

# Comparative and Transnational Law

11

**Simona Novaretti**

**Social Governance vs. Social Management:  
Towards a New Regulatory Role for Social  
Organizations in China?**

**Suggested citation**

Novaretti, Simona "Social Governance vs. Social Management: Towards a New Regulatory Role for Social Organizations in China?", CDCT working paper 32-2014/ Comparative and Transnational Law 11, available at [www.cdct.it/workingpapers](http://www.cdct.it/workingpapers)

## Abstract

**IT** Il 12 Novembre 2013 il Comitato Centrale del Partito Comunista Cinese ha emanato la “Decisione del CCPCC su alcuni temi fondamentali riguardanti il complessivo approfondimento delle riforme”. Il documento, che rappresenta la prima importante dichiarazione politica della nuova dirigenza cinese, è stato particolarmente apprezzato per i suoi richiami a una maggiore liberalizzazione dell’economia, e per le sue aperture verso un maggior coinvolgimento del mercato, del settore privato e dei soggetti non statali, incluse le organizzazioni non governative, nei processi decisionali. Il più importante segnale di questo mutato (e più positivo) atteggiamento nei confronti delle ONG pare, tuttavia, essere di tipo lessicale: nei discorsi ufficiali, l’espressione “shehui guanli” (社会管理, social management) è stato sostituita da “shehui zhili” (社会治理, social governance) un concetto che attribuisce agli attori sociali un ruolo di governance analogo a quello assegnato a governo e operatori commerciali. Ma quale impatto potrà, concretamente, avere questo cambiamento sulle ONG cinesi, e sulla loro possibilità di prendere parte alle decisioni che le riguardano? E in che modo i ruoli e le competenze dei governi e delle organizzazioni sociali verranno definiti e distribuiti a livello locale e centrale?

In questo articolo, analizzerò gli effetti che questo nuovo modo di interpretare la relazione tra Stato e società ha prodotto sulle ONG, alla luce delle modalità in cui, in questi anni, si è andato costruendo il rapporto tra attori statali e non-statali nella Repubblica Popolare Cinese. A tale scopo, prenderò in considerazione le sperimentazioni che sono state portate avanti a livello locale, e l’ascesa (e il declino) della possibilità, per le ONG cinesi, di influenzare il processo decisionale attraverso azioni giudiziali, utilizzando lo strumento delle public interest litigation.

**Keywords:** Organizzazioni sociali, Regulatory Governance, Azioni nel pubblico interesse ambientali.

## Abstract

**EN** *On November 12th, 2013 the Central Committee of the Communist Party of People's Republic of China approved the "Decision of the CCCP on Some Major Issues Concerning Comprehensively Deepening the Reform". The document – the first major policy statement of President Xi Jinping's new administration – has been well received for its calls for greater liberalization of the economy and greater governance role for the market, private sector and non state-actors, including social organizations. The most important signal of this new (and more positive) attitude towards NGOs seems to be a lexical one: in official discourse, the expression "shehui guanli" (社会管理, social management) has been substituted by "shehui zhili" (社会治理, social governance) a notion which recognizes social actors' role in governance, alongside government and businesses. Concretely, what will this change mean for NGOs and their taking part to the regulatory process? And how will the role and responsibility of government(s) and social organizations be clarified and enforced, at the central and local level? In this paper, I will analyze the impact of this new way of understanding the relationship, concerning social organization, between State and society, taking into account the ways by which the relationship between state and non-state actors has been shaped in the past few years. I will concentrate, especially, on the experiments that have been going on at a local level, and on the rise (and decline?) of NGOs potential influence on the regulatory process through legal actions, using "public interest litigation".*

**Keywords:** Chinese Law, Social Organizations, Regulatory Governance, Environmental Public Interest Litigation

## SOCIAL GOVERNANCE VS. SOCIAL MANAGEMENT: TOWARDS A NEW REGULATORY ROLE FOR SOCIAL ORGANIZATIONS IN CHINA?

SIMONA NOVARETTI\*

### Indice

Introduction - 1. Social governance vs. social management - 2. State and civil society organizations in China: a recurring - 2.1. The simplification of NGOs' registration procedure - 2.2 The outsourcing of services to civil society organizations - 3. Civil society's involvement in policy decision - 3.1 Environmental public interest litigation: a first real step towards "making innovation in social governance"? – Conclusions

### Introduction

On November 12<sup>th</sup>, 2013 the Central Committee of the Communist Party of People's Republic of China approved the "Decision of the CCCP on Some Major Issues Concerning Comprehensively Deepening the Reform"<sup>1</sup>. The document – the first major policy statement of President Xi Jinping's new administration – has been well received for its calls for greater liberalization of the economy and greater governance role for the market, private sector and non state-actors, including social organizations. The most important signal of this new (and more positive) attitude towards NGOs seems to be a lexical one: in official discourse, the expression "*shehui guanli*" (社会管理, *social management*) has been substituted by "*shehui zhili*" (社会治理, *social governance*) a notion which recognizes social actors' role in governance, alongside government and businesses.

---

\* P.h.D, Assistant professor of Chinese Law, University of Turin (Italy). A previous version of this paper was presented at the 5th ECPR Regulatory Governance Conference ( Barcelona, June 25- 27, 2014). I thank Sofia Ranchordas (Tilburg University), Yan Qian (Tilburg University), Zhao Bo (University of Groningen) and Werner Bussmann (Swiss Federal Office of Justice) for their helpful comments and suggestions, and the audience at Institut Barcelona d'Etudis Internacionals for their valuable feedback. A further debt of gratitude goes to to the Centro di Diritto Comparato e Transnazionale (CDCT) for its generous support.

<sup>1</sup> The original text of the Decision (in Chinese) can be found at: <http://cpc.people.com.cn/n/2013/1115/c64094-23559163-13.html>. The official translation (in English) of the Decision can be found at: [http://www.china.org.cn/china/third\\_plenary\\_session/2014-01/16/content\\_31212602.htm](http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm) (last seen: Jun 1, 2014).

According to section 13 of the “Decision”, improving methods of “social governance” will “*strengthen leadership by the Party committee*” and “*give full play to the leading role of the government*, but – at the same time – “*encourage and support the participation of all sectors of the society*”, and “*establish an open and orderly mechanism under which people can express their grievance*”, in order to achieve “*positive interaction between the government management on the one hand, and social self-management and residents self-management on the other*”.

Concretely, what will this change mean for NGOs and their taking part to the regulatory process? And how will the role and responsibility of government(s) and social organizations be clarified and enforced, at the central and local level? In this paper, I will analyze the impact of this new way of understanding the relationship, concerning social organization, between State and society, taking into account the ways by which the relationship between state and non-state actors has been shaped in the past few years. I will concentrate, especially, on the experiments that have been going on at a local level, and on the rise (and decline?) of NGOs potential influence on the regulatory process through legal actions, using “public interest litigation”.

## 1. Social governance vs. social management

“Social governance” (*shehui zhibi*), although it’s not a new term, has been used almost exclusively under Xi Jinping’s administration instead of “social management” (*shehui guanli*), which was more frequently employed during the Hu Jintao’s period<sup>2</sup>.

