and procuratorates are required to take constitutional oath upon taking their office (http://news.xinhuanet.com/politics/2015-07/01/c_1115785225.htm). Article 8 of this document describes the procedure of taking oath. Under this decision swearing-in ceremony may take the form of separate or collective oaths. When taking the oath individually, the person to take the oath shall put the left hand on the PRC Constitution and raise the right one, clenched in a fist. When taking the oath collectively, one public servant shall take place next to the PRC Constitution, put the left hand on it and raise the right one, clenched in a fist, all others to take oath shall align next to this person and repeat the oath (note 4) after the person standing next to the Chinese Constitution. The national emblem and flag of the PRC shall be displayed in the room during swearing-in ceremony. Thus, the constitutional oath will be taken by the president of the PRC in March 2018 for the first time. NPC elects simultaneously one or several vice-presidents (note 5) (currently, one vice-president is usually elected who will subsequently "inherit" the presidential office). Vice-presidents assist the president and may perform a part of his functions. The

Standing Committee decision of 28.12.1955 provides that in the case of vacation or absence of the president and vice-presidents it is the chairman of the NPC Standing Committee who shall host diplomatic representatives of foreign states. If the president of the PRC becomes continuously unable by reason of ill-health to perform his functions the vice-president shall exercise the functions of the office of the president during the period of disability. When the office of the president of the PRC falls vacant, the vice-president succeeds to the office of the president (note 6). In accordance with the Constitution in force, the vice-president has no discretionary powers; his duty is to assist the president of the PRC in his work. The vice-president may exercise such presidential powers as assigned by the president of the PRC. In China's political life in case of vacation or absence of the president it is the vice-president who hosts visiting foreign heads of state, negotiates with them, accepts credentials and letters of revocations of foreign diplomatic representatives (Xueyuan and Zhongjing, 2004). Elections and term of office of the vice-president are the same as the ones of the president of the PRC. The president and vice-president of the PRC exercise their functions until the new president and vice-president elected by the succeeding NPC take office (Kremyanskaya et al., 2014). A separate article of the Organic Law of the National People's Congress of the People's Republic of China of 10.12.1982 is devoted to the procedure of removal from office of a number of senior state officials, including the president and vice-president of the PRC. Proposal for removal may be submitted by at least three of delegations or by at least one-tenth of the number of NPC deputies. The grounds for

presidential dismissal are not set in the legislation (http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4425.htm).

3. RESULTS

To provide a more comprehensive analysis of the establishing of the status of the president of the PRC presidential powers shall be examined. Chinese lawyers (Yurkovsky, 2004) and political scientists classify the powers of the president of the PRC and distinguish two types of powers: domestic and in the area of foreign policy (Articles 80 and 81 of the Constitution of the PRC of 1982). Domestic powers of the president of the PRC include: promulgation of statutes, issue of mobilisation orders and amnesty orders, declarations of war and of the state of emergency, granting pardon, appointment and removal of officials – members of the State Council: the premier, the vice-premier, state councillors, ministers, the auditor-general and the secretary general; conferment of state medals and titles of honour. The second type of powers covers the foreign policy, namely the PRC president ratifies or denounces treaties and important agreements with foreign states, in the public interest manages state affairs, hosts foreign diplomatic representatives and delegations and pursuant to the NPC Standing Committee decisions appoints or recalls plenipotentiary representatives in foreign countries. The first type of powers of the President of the PRC involves the domestic powers. These are

primarily the powers of the president of the PRC in relation to the NPC and its Standing Committee. The NPC is the highest organ of state power in the People's Republic of China and the highest legislative body as well. Legislative process in the NPC consists of four stages: introduction of a bill, preliminary consideration of a bill by the NPC Standing Committee, discussion on a bill, its adoption and promulgation. The most interesting stage seems to be the one in which the president of the PRC participates. The Constitution of the PRC does not regulate specifically the bill introduction procedure in the NPC. An exhaustive list of bodies and persons with the right of legislative initiative is set in the Article 12 of the Legislation Law of the PRC. The list includes the Standing Committee of the NPC, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate and the special committees of the NPC who may submit the bills, which shall be put on the agenda upon the Presidium decision. Following the Cultural Revolution in China, the process of separation of party's bodies from the state ones started, though the traditions of their convergence anchored in the minds of Chinese public servants. The deprivation of the right of legislative initiative of the president of the PRC was dictated, in our opinion, by the desire to harmonise the spirit of the Constitution and its content, and to differentiate between state and party's apparatuses, and the president of the PRC – not taking into account the fact that de facto he is the general secretary of the Central Committee of the CPC – becomes therefore only a “signatory” which clearly makes the office of the Chinese President decorative in comparison with the role of the