The expression “*shehui guanli*” has been part of the Chinese political discourse for more than twenty years: introduced by the CCP Central Committee in 1993<sup>3</sup>, it was listed in 1998’s “Proposal to Restructure the State Council” as one of the basic government functions, together with “macro-economic control” and “public service”<sup>4</sup>. With the beginning of the new century, then, the concept began to gain prominence in the agendas of both the Party and the government:

---

<sup>2</sup> Samantha Hoffman and Peter Mattis, “China’s Proposed “State Security Council”: Social Governance under Xi Jinping”, in China Policy Institute Blog, November 21, 2013, available at: <https://blogs.nottingham.ac.uk/chinapolicyinstitute/2013/11/21/chinas-proposed-state-security-council-social-governance-under-xi-jinping/> (last visited: April 30, 2014)

<sup>3</sup> As noticed by Prof. Xiang Chunling, of the Social Science Department of the Central Party School, in March 2014. See: “创新社会治理应“放权于民””, 中国人大杂志 2014 年第 5 期, Chuangxin shehui zhili ying “fangquan yu min” (for making innovation in social governance it is necessary to “transfer power to the people), Zhongguo renda zazhi (Chinese People’s Congress Review), n.5, 2014, available at: [http://www.npc.gov.cn/npc/zgrdzz/2014-03/31/content\\_1858216.htm](http://www.npc.gov.cn/npc/zgrdzz/2014-03/31/content_1858216.htm) (last visited: April 30, 2014)

<sup>4</sup> Yu Keping, “A Shift Towards Social Governance in China”, Eastasiaforum, 9 September 2011, available at: <http://www.eastasiaforum.org/2011/09/09/a-shift-towards-social-governance-in-china/> (last visited: April 30, 2014)

it was further elaborated on in the 16th and 17th Party Congresses, and it became a focus at the Fifth Plenary Session of the 17th Central Committee in 2010. According to the “Resolution” of this session:

*“the general principle of social management is party leadership, government responsibility, social coordination and public participation”*<sup>5</sup>.

The notion – almost impossible to translate in English being one of many political terms that are difficult to define outside the Chinese context<sup>6</sup> – was eventually elevated as a key target by the 12<sup>th</sup> Five Year Plan for National and Social Development in March 2011<sup>7</sup>.

In the Plan, the goal of “innovate(ing) social management institution” is considered to be twofold: involving the “improvement of the social management structure”, on the one hand, and pushing the “innovation of the social management system”, on the other<sup>8</sup>.

While the first aspect, however, includes – among other things – playing a coordination role between social actors, and improving standardization, profession, socialization and legalization of social management, the second aims at strengthening the management of the origin of social problems, focusing on the “dynamic management” of social conflicts and developing a crisis response system<sup>9</sup>.

It is exactly this last coercive aspect that, according to many Chinese and Western observers, had overshadowed the more “cooperative” aspects, at least in the late Hu Jintao era (2002 – 2012)<sup>10</sup>, not only undermining the possibility of reaching one of the main goals of the period (the “improvement of people’s livelihood”) and jeopardizing the most important of the leader’s objectives (the

---

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> See 中华人民共和国国民经济和社会发展第十二个五年规划纲要 (Zhonghua renmin gongheguo jingji he shehui fazhan di shier ge wu nian guihua gangyao), available at: [http://news.xinhuanet.com/politics/2011-03/16/c\\_121193916.htm](http://news.xinhuanet.com/politics/2011-03/16/c_121193916.htm); an English translation of the Plan can be found at: <http://www.britishchamber.cn/content/chinas-twelfth-five-year-plan-2011-2015-full-english-version> (last visited: April 30, 2014)

<sup>8</sup> See *ibid.* chapter 37.

<sup>9</sup> *Ibid.*

<sup>10</sup> Samantha Hoffman and Peter Mattis, “China’s Proposed “State Security Council”: Social Governance under Xi Jinping”, in China Policy Institute Blog, November 21, 2013, available at: <https://blogs.nottingham.ac.uk/chinapolicyinstitute/2013/11/21/chinas-proposed-state-security-council-social-governance-under-xi-jinping/> (last visited: April 30, 2014). For a similar analysis of the interpretation (and implementation) of “social management” by the Chinese leader, see also: David Cohen, “Decoding “Social Management””, *The Diplomat*, September 21, 2011, available at: “<http://thediplomat.com/2011/09/decoding-social-management/> (last visited: April 30, 2014)

creation of a “harmonious society”), but also threatening the Communist Party’s long-term legitimacy<sup>11</sup>.

Certainly, as Samantha Hoffman pointed out in an article published in August 2012, Beijing, at the time, was implementing

*“a strategy of improving control through social management”, “building a service-oriented government to prevent and reduce the number of social problems; [...] and strengthening the party-state ability to manage the sudden outbreak of public incidents”*<sup>12</sup>.

The new “contradictions among the people”, caused by the economic growth, and the challenges of the increasing social complexity, generated by the so-called “five-izations” (五化, wuhua: industrialization, urbanization, marketization, informatization and globalization)<sup>13</sup>, however, could not be only resolved through targeted coercion and domestic intelligence<sup>14</sup>.

Therefore, the growing number of the above mentioned public incidents, and the rising violence and large-scale nature of protests, over the past several years, had to reveal at once the limits of the implementation of social management, and the need, for Chinese leadership, to change its attitude towards civil society’s involvement in public choices, in order to maintain social stability and not put its political power at risk.

While this recognition seems to have been driven as much by the causes of civil unrest themselves as by the Chinese Communist Party’s internal problems<sup>15</sup>, it is a matter of fact that – especially after July 2012, when the Premier Hu Jintao, for the first time, used the expression “social governance” in an official speech<sup>16</sup> – many authors have called for a shift from the “social management” model to

<sup>11</sup> Samantha Hoffman and Peter Mattis, cit..

<sup>12</sup> See Joseph Fewsmith, “Social Management as a Way of Coping with Heightened Social Tensions,” China Leadership Monitor, No. 36, cited by Samantha Hoffman, “Portents of change in china’s social management”, China Brief Volume 12, Issue: 15, August 3 2012, available at: [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=39727#.U1Fa4Vew6ZJ](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=39727#.U1Fa4Vew6ZJ) (last visited: April 30, 2014)

<sup>13</sup> 麻宝斌, 任晓春: “从社会管理到社会治理 - 挑战与变革”, 学习与探索, 2011年3期总第194期, Ma Baobin, Ren Xiaochun, “Cong shehui guanli dao shehui zhili – Tiaozhan yu biange” (From social management to social government – Challenge and transformation), Xuexi yu tansuo, n.2 (serial number 194), 2011, p. 95, available at: <http://www.doc88.com/p-907565190301.html> (last visited, May 1, 2014);

<sup>14</sup> Peter Mattis: “Resolving Contradictions in Social Management, China Brief, Volume 12 Issue 18, September 21, 2012, available at: [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=39865#.U1FY9Few6ZJ](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=39865#.U1FY9Few6ZJ) (last visited: April 30, 2014). On the topic, see also: “创新社会治理应“放权于民””, cit.

<sup>15</sup> Samantha Hoffmann, *ibid*.

<sup>16</sup> 陈家刚, 从社会管理走向社会治理, 《学习时报》2012年10月22日. Chen Jiagang, Cong shehui guanli zou xian shehui zhili” (From social management to social governance), Xuexi shibao, 22 Oct. 2012

a model in which all social actors could regulate and manage social affairs “as equal cooperative partners according to law, in order to maximize eventually the public interest”<sup>17</sup>.

In this sense, the switch in terminology can certainly be considered as a reflection of the (slight) change in Chinese government policies leaning towards civil society that coincided with seizure of power of the new leadership.

But what are, in a nutshell, the differences between “social management” and “social governance”?

Chen Jiagang, of the China Center for Comparative Politics and Economics, in an article published on 22nd October 2012 in the Central Party School’s review “Xuexi shibao” (学习时报, Study time) explained how the two concepts, despite sharing the same goals, differ in four aspects, and in particular:

- (1) Social management, although inclusive of both government and social organisations, is a government-centred management of society, while social governance is diversified, and no single body can monopolise the practical process of regulation and management;
- (2) Social management tends to make the government superior to the rest of society, while social governance incorporates the role of social organisations and the private sector in governance, considering effective management as a cooperative process between different bodies;
- (3) Social management is a subjective and top-down control method, while social governance aims to encourage social participants to reach consensus through self-expression, negotiation and dialogue, in order to make public policies meet the interest of the whole society;
- (4) Social management mainly relies on government authority and dictation of orders; on the contrary, social governance means the government guides more and controls less, while civil organizations and civil society take on more responsibilities<sup>18</sup>.

As Zhu Guangyuan, vice-secretary of the Committee of Political and Legal Affairs of Jiangsu Province Committee of the Communist Party of China, pointed out in a recent interview:

*“social management and social governance differ only in one word, but this diversity mirrors a new, further leap forward in our Party’s acknowledgment and comprehension of laws and regulations regarding social development”*<sup>19</sup>.

---

<sup>17</sup>陈家刚, Chen Jiagang, op. cit. An English translation of the main contents of the article can be found in Chen Jiagang, “Governance not management”, available at: [http://www.china.org.cn/opinion/2012-11/20/content\\_27168301.htm](http://www.china.org.cn/opinion/2012-11/20/content_27168301.htm).

<sup>18</sup>陈家刚, Chen Jiagang, op. cit.

<sup>19</sup>任松筠, 陈旭, “推动社会管理走向社会治理”, 新华日报/2013年/12月/19日/第A01版, Ren Songyun, Chen Xu, “Tuidong shehui guanli zou xian shehui zhili” (Pushing social management towards social governance), Xinhua ribao, 19 Dec. 2013, first ed., p. 1

In the following sections we will see how the new “acknowledgement” and “comprehension” of the role of social actors in governance, by Chinese leaders, is modifying the legal environment in which social organization has to operate, in the PRC. In order to better understand this development, it is important to know something about the evolution of civil society in China. Thus, a brief history of such associations and a short description of the current legal framework will precede the discussion.

## 2. State and civil society organizations in China: a recurring conflict?

Section 13 of the “Decision of the CCCP on Some Major Issues Concerning Comprehensively Deepening the Reform” is devoted – as already noted - to “Making Innovations in Social Governance”. Paragraph 48 of the same section talks about stimulating the vigor of social organizations by intensifying efforts to separate government administration from social organizations, commissioning the latter to provide the public services that are able to supply and make it easier the registration for some social organization<sup>20</sup>. The Decision mentions social organizations also in other sections, calling for them to get involved in cultural and educational activities (par. 41-42), and to be consulted – together with community-level organizations - on policy decisions and their implementation (par. 28 – 29)<sup>21</sup>.

All these statements may sound difficult to interpret, if we take into account not only the increased political repression and the constant harassment of social activists, in the last ten years (in particular from 2006, and with even more impetus since Xi Jinping became party chief)<sup>22</sup>, but also – in a broader sense – the suspicion with which, since ancient times, the power in China has seen social organizations, and the involvement of civil society in policy-making.

Indeed, it could not have been otherwise, in a (neo)Confucianist country, as was China for centuries. In this context, the general attitude of distrust, if not outright hostility, towards this form of association (defined as 党 *dang*, “faction,

---

<sup>20</sup> In particular: trade associations and chambers of commerce, scientific and technological associations, charity and philanthropic associations and urban and rural community service organizations. See Decision, cit., par. 48.

<sup>21</sup> See Decision, cit. at note 1. On the subject, see also Administrator: “Policy brief. N. 14 (January 2014): The Third Plenum Brings a Chilly Spring for China’s Civil Society”, posted on February 7, 2014 China Development Brief website, and available at: <http://www.chinadevelopmentbrief.cn/?p=3173> (last visited: 3 May 2014)

<sup>22</sup> Editor, “Chinese Civil Society. Beneath the glacier”, *The Economist*, April 12th 2014, available at: [http://www.economist.com/news/china/21600747-spite-political-clampdown-flourishing-civil-society-taking-hold-beneath-glacier?fsrc=scn%2Ftw\\_ec%2Fbeneath\\_the\\_glacier](http://www.economist.com/news/china/21600747-spite-political-clampdown-flourishing-civil-society-taking-hold-beneath-glacier?fsrc=scn%2Ftw_ec%2Fbeneath_the_glacier):

party”, in a mildly negative sense<sup>23</sup>) was based on the same metaphysical premises on which was based the blame of any “individualistic” claim: in no case the greater public interest (da gong, 大公) – by definition coinciding with the interest of the sovereign - would be subordinate to any fraction thereof<sup>24</sup>. During the Imperial era, the repression of certain forms of social and civic organizations was therefore quite frequent, while the disdain regarding groups<sup>25</sup> was such that – as, for example, in a regulation of the Kaiyuan period of the Tang Dynasty (713 – 741) - the people who were organizing societies were referred to as “*living the lives of beast*”<sup>26</sup>.

Nevertheless, as noticed by Karla Simon, there is also evidence that charities and associations involved in serving society were, at that time, fairly usual<sup>27</sup>.

As a matter of fact, from the earliest days of imperial China, through to the end of the Qing dynasty and into the Nationalist era that followed:

“ [o]ften local government and charitable associations worked hand in hand to provide relief at time of famine, drought, floods or disease,

to the point that

*[...] in some cases, local government simply delegated activities to organized charities, from charitable disaster relief to public works, such as road building*”<sup>28</sup>.

But if it is true that the imperial state frequently co-opted social organizations to accomplish its own purposes, supporting civil society through direct and indirect means, it is also important to remark that it did so only as long as it liked what these organizations were doing<sup>29</sup>. It is an attitude quite comparable with the way in which Chinese leadership has been dealing with CSOs (Civil Society Organizations, generally indicated in Chinese as 社会组织, shehui zuzhi), in the last years.

We will come back to this in a while. For the moment, we will briefly refer to how the traditional distrust of associations composed of citizens - grown during

<sup>23</sup> On the topic, see Timothy Brooks, “Auto-organization in Chinese Society”, in Timothy Brooks, B. Michael Frolic, “Civil Society in China”, 1997p. 29 – 30.

<sup>24</sup> Simona Novaretti, “Le ragioni del pubblico. Le azioni nel pubblico interesse in Cina” [The rationale of public: “public interest litigation” in China], Napoli, ESI, 2011, p. 23. On the evolution, in China, of the concept of public interest, and its relationship with private/collective interest see *ibid.*, pp. 18 – 27.

<sup>25</sup> In particular when the group was not organized in a hierarchical form, such as the clan, but formed by peers. On the topic, see Simona Novaretti, *op. cit.* p. 23.

<sup>26</sup> Liu Peifeng, “Expansion of the Civil Right of Association”, in Wang Ming (ed.), “Emerging Civil Society in China, 1978 – 2008, Leiden, Brill, 2011, p. 62, note 2.

<sup>27</sup> Karla Simon, “Civil Society in China. The legal framework from Ancient Times to the “New Reform Era”, Oxford, Oxford University Press, 2013, p. 52 and 54.

<sup>28</sup> *Ibid.*, pp. 53 and 54.

<sup>29</sup> *Ibid.*, pag. 54.

the Ming and Qing dynasties<sup>30</sup> - and the “dual-management” system<sup>31</sup> of CSOs’ registration - borrowed from Japan during the Republic era, in order to channel public activism in ways that enable the power to direct and control the modernization process without opening political challenge from below<sup>32</sup> - were intended to be combined in modern China, in order to create a controlling state system that not only flourished during the Nationalist period but also carried over after the revolution<sup>33</sup>.

Indeed, from the very beginning, the attitude of PCC towards social organizations was clearly driven by pragmatism. In the 1930s and 1940s it encouraged the organization and development of NGOs<sup>34</sup>, most of which supported the anti-Japanese war and the war against the Guomindang as part of the United Front. After the foundation of the People’s Republic, in 1949, though, the Party tried to eliminate anything that stood between the state and the individual<sup>35</sup> in order to extend its control over the country. To this purpose, associational rights were restricted, and civil society organizations were required to register with the Ministry of Interior.

Concretely, from 1950 (when the first rudimentary regulation on CSOs was adopted) to the late 1980s (when the General Principles of Civil Law and the national regulations on NGOs were promulgated), there was a firm belief, in China, that social organizations simply “belonged to” the state and the party<sup>36</sup>. Not surprisingly, therefore, from the early 1950s former independent organizations were outlawed or absorbed into the party-state system, being folded into mass organizations (群众组织 *qunzhong zuzhi*)<sup>37</sup>, or becoming part of the post-revolution United Front<sup>38</sup>. Moreover, beginning with the anti-rightist campaign in 1957 and until the end of the Cultural Revolution in 1976,

---

<sup>30</sup> See Timothy Brooks, *cit.*, p. 30.

<sup>31</sup> See *infra*.

<sup>32</sup> *Ibid.*, p. 32. For a brief description of the “dual-management” system as it works nowadays, see *infra*, in this paragraph.