legislature. Thus, under the current practice, where the president of the PRC traditionally is the general secretary of the CPC Central Committee, and the right of legislative initiative is de facto exercised by the CPC Central Committee Politburo, it would be erroneous to suppose that the policy of the legislature will contravene the general political position of the CPC. The president of the PRC participates in the final stage – in the approval and promulgation of the bill. The President of the PRC does not take part in the discussion and adoption of the bill. The president of the PRC approves the bill by signing the official text and its promulgation. The president of the PRC promulgates the statutes (Art. 80). The President issues decrees [orders (note 7)] on the promulgation. A decree on promulgation represents more a declaration than an approval of the statute. In many countries the head of state is entitled to the right of veto, the head of state in PRC is not. Usually, the President of the PRC signs the decrees on statutes' promulgation on the date of their adoption. The law does not provide for another promulgation procedure of the NPC and its Standing Committee acts. Nevertheless, such documents of high importance as the Constitution and the Organic Law of the NPC were promulgated not by the President's decrees but by the declarations of the NPC itself. The NPC declaration *Renmin* (1954) is an act of proclamation of law by the adopting body. The declaration is signed by the session presidium; these declarations were adopted because the president of the PRC did not have been elected yet. Such declaration in its form is similar to the presidential decree of promulgation. Importantly, the presidential decrees are non-autonomous legal acts; they become

sources of law only in conjunction with the NPC or its Standing Committee decisions on which they are based (note 8). For instance, the president of the PRC issues orders on mobilisation, on amnesty, on declarations of war and of the state of emergency, on granting pardon. The President issues a decree when appointing or removing the premier and other members of the State Council. Most importantly, all of these presidential decrees are issued upon the decisions of the NPC or its Standing Committee (Kondratyev and Grachyov, 1959).

Declarations of war or of the commencement of hostilities and of the state of emergency belong to the presidential powers as well. Since commencement of hostilities results in major military actions on the part of not only one but several States, which may not always be the case, the president of the PRC drafts a document specifying belligerent countries, the cause of the conflict and the objectives pursued by its parties. The proclamation of war is followed by the declaration of martial law on the whole territory of the country. At the same time, partial or complete mobilization is imposed upon a presidential decree on full combat readiness which implies human and material resources, elaboration of warfare strategy and tactics. The next power of the president of the PRC is the power to appoint and remove from office the members of the State Council of the PRC, namely, the premier, the vice-premier, state councillors, ministers, the auditor-general and the secretary-general. As previously noted, the appointment or the removal from office of the premier and the other members of the State Council shall be performed upon the NPC or its

Standing Committee decisions. The procedure of empowerment of the premier of the State Council is as follows: the premier is approved by the NPC at the suggestion of the president of the PRC which is his legally exclusive power (Karpenko, 2016). In all other cases of appointment of the members of the State Council the act of the president on performing an action shall be preceded by an act of the highest representative body or its Standing Committee defining the action (note 9).

The president of the PRC issues decrees on awarding the state honours and on conferment of honorary titles upon the decision of the NPC or its Standing Committee (note 10). The president of the PRC awards the highest honours and confers the honorary titles. The list of institutions authorized to assign an award and to confer honorary titles is rather extensive, but only the president of the PRC is entitled to award the public authorities. The peculiarities of the Chinese award system in place as of the instrument of policy and ideology implementation is due to the content and particularities of the policy of the establishment. The Chinese policymakers maintain traditional approaches to the award system which was established in the early stages of its functioning (Rozanov, 2008). The most important powers of this type are the military powers. Being a commander-in-chief, and the guarantor of state security in some countries, the head of state operates all military forces. In practice, in some countries, it is not the fact. Moreover, in many countries, the head of state does not command the forces in peacetime regardless of the political structure of the