<sup>33</sup> Karla Simon, *op cit.*, Introduction, p. xxxvii.

<sup>34</sup> Zhang Ye, “Chinese NGOs: A Survey Report”, in Tadashi Yamamoto (ed.), “Emerging Civil Society in the Asia Pacific Community”, Tokyo: Institute of Southeast Asian Studies and Japan Center for International Exchange, 1995.

<sup>35</sup> On the topic, see also Editor, “Chinese Civil Society. Beneath the glacier”, *cit.*

<sup>36</sup> *Ibid.*, p. 156.

<sup>37</sup> Such as the All-China Women Federation, the All-China Federation of Trade Unions and so on. These organizations, as Karla Simon pointed out, “have been used as a means to penetrate the society at large, encouraging popular participation, mobilizing the masses, and integrating them into political life, as seen appropriate by the party. They were considered, in practice, as “transmission belts” between the CCP and the people. On the point, see Karla Simon, *op. cit.*, pp. 169 -183.

<sup>38</sup> *Ibid.*, p. 146.

“under the total control of a coercive state, trust, civic engagement and associations became fragmented”<sup>39</sup>,

so that “civil society virtually disappeared”<sup>40</sup>.

It was only after Deng Xiaoping’s seizure of power, in 1978, that CSOs were considered as playing a part in the economic reform and opening up, and were (again) given an important role in the restructuring of the state bureaucracy<sup>41</sup>. Firstly, in 1986, the GPCL recognized social organizations as (at least slightly) separate from the state party apparatus. They were listed among legal entities, together with enterprises, independently founded official organs and public institution. Then, in 1988, the State Council transferred regulatory power over CSOs from the Ministry of Interior to the Ministry of Civil Affairs, and finally it issued the first set of regulations concerning foundations (基金会 *jinjihui*, 1988, emended in 2004) and social organizations (社会团体 *shehui tuanti*, 1989, emended in 1998). The (provisional) regulations concerning the third kind of social organization recognized in China, the private non-commercial institutions (*minban fei qiye danwei* 民办非企业单位, or *minfei* 民非), on the contrary, were enacted only in 1998.

It is interesting to notice that - while controlled by different regulations - both SOs and *minfei* have been (at least until now) subject to the so-called “dual management” system, a scheme with a long history in China, provided not only for the 1950 regulations but also - as seen before - in the KMT Civil Code<sup>42</sup>.

Indeed - focusing only on social organizations - according to articles 3 and 7 of 1998’s Regulations, to be founded a *shehui tuanti* should:

- a) receive the examination and approval of a sponsor organization (业务主管部门, *yewu zhubuguan bumen*, affectionately known as “mother-in-law”, 婆婆, *popo*);
- b) register with the Ministry of Civil Affairs (MCA) or local civil affairs department at county level and above<sup>43</sup>.

That means that, before a SO can be registered at the appropriate Registration and Management Bureau, the preliminary application proposed by its promoters must be examined and approved by the “State Council relevant departments and local government relevant departments at county level and above, or organs empowered by the State

<sup>39</sup> Ma Qiusha, “Non-governmental Organizations in Contemporary China. Paving the Way to Civil Society?”, London and New York, Routledge, 2006, p. 111.

<sup>40</sup> Karla Simon, op. cit., p. 183.

<sup>41</sup> Ibid., p. 187.

<sup>42</sup> See *supra*. Sect. 45 of the KMT Civil Code required that associations seek permission to register. On the topic, see also Karla Simon, op. cit. pp. 118-122.

<sup>43</sup> See “Regulations on the Registration and Management of Social Organizations”, published by the State Council at the 8<sup>th</sup> ordinary session on 25 September 1998, art. 3 and art. 7.

*Council or local government at county level and above*<sup>44</sup>, or by mass organizations in the relevant field<sup>45</sup>.

Moreover, in addition to the aforementioned requirements, the SO's regulations specifically provide that the MCA may deny registration:

*“if in the same administrative area there is already a social organization active in the same or similar area of work”*<sup>46</sup>.

The rationale of this system of registration was (and is), obviously, to create institutional dependency and control, and to allow the government to manipulate the number of organizations that can be registered in any given locality.

Undoubtedly, the Chinese leaders have often considered this strict oversight on SOs more than appropriate. For example, in 1989, after Tian'anmen Square's events; or in the early '90s, during the period that followed the collapse of the Soviet Bloc, which were precipitated also by trade unions, churches and other groups in Poland, Czechoslovakia and elsewhere; or, again, in 2005, at the time of “colored” revolutions in Ukraine, Georgia and Kyrgyzstan<sup>47</sup>.

In recent years, however, the party has become to see NGOs in a different perspective, and to consider “dual management” as one of the main obstacles to the growth of the NGOs sector.

Actually, the sponsor organization has the duty to assist the Ministry of Civil Affairs not only in the establishment, but also in the supervision of the “sponsored” organizations, taking full responsibility for their activities and finances<sup>48</sup>. As a consequence, many SOs remain unregistered or are registered as commercial entities, sometimes by choice, but more often because they cannot gain the support of local authorities which – preferring to reduce political risk, and avoid liability – refuse to engage in overseeing them.

To understand the extent of this phenomenon it is worth mentioning some data. According to official statistics, by the end of 2011, about 460.000 social organizations were registered with the MCA<sup>49</sup>, but perhaps ten times as many unregistered organizations existed, including those registered as businesses<sup>50</sup>.

In this regard, I briefly remark that, even if registering as a commercial entity can seem, for a NGO, a better choice than being unregistered - making it easier,

---

<sup>44</sup> Ibid. art. 6.

<sup>45</sup> See Karla Simon, op. cit., p. 241.

<sup>46</sup> See Regulations, cited, art. 13, point 2.

<sup>47</sup> See Editor, “Beneath the Glacier”, cit.

<sup>48</sup> See Regulations, cited, art. 28.

<sup>49</sup> According to MCA's data, at the end of 2013 in China there were 541.000 registered social organizations, 19.000 of which registered through the new procedure of direct registration. See MCA's website, at: <http://www.chinanpo.gov.cn/1938/77052/index.html> (last visited: 24 April, 2014). On the subject, see also *infra*, in the following section.

<sup>50</sup> See Karla Simon, cit., p. xxxiv. On the topic, see also Yu Keping, cit.

for example, to receive grants or donations – it implies, though, a more onerous tax regime, and exposes the organization to significant risks, since it violates provisions that specifically forbid an organization registered as a business entity to act as an SO or a *minfei*<sup>51</sup>.

The party-state turns a blind eye<sup>52</sup>, as long as it likes (or needs) what an organization is doing, but it can (and, in practice, often does) use the ground of tax evasion to de-register (i.e.: shut down) it, once such an organization steps out of line, and engages in activities deemed undesirable. This is exactly what happened to Gongmeng (公盟, better known by its English name, Open Constitution Initiative, OIC) and its founder, the lawyer Xu Zhiyong, in the summer of 2009, or – one year later – to the Ai Yuan (爱源, also commonly known by the English name ("Loving Source"<sup>53</sup>). We must notice that Xu Zhiyong, in January 2014, was sentenced to four years in jail for “*gathering crowds to disturb order in a public place*” – an accusation against of activists and dissidents frequently used as a substitution, under the new leadership, for more “politicized” charges, i.g. “*endangering state security*”<sup>54</sup>.

But if, on the one hand, in the last several years PRC’s leaders have been undoubtedly far from relaxing control over civil society’s activities, on the other

---

<sup>51</sup> See Art. 69, “Regulations of the People’s Republic of China on the Administration of Company Registration”, issued by the State Council on 24<sup>th</sup> June, 2005 and “Temporary Measure Banning Illegal Organizations”, issued by the Ministry of Civil Affairs on 10<sup>th</sup> April, 2000.

<sup>52</sup> According to the so-called “no banning, no recognition, no intervention” rule. On the subject, see Deng Guosheng, “The Hidden Rules Governing China’s Unregistered NGO’s: Management and Consequences”, 10 *The China Rev.* 183 (2010).

<sup>53</sup> The Ai Yuan – an NGO registered as a commercial enterprise since 2004, and tha from September 2010 has been subject to constant tax inspections by the authorities - announced on 11 November 2010, through its legal representative, the decision to cease its activities for the benefit of AIDS patients and orphans. The decision was taken after increasing pressure from tax authorities, and – in particular – after having received a notification for a detailed audit by the same office of the Beijing Tax Bureau which had inspected the Gongmeng. On the issue that has affected the Gongmeng, see, among others: “China v. Civil Society”, *The Wall Street Journal*, 21 July 2009, “Chinese Public Interest Lawyer Charged Amid Crackdown” *The New York Times*, August 18, 2009. More details on the closure of Ai Yuan are available at: <http://zengjinyan.wordpress.com/> (last seen on 12/11/2010). On the topic, see also Simona Novaretti, “La riforma della procedura civile della RPC e le “azioni nel pubblico interesse”: un balzo in avanti? Diritto con caratteristiche cinesi e società civile” [The reform of civil procedure in China and “public interest litigation, a step forward? Law with Chinese Characteristics” and Civil Society], in *Rivista di Diritto Civile*, n. 2, marzo – aprile 2013, pp. 363.

<sup>54</sup> On the subject, see Josh Chin, “China’s New Strategy in Prosecuting Critics”, *The Wall Street Journal*, 13 Mar. 2014, available at: <http://blogs.wsj.com/chinarealtime/2014/03/13/chinas-new-strategy-in-prosecuting-critics/?mod=chinablog> (last visited: 21 May 2014). For an English translation of Xu Zhiyong’s verdict, see: <http://chinalawtranslate.com/en/xu-zhiyong-opinion/> (last visited: 20 May 2014).

–notably after the 2008 earthquake, when thousands of volunteers converged on Sichuan to lend a hand to the rescue, showing that social organizations can be much more effective than the government<sup>55</sup> – they have begun to realize that co-opting such activist citizens can be much more beneficial than suppressing them. Indeed, in a complex society as the Chinese has become as a result of the reforms, the party can no longer provide everything for its citizen as once it did (or pretended to do), while the people’s anger over inadequate social services could put social stability (and, ultimately, the power of the CCP itself) at risk. Moreover, as a consequence of decentralization, localities have been given the freedom to develop certain social services in their jurisdictions, but they have gained, at the same time, the responsibility to finance and manage them<sup>56</sup>.

In this perspective, NGOs could become a useful tool in the hands of the state-party, being involved – under its direction – in the provision of some of the social support that the central (or local) government itself is unwilling or unable to supply on its own.

It is in this context that the recent reforms must be placed. I will now discuss them in more detail, with a particular focus on two of the points recalled by the Decision: the simplification of Ngo’s registration procedures and the creation of a social service procurement system. The last section of this paper will be dedicated to the participation of civil society to policy decision.

### *2.1. The simplification of NGOs’ registration procedure*

As we have already pointed out, the change in terminology and the introduction of the notion of “social governance”, although notable, has not led to a fundamental change in the goals pursued by Chinese leaders via the reform of the social sector. On the contrary, it seems to have accelerated the process, carried out in recent years, mostly through local experiments.

Indeed, as Karla Simon pointed out:

*“By the time the twenty-first century dawned, the party-state was developing policy with regard to the role of CSOs in service provision and experimenting with new solutions to social problems by giving more powers to favored CSOs”<sup>57</sup>.*

First of all, that has meant to relax the dual management system, in order to recognize the existence of some smaller, community-based CSOs<sup>58</sup>.

The pioneer of this reform was the General Office of Qingdao Municipality, which, in 2002, adopted a “documentation system” (备案, bei’an), allowing for

---

<sup>55</sup> Karla Simon, cit., p. XXXIV. Editor, “Chinese Civil Society. Beneath the glacier”; aggiungere cinesi.

<sup>56</sup> “Reform Will Promote NGOs – To Serve Beijing Agenda”, The Oxford Analytica Daily Brief, Friday, May 16 2014.

<sup>57</sup> Karla Simon, cit. p. 236.

<sup>58</sup> *Ibid.*

quasi-legal existence those civil society organizations that do not qualify for actual registration because of their size, lack of funds, or because they are not for the public benefit<sup>59</sup>.

Concretely, according to art. 2 of the “Opinions for Strengthening the Development and Management of Civil Community Organizations” (关于加强社区民间组织培育与管理的意见, *Guanyu jiaqiang shequ minjian zuzhi peiyu yu guanli de yijian*)<sup>60</sup>, “objectively existing community civic organizations that are not eligible for legal registration” can obtain a certificate of “quasi-SO” or “quasi-minfei” upon filing a record of itself with the resident’s committee, the sub-district office and the district department of civil affairs<sup>61</sup>. This certificate, obviously, does not grant the preferences accorded to properly registered SO or minfei (i.e.: tax preferences, limited liability and so on)<sup>62</sup>, but – at least- it gives such organizations the right to carry out activities within the community.

Although the model of Qingdao’s documentation system has been adopted – with a few nuances in characterization - by many provinces (i.e.: Jiansu, or Guizhou) and districts of big cities (i.e.: Shanghai Hongkou district, or Beijing Xicheng district)<sup>63</sup>, it is undoubtedly in Guangdong province, and more in particular in the Special Economic Zone of Shenzhen, that the most innovative solutions for the development of civil society have been drawn in the last several years.

In fact, in 2009 Shenzhen has signed with MCA a “Cooperative Agreement on Pushing Forward to Integrated Reforms to Civil Affairs Undertakings” (民政部于深圳签订民政事业改革合作协议, *Minzhengbu yu Shenzhen qianding minzheng shiye gaige hezuo xieyi*)<sup>64</sup> becoming an “experimental site” for reforms in a wide range of civil affairs issues. These include the possibility for trade associations and public benefit organizations to register directly with the Shenzhen Civil Affairs Bureau, the outsourcing of public services to NGOs and the provision of coaching assistance to the organizations involved in social services such as the ones concerning the disabled, senior citizens, mentally retarded children, environmental protection and health<sup>65</sup>.

---

<sup>59</sup> *Ibid.*, p. 264.

<sup>60</sup> The opinions are available at: <http://hk.lexiscn.com/law/law-chinese-1-391703.html>.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> On the topic, see Karla Simon, cit. pp. 265-267.

<sup>64</sup> For the content of the agreement, see the Ministry of Civil Affairs website, at: <http://www.mca.gov.cn/article/zwgk/mzyw/200907/20090700033466.shtml> (last visited: 27 May 2014).

<sup>65</sup> On the subject, see more in the detail: ” No challenges too big for “city of courage”, Global times, 26 Aug. 2010, available at: <http://www.globaltimes.cn/content/567294.shtml> (last visited: 27 May 2014).

It is worth noticing that also other cities, like Tianjin, have signed, in those years, similar agreements, and that all these contracts contained, as well, clauses for experimenting with a reduction in requirements for the registration of SO and *minfei*<sup>66</sup>. By the end of 2011, at least four municipalities (Beijing, Changsha, Guangzhou and Foshan), in addition to Shenzhen, have already adopted new norms on direct registration, while the same kind of provisions, approved in November 2011, would have been extended to the whole Guangdong Province on July 1, 2012.

These last regulations are, in particular, relevant. In fact, although the amendments to the State Council's Regulations on SO and *minfei*, expected for the end of 2013, at the time of writing this paper (May 2014) are still under discussion, there is little doubt that the new national rules will look very much like the ones currently implemented in Guangzhou and Guangdong, and that - as the Minister of Civil Affairs Li Ligu called for, in November 2011 - "*the Guangdong model will [soon] be used throughout China*"<sup>67</sup>.

According to Guangdong Regulations, eight types of civil society organizations should benefit from legal relaxation: industrial associations, trade associations registered in other provinces, organizations serving the living of the mass, charity organizations, social service organizations, rural-urban grassroots organizations, organizations that have relation/affiliation to foreign organizations, and nexus organizations<sup>68</sup>. The above mentioned NGOs can register directly with the Ministry of Civil affairs while, for them, the role of the former "mother-in-law" agency is lessened to management focusing on the work, administration and capacity building of the CSO in question. Furthermore, in these cases, the restriction on having only one entity performing a service in any given locality is eliminated<sup>69</sup>.