state. There are in the People's Republic of China such bodies of political military command as the Central Military Commission of the PRC (CMC) and the Central Military Commission of the Communist Party of China which consists of the same members. PRC military forces comprise the People's Liberation Army (PLA), People's Armed Police and People's Liberation Army militia. The CMC controls all armed forces of the state. The CMC consists of the chairman, the vice-chairmen and the members. The term of office of the chairman is not limited. The representation of the state inside the country plays an important role as well. The PRC president regularly visits various regions of the country, mostly in the hinterlands. The choice of places is often made in such a manner that emphasises the political meaning of the visits. When exercising powers in the field of foreign affairs, the president of the PRC under Article 81 of the Constitution represents the People's Republic of China, manages state matters in the interest of the PRC, hosts foreign diplomatic representatives and delegations, upon the Standing Committee decision ratifies or denounces treaties and other international agreements, appoints and recalls diplomatic officials in the foreign states. Taking into account that the heads of state hold a rather wide range of powers in the foreign policy, the international community pays particular attention to any changes in the geopolitical landscape. Consequently, the international community shall know the heads of state and recognize them as such. In relation to the procedure of execution and termination of treaties according to Article 89 (9) of the Constitution the State Council signs a treaty or an international agreement, the NPC Standing Committee decides on its

ratification or cancellation and the PRC president issues then a decree on ratification or denunciation of a treaty or an international agreement. Another power of the president of the PRC in the field of foreign affairs is the management of state matters, including state representation in the international arena. To increase the effectiveness of its foreign policy, Beijing uses the values of traditional Confucianism, which has been known since ancient times for respect for harmony. The Chinese establishment focuses on the use of the soft power. As defined by an American political scientist Nye (2004), the soft power is an art of persuasion, of the use of cultural intangible resources and political values in order to influence people in other countries. However, the Chinese definition of the soft power is much larger than the Western one and provides for a much broader application. By giving this concept a Taoist tinge, Chinese theorists often quote an ancient wisdom stating that “in the Celestial Empire the softest prevails over the hardest” (Mishin, 2011: 25).

On 15 March 2004, the fourth set of amendments to the existing Constitution of the PRC was adopted which followed the amendments of 1988, 1993 and 1999. It was the amendments of 2004 that affected the powers of the PRC president (Gudoshnikov and Polyakov, 2004). The powers used to be limited to the representative and diplomatic functions, now the expansion of the presidential powers is expressed in one sentence: “Performing State activities”. The last function of the PRC president in the field of foreign affairs is the maintenance of diplomatic relations with other states and international

organisations(Constitutional legal mechanism of foreign policy, 2004).The head of state receives in accordance with established international practice diplomats and diplomatic delegations, accepts credentials and letters of recall from foreign and international diplomatic representatives. In China, these obligations are carried out by the PRC president. Furthermore, the president appoints and recalls Chinese plenipotentiary officials in foreign states and signs credentials to the diplomats upon the NPC Standing Committee decision.Based on the aforesaid, one can draw a conclusion that the presidential powers on one hand and the powers of the NPC and its Standing Committee on the other to a large extent have the same scope. Naturally, they are not interchangeable, but are separated: the Standing Committee decides on treaty ratification, but cannot ratify it itself, and the PRC president cannot ratify it without an appropriate Standing Committee decision. A question emerges whether the president of the PRC is entitled between the NPC sessions to grant amnesty, ratify treaties, appoint and dismiss the members of the State Council and perform other functions. From a legal perspective, the answer would be negative.There is a substantial difference between the presidential powers set in the first Constitution and those defined in the effective one. In accordance with the first Constitution, the PRC president used to lead the armed forces and was ex officio the president of the National Defence Council which replaced the People's Revolutionary Military Commission. Another new body was established in the state system. The State Council contrary to its predecessor – the Government Administration Council – was charged with armed force development, and the Ministry of

National Defence was formed as its part. Nonetheless, as ensuing events in the country have shown, it was not these state bodies, but the CPC Central Military Commission who actually led the armed forces. Mao Zedong was the head of this body. Therefore, the second PRC president Liu Shaoqi was dismissed by Mao Zedong's order regardless of his senior military position and formal leadership of the armed forces (Gudoshnikov, 2007). Currently the CMC of the PRC is the supreme state body for military affairs.