I would like to briefly point out that the typologies of NGOs set out by the above Regulations are not only the same listed in paragraph 48 of the CCCP's Decision<sup>70</sup>, but they are also very similar to the ones cited in the "Blueprint on

---

<sup>66</sup> See Karla Simon, cit., p. 277, note 86.

<sup>67</sup> Quoted by Karla Simon in Karla Simon, op. cit., p. xliii.

<sup>68</sup> The definition of the nexus organizations is not clear. According to the Hong Kong Liaison Office of the international trade union movement, the more comprehensive (and official) explanation is the one which defines these organizations as federations of organizations that liaise, administer and provide service to social organisations of the same nature, in the same sector, or the same area of work/services. On the subject, see: IHLO, Guangdong Government Implements New Scheme to Promote Civil Society Organizations and Outsourcing of Social, Nov. 2011, available at: <http://www.ihlo.org/LRC/Laws/011111.html> (last visited: 28 May, 2014).

<sup>69</sup> *Ibid.*

<sup>70</sup> See Decision, cit., paragraph 48.

the Reform and Transformation of Civil Service Institutions and their Functions”, adopted by the 12th National Peoples’ Congress in March 2013<sup>71</sup>.

The Blueprint, in its 23rd clause, states exactly that :

*“trade associations, chambers of commerce, scientific and technological organizations, charitable (or public benefit) organizations and urban-rural community service organizations will carry out MCA’s direct registration system”*<sup>72</sup>.

In this sense, it is possible to state that – even in the absence of a national framework – what for Li Liguó was only a hope, in 2011, is now a reality, in almost all the PRC’s territory.

By the end of 2013, in fact, following the guidelines provided by both the NPC and CCCP, every province (except Tibet and Xinjiang) as well as every self-governing municipality, had adopted “direct registration” rules shaped on the Guangdong’s model<sup>73</sup>.

The recent removal of the dual management requirement has undoubtedly had a big impact on the growth of NGOs’ sector. In an article recently published in the China Daily, He Dan affirms that, in Beijing alone, 221 social organizations registered directly with civil affairs departments in 2013, accounting for about 34 per cent of the social organizations that obtained legal identities in that year<sup>74</sup> while, according to the Ministry of Civil Affairs’ data, the overall increase of the sector, in the same period, has been of 8.4 per cent<sup>75</sup>. The new system of direct

---

<sup>71</sup> Matt Perrement (transl.): “Beijing University Civil Society Center’s “Ten Major Events in China’s Social Sector for 2013”, January 16, 2014, available at: <http://www.chinadevelopmentbrief.cn/?p=3435> (last visited: 26 May, 2014). The original document (in Chinese) is available at: <http://www.ccsspku.org/archives/3914>. The Ministry of Civil Affairs also listed the Blueprint among the “Top Ten Major Events for Social Organizations in 2013”. See Matt Perrement (transl.), “The Ministry of Civil Affairs’ “Top Ten Major Events for Social Organizations in 2013”, available at: <http://www.chinadevelopmentbrief.cn/?p=3411>. The original document (in Chinese) can be found at: <http://www.chinanpo.gov.cn/1938/76760/index.html>

<sup>72</sup> Matt Perrement (transl.): “Beijing University Civil Society Center’s “Ten Major Events in China’s Social Sector for 2013”, cit.

<sup>73</sup> Karla Simon, “Charity and Social Enterprise in China”, cit.

<sup>74</sup> He Dan, “Reforms give NGOs a level playing field”, China Daily, 2014-03-31, available at: [http://usa.chinadaily.com.cn/china/2014-03/31/content\\_17390892\\_2.htm](http://usa.chinadaily.com.cn/china/2014-03/31/content_17390892_2.htm) (last visited: 12 May, 2014).

<sup>75</sup> On the subject see, on Ministry of Civil Affairs website: “中国慈善发展报告：社会组织总量达 54.1 万个 同比增长 8.4%”，新华社，2014-05-19，“Zhongguo cishan fazhan baogao: Shehui zuzhi zongliang da 54.1 wan ge tong bi zengzhang 8.4%” (China Charity Development Report: total social organization are 541,000, with an increase of 8.4%), available at: <http://www.mca.gov.cn/article/mxht/mtgz/201405/20140500639535.shtml> (last visited: 29 May 2014). See also Matt Perrement (transl.): “Beijing University Civil Society Center’s “Ten Major Events in China’s Social Sector for 2013”, cit., and “The Ministry of Civil Affairs’ “Top Ten Major Events for Social Organizations in 2013”, cit.; Karla Simon, “Charity and Social Enterprises in China”, Latest from Alliance, 24<sup>th</sup> May, 2014, available at:

registration has, in its early stages, already helped more than 19,000 SOs to register with the Civil Affairs authorities at all levels. In December 2013, there were 541,000 registered NGOs operating in China<sup>76</sup>; an achievement that would have seemed unattainable, until a short time ago.

## *2.2 The outsourcing of services to civil society organizations*

The reforms aimed at reducing the threshold for NGOs registration, in the last decades, have gone hand in hand with the attempt to encourage the outsourcing service to civil society organizations. This seems quite obvious, since the growth of the sector may mean, for the government(s), also the increase in the number of partners to entrust the provision of certain social services. Not surprisingly, therefore, the “Decision of the CCCP on some Major Issues Concerning Comprehensively Deepening the Reform”, besides “*making it easier for some social organization to register*”, has also called for “*commissioning social organizations the public services that are able to supply*”.

However, with regard to this aspect as well, the shift from “social management” to “social government” has only given a further boost towards the objectives pursued through the local trials of the last few years.

Indeed, as we have already pointed out, the involvement of civil society in the provision of public services has been inevitable, for Chinese leaders, ever since the beginning of the Deng Xiaoping era.

If, on the one hand, the post-1978 marketization reforms considerably undermined the state’s direct service delivery capacity<sup>77</sup>, on the other, the administrative and fiscal reorganizations of the 1990s moved the duty to perform certain type of services from central and provincial governments to local level governments<sup>78</sup>.

In this situation:

*“Local official were forced to cope with rising social demands. In-house production, either through governmental agencies or public service units, was not a feasible option because of a consistent pressure of administrative downsizing. Contracting with for-profit organizations was also infeasible as a profit margin was prohibited for government-founded social service. In*

---

<http://philanthropynews.alliancemagazine.org/2014/05/24/charity-and-social-enterprise-in-china/> (last visited: May 29, 2014).

<sup>76</sup> See *supra*, prev. note.

<sup>77</sup> Jing Yijia, Bin Chen, “Is competitive contracting really competitive? A case study of Restructuring Government-Non profit relations in Shanghai”, Baruch College Center for Nonprofit Strategy and Management Working Paper Series, 2010, p. 12, available at: [http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/documents/JingChen\\_IsCompetitiveContractingReallyCompetitive-ACaseStudyofRestructuringGovernment-Nonpr.pdf](http://www.baruch.cuny.edu/spa/researchcenters/nonprofitstrategy/documents/JingChen_IsCompetitiveContractingReallyCompetitive-ACaseStudyofRestructuringGovernment-Nonpr.pdf) (last visited: May 30, 2014).

<sup>78</sup> Karla Simon, “Civil Society in China”, cit., pp. 291-292.

*response, local governments began to systematically sponsor non profits to provide services like home care, mental health service, job training, legal aid and social relief*<sup>79</sup>.

In the beginning, the government at all levels delegated certain functions only to CSOs closely related to it, the so-called “government operated non-government organizations” (GONGO, in Chinese: 由政府运行的非政府组织, *you zhengfu unxing de fei zhengfu zuzhi*), while the funding for outsourcing originally came from revenues generated by the social welfare lottery<sup>80</sup>.

With the proceeding of the reforms, however, the needs for government-nonprofit collaboration increased dramatically, together with the concern about transparency and the urgency to find a number of high quality CSOs able to provide adequate services to marginal and other needy citizens.

Once again, Guangdong served as a reference. The enactment of the “Shenzhen Special Economic Zone Regulation on Public Procurement”, in October 1998, was followed, one year later, by the PRC Standing Committee’s adoption of the “Competitive Bidding Law” (1999), and then by the Government Procurement Law (2002).

These two pieces of legislation marked the beginning of the transformation of a highly informal system into a more formalized one<sup>81</sup>. In the same period government funding of CSO services started at the municipal level<sup>82</sup>.

The Shanghai Department of Civil Affairs (DoCA) took the lead in 2000, when it established an office that provided funding for social organizations serving elderly people in six districts and twelve street offices<sup>83</sup>. Then, in 2006, Shanghai’s new Pudong district started providing funding for charity and for the education of migrant workers’ children, while, in Shenzhen, the municipal government has been fostering social work organizations since 2007, and in July 2010 the Beijing municipal government provided 100 million RMB to support 300 welfare projects<sup>84</sup>. Local experiments were, eventually, scaled up to the national level when, in 2012, the Ministry of Finance allocated 200 million RMB to support social service delivery CSOs<sup>85</sup>.

It is worth noticing that, since then, the trend has only gone upward. In a conference held in Beijing in Mid-May 2014, the MCA announced that in 2013

<sup>79</sup> Jing Yijia, Bin Chen, *ibid*.

<sup>80</sup> Karla Simon, last work cited, p. 292

<sup>81</sup> Karla Simon, p. 293.

<sup>82</sup> Andreas Fulda, “Government procurement of CSO services in the PR China: Doing the party’s work?”, China Policy Institute Policy Paper 2013: No. 4, available at: <http://www.nottingham.ac.uk/cpi/documents/policy-papers/cpi-policy-paper-2013-no-4-dr-andreas-fulda-government-procurement-of-cso-services-in-the-prc.pdf> (last seen: May 31, 2014)

<sup>83</sup> *Ibid*. On the subject, see also Jing Yijia, Bin Chen, *op. cit*.

<sup>84</sup> Andreas Fulda, *ibid*.

<sup>85</sup> *Ibid*.

social service purchase funds rose to the remarkable amount of 150 billion yuan<sup>86</sup>.

Undoubtedly, as Zhao Yong, Vice Director of the Institute of Public Market and Government Procurement, pointed out in a recent interview:

*“government procurement in China is still in its early stages, but its power and its rate of development is incredibly fast”*.<sup>87</sup>

According to Zhao, the “acceleration” of the reforms in this sense would have been fostered, in particular, by the enactment of the “Guiding opinions regarding government purchasing of social work services”<sup>88</sup>, jointly issued by the Ministry of Finance and the Ministry of Civil Affairs on 14 November 2012. In that document, though, the outsourcing to social organizations is still confined to the purchasing of social work. On the contrary, the Guiding Opinions on Government Purchasing Services from Social Actors” (国务院办公厅关于政府向社会力量购买服务的指导意见), released by the State Council General Office on 26<sup>th</sup> September 2013, more generally refer to government procurement of “public” services, expanding the tasks which can be delegated to civil society, and “*marking a milestone in the field of decentralization and reform of government functions*”<sup>89</sup>.

It is for this reason that the latter Guiding Opinions – considered as “*filling a void in the government’s current procurement policy*” and representing “*an important step in the strategy to transform government functions, by enhancing the environment in which SOs develop and helping to realize the positive role they play in the improvement of public service*”<sup>90</sup> – has been listed among the MCA’s “Top Ten Major Events for Social Organizations in 2013”<sup>91</sup>. Following the directions contained in them, many provinces (i.e.: Shandong, Hebei, Hubei, Anhui - besides Beijing, Shanghai and the Guangdong province, which are, as always, at the forefront when it comes

---

<sup>86</sup> Karla Simon, “Charity and Social Enterprise in China”, cit.

<sup>87</sup> 吴建华, 政府买服务造千亿大市场 - 民政部财政部连续发文推动, 华夏时报, 2014-02-14, Wu Jianhua, “Zhenggu mai fuwu zao qianyi da shicang - Minzheng bu cai zheng bu lianxu fawen tuidong” (Government service procurement create a big market – The Ministry of Civil Affairs and the Ministry of Finance continuously issue and promote) available at: <http://www.chinatimes.cc/hxsj/news/zhengce/140214/1402142258-133577.html> (last visited: May 26, 2014).

<sup>88</sup> Ibid. The original text (in Chinese) of the “Guiding Opinions” can be found at <http://www.mca.gov.cn/article/zwgk/tzl/201211/20121100383464.shtml> (last visited: May 31, 2014).

<sup>89</sup> 吴建华, Wu Jianhua, cit.

<sup>90</sup> Matt Perrement (transl.), “The Ministry of Civil Affairs’ “Top Ten Major Events for Social Organizations in 2013”, cit.

<sup>91</sup> Ibid.

to the NGOs sector<sup>92</sup>) have already issued provisions to promote government procurement of public services<sup>93</sup>.

The remarkably fast development here above described must obviously be also (and above all) linked to the statements contained in the CCCP's Decision. As noticed in an article published in China Development Brief in February 2014, in fact, the Decision:

*“not only gives a green light to the reform and experiments that have been going on [...] at the local level in the past few years, but also provides a macro framework decided by the top leadership for envisioning how those reforms should proceed”*<sup>94</sup>.

Many problems, however, remain unsolved. For example, is still not clear how, concretely, government contracting will be implemented, or how the distribution of functions between governments and social organizations will work. Moreover, there are doubts regarding the type of social organizations that will be eligible to apply, since government-affiliated organizations currently already provide up to 80-90% of public services in China, blurring the boundaries between funding provision and service production<sup>95</sup>.

Precisely with reference to the resources that can be used for the purpose, the Ministry of Finance has recently clarified that the purchasing of social services must be understood only as a pattern of public service delivery and a way of employing the existing government resource, and that it does not imply, in any possible way, the increasing of the funds available to local governments<sup>96</sup>.

In fact, as pointed out by Zhao Yong:

*“Government purchasing is not a step forward to the creation of a “big government”, but, instead, a transformation into “small government, big society”*<sup>97</sup>.

It seems plainly evident, however, that not all the organizations will benefit from the emerging trend in the same way. In particular, as remarked by Andreas Fulda, social service CSOs focusing on community services, health services, children, the elderly or the disabled will be the main beneficiaries of the new government policies while, on the contrary, CSOs promoting democracy, human rights or labor issues will be fairly unlikely to receive financial aid. This could also have an impact on the possibility, for such organizations, to sustain

<sup>92</sup> 吴建华, Wu Jianhua, op. cit.

<sup>93</sup> *Ibid.*

<sup>94</sup> Administrator: “Policy brief. N. 14 (January 2014): The Third Plenum Brings a Chilly Spring for China’s Civil Society”, cit.

<sup>95</sup> Andreas Fulda, op. cit.

<sup>96</sup> 吴建华, Wu Jianhua, op. cit.

<sup>97</sup> *Ibid.* It is worth noticing that the principle of “small government – big society” (xiao zhengfu – dashehui) was incorporated by CCP into its platform at the Fifteen Party Congress, with reference to the decision to privatize some state-owned enterprises. On the subject, see Mary Gallagher, “Time is Money, Efficiency is Life: The Transformation of Labor Relations in China”, 39 Stud. In Comp. Int’l Dev. 11, 22 (2004), cited by Karla Simon, cit. p. 236, note 10.

their operations in autonomy , in the face of the recent dwindling of international support<sup>98</sup>.

Notwithstanding these concerns – and despite the “chilly wind” for activists that has blown since Xi Jinping’s seize of power<sup>99</sup> - members of non-government organizations say that the outlook has never been sunnier<sup>100</sup>.

Indeed, they hope that the creation of access channels that are, at the present moment, operating merely in one direction may, in the future, allow organizations to participate in relevant policy areas. In their perspective, contracting public services might potentially have significant effects, by increasing pluralism in local public policy and generating more demand for transparency and accountability of government services<sup>101</sup>.