4. CONCLUSIONS

Summarising the aforesaid, the following conclusions can be made. The president of the PRC may act only in accordance with the decisions of the NPC and its Standing Committee whose he should not rebel against. The Constitution does not regulate the possibility of neither a conflict between the PRC president and the supreme collegial bodies nor the conflict settlement procedure. This shows that a socialist tendency to the supremacy of collegiate methods of government set forth in the Constitution has always been of a formal character. The president of the PRC is the chairman of the CMC of the PRC and of the CMC of the CPC at the same time. The true power of the president is based on these functions, as the army and the Communist Party of China play a crucial role in exercising state authority. Though there is a Ministry of Foreign Affairs in the PRC, it is the leader of the party and

the state who play the main role in directing the foreign policy, i.e. the leader of the three activity areas of the party: party itself, governmental and military. The CPC and the PRC have faced different periods in their history. Occasionally, the party and the governmental powers were concentrated in the hands of a single person. That was the case in Mao Zedong, Jiang Zemin, Hu Jintao years. The same applies to Xi Jinping since 2012. Two and even three officials led at times these areas. It happened when Deng Xiaoping was a de facto leader and Yang Shangkun was a de jure one, i.e. held office as president of the PRC.

Based on the aforesaid, it becomes clear that a legally undefined institution of the CMC chairman represents a hidden tool to pressure the constitutional bodies, should they oppose the PCR president. It is worth noting that upon the results of the 3rd Plenary Session of the 18th Central Committee of CPC a decision was taken to establish the Central National Security Commission (CNSC). This body is empowered to prevent infringements and to provide the state security. The spokesperson of the Ministry of Foreign Affairs Qin Gang explained the objective of establishing a new structure, “<...> – to improve the mechanism and the strategy of the State security in China. Certainly, the powers of this body will comprise combating terrorism, separatism and extremism. Moreover, the Commission will define forces threatening the national security of China”. The president of the PRC Xi Jinping headed the CNSC. The fact that the head of state leads this body does not make an exception: in the countries where a similar service exists it is the head of state who rules it. Taking into account

the peculiarities of the organisation of state-like structures, the question arises whether the CNSC becomes a disguised lever of pressure on state authorities and on the Chinese legal system in general. Having come to power, the “fifth generation” of leaders estimates the creation of this body necessary. The introduction of the CNSC is of specific interest due to the existence of a similar body – Supreme State Conference. The CNSC (note 11) is a single body charged with the PRC national security coordination and provision. The establishing of this authority is well timed and indispensable. Currently, such institutions exist in the USA (the National Security Council), in the Russian Federation (the Security Council), in the RSA (the State Security Council), the CNSC will definitely be with Chinese specifics though. The purpose of the CNSC creation is to control a constantly changing situation in the region and the hotbeds of tension situation in the world. The Chinese government reacted very quickly to the terrorism as to a sign of an increasing threat for the existing political system and national unity of China. There are a lot of internal and external factors requiring an improvement of the state security mechanism and strategy in the PRC. The main function of this body comprises public stability, defence and financial security, foreign affairs. The second function is a managing one. The CNSC enhances state security under a central management. The third one consists in fighting against serious crises and challenges threatening China.

Following existing foreign practice, the PRC president Xi Jinping heads this structure. The CNSC is composed of the

chairman, deputy chairman and twenty members. The majority of CNSC members belong to the CPC Central Committee. As defined by the Constitution of 1982, the president plays rather a formal role being unable to exercise his functions fully autonomously. At the same time, based on the aforesaid, a conclusion can be drawn that the three centres of power existing in China (party, governmental and military) were extended by a new institution – the Central National Security Commission, and are led by one person – the CPC chairman, the senior public officer and the commander-in-chief Xi Jinping. The functioning of the body and the powers of its chairman are of a great theoretical and practical interest for sinological and legal studies.

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Revista de Ciencias Humanas y Sociales

Año 34, Especial N° 14, 2018

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.
Maracaibo - Venezuela

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