This could undoubtedly be true, in the long term, at least for NGOs not engaging in advocacy or other sensitive areas<sup>102</sup>. In fact, as Shawn Shieh, editor of China Development Brief, a newsletter focused on social development and civil society, explained in a recent interview:

*“The government wants people to have an input into governance, but it wants it to occur in an orderly manner [...] It wants to depoliticize acceptable NGOs, and bring them into the fold so they can be regulated properly”*<sup>103</sup>.

But is there any evidence that the new focus on “social governance” is currently opening a novel space, for (acceptable) social organizations involvement in public choice?

### 3. Civil society’s involvement in policy decision

Prof. Xiang Chunling, of the Central Party School, in an interview published in the National People’s Congress review stated that:

*“for a long time, the neglect and disregard for social cooperation meant that the government took any decision independently, without seeking the opinion of the masses”*<sup>104</sup>.

---

<sup>98</sup> See Andreas Fulda, op. cit.

<sup>99</sup> The concept have been remarked by many authors. See, among others, Editor, “Policy Brief n.14”, cit.; Tom Miller, Warren Lu, “Better Governance Through Kung-Fu”, GravekalDragonomics, February 14, 2014, available at: <http://research.gavekal.com/content.php/9689-China-Better-Governance-Through-Kung-Fu-by-Tom-Miller> (last seen: June 2, 2014).

<sup>100</sup> Tom Miller, Warren Lu, *ibid*.

<sup>101</sup> Jessica C. Teets, “Reforming Service Delivery in China: The Emergence of a Social Innovation Model”, Journal of Chinese Political Science, March 2012, Volume 17, Issue 1, p. 15.

<sup>102</sup> *Ibid*.

<sup>103</sup> Tom Miller, Warren Lu, op. cit.

<sup>104</sup> 张学文, “创新社会治理应“放权于民””, 中国人大杂志 2014年第 5 期, Zhang Xuewen (ed.), “Chuangxin

This way of interpreting the concept of “social management”<sup>105</sup> though, has been quite costly from both the political and the economic point of view since, as remarked by Prof. Xiang, very often, as soon as a new policy was launched, citizens immediately filed petitions, or - even - organized protests to stop its implementation<sup>105</sup>.

Indeed, the case above mentioned occurred, for example, in Qidong (Jiansu) and Shifang (Sichuan) in the Spring of 2012<sup>106</sup>. In both incidents thousands of protesters demanded the end of construction projects seen as environmentally destructive and harmful to local interest. The protests reached a point of limited violence, which were resolved quickly, when the local governments suspended the disputed project<sup>107</sup>. But while, on the one hand, some authors have considered this way of handling civil unrest as a positive indication of the move of the government towards some conciliatory changes<sup>108</sup>, on the other there is no doubt that such a policy can be extremely harmful, for the construction of a “harmonious society”.

As pointed out in an article published, after the Qidong’s incidents, in Global Times, a newspaper known for its highly nationalist bent<sup>109</sup>:

*“The two protests have together left the impression that the quickest way to change a government policy is to hold a violent demonstration. If this model is copied widely, it would be disastrous for social stability”*<sup>110</sup>,

It is (also) for avoiding this risk, as I have already noticed, that the CCCP’s Decision calls for “making innovation in social governance”, a model that implies a bi-directional relationship between local governments and social actors, focusing on the involvement of civil society in public choice in order to “solve problems at the source”<sup>111</sup>.

The change of attitude is - in this respect, and for some scholars - already evident, as shown by the outcome of the protests against the Anning PX project. On April 18, 2013, two local environmental organizations, Green Kunming and Green Watershed, carried out an on-the-spot investigation of Yunnan Petrochemical’s one billion ton oil refining project in Anning City, approved by the Yunnan Provincial Government at the end of March 2013. The announcement of the plan, in fact, had caused panic and concerned reactions

---

<sup>105</sup>张学文 (责任编辑), Zhang Xuwen (ed.), cit.

<sup>106</sup> On the subject, see Samantha Hoffman, “Portents of Change in China’s Social Management”, cit.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> Donal Clarke, “Dumb Arguments about Human Rights in China”, Chinese Law Prof Blog, June 6, 2014, available at: [http://lawprofessors.typepad.com/china\\_law\\_prof\\_blog/2014/06/dumb-arguments-about-human-rights-in-china.html](http://lawprofessors.typepad.com/china_law_prof_blog/2014/06/dumb-arguments-about-human-rights-in-china.html) (last seen: June 7, 2014).

<sup>110</sup> Global Times, July 30 2012, cited by Samantha Hoffman, last work cited.

<sup>111</sup>张学文 (责任编辑), Zhang Xuwen (ed.), cit.

of the Kunming public, owing to the omission of certain details, which resulted in a peaceful protest by almost 3,000 citizens on May 4. On the morning of May 10, the Kunming city government held a press conference to publically respond to rumors about PX, inviting citizen representatives to meet informally with chemical engineering experts. Towards the end of June, China Petrochemical Company finally bowed down to public pressure, and published an “Environmental Impact Assessment of the Yunnan PX Project”, bringing closure to this incident.

This incident was considered as one of the “Ten Major Events in China’s Social Sector for 2013” by the Beijing University Civil Society Center<sup>112</sup>, which remarks that:

*“when compared to PX projects in Xiamen, Dalian, Ningbo and other places that “stopped as soon as they hit problems”, the handling of the Yunnan Px incident promotes and highlights both the management capability of local government and growing public maturity”<sup>113</sup>.*

It is a manner of “*making innovation in social governance*” also endorsed by Prof. Xiang who, in the previously mentioned interview, pointed out how “*the major change of direction inflicted by “make innovation in social governance” imply the correct handling of the relationship between the government and the masses or, rather, the construction of a new relationship between the government and the masses*”.

In my opinion, however, events like the one reported above are not representative (or, at least, not *enough* representative) of a real change in Chinese leaders attitude towards civil society. In fact, if the social organization’s involvement in public choice should be judged only on that basis, there would be very little novelty in it.

First of all, the call for “*improv(ing) the public hearing and expert consultation system of public decision-making process*” was already mentioned in the 12<sup>th</sup> Five Year Plan for National and Social Development of March 2011<sup>114</sup>. This suggestion is included in the chapter regarding the invitation to “*actively and proactively respond to social concerns*”; a recommendation that is not new at all, but that, on the contrary - as the recent clampdown on bloggers and the arrest or detention of well-known activists, scholars and businessmen demonstrated – has been taken quite seriously by Chinese leaders, in the last several years.

The outcome of the Anning PX plan (and of others alike), then, seem to me more the result of the government(s) success in tearing the consensus of the general public on decisions already taken by the vertices, than a genuine attempt to mediate between the demands of the citizens, on one side, and of local

<sup>112</sup> Matt Perrement (transl.): “Beijing University Civil Society Center’s “Ten Major Events in China’s Social Sector for 2013”, cit.

<sup>113</sup> *Ibid.*

<sup>114</sup> See 中华人民共和国国民经济和社会发展第十二个五年规划纲要 (*Zhonghua renmin gongheguo jingji he shehui fazhan di shier ge wu nian guihua gangyao*), cit., chapter 40, point 1.

governments, on the other. In each of these incidents, in fact, the masses - once properly informed - have agreed to what has already been established, and no change was made to the original project.

It must be concluded, therefore, that the concept of “social governance” is only an empty slogan, a new lexical tool used by Chinese leaders to co-opt social organizations maintaining, at the same time, the monopoly of political choices? Possibly not. Indeed, there is at least one development that leads to be (moderately) optimistic, about the possibility, for civil society, to gain some space of action regarding policy-making. I am referring to the recent – and quite unexpected – approval of the amendment of the Law of the People’s Republic of China on Environment Protection, in a sense more favorable to public interest litigation filed by social organizations. I will discuss it in more detail in the following paragraph.

### *3.1 Environmental public interest litigation: a first real step towards “making innovation in social governance”?*

Public interest litigation (公益诉讼, *gongyi susong*), are a new sort of lawsuits for China<sup>115</sup>, but they have grown rapidly over the last decades, to become a significant and influential form of legal action.

Since 1996 – when Qiu Jiandong sued the Post and Telecommunication Office of Xinluo district (Loyan city, Fujian), for failing to implement discount for holiday and nighttime telephone calls - an increasing number of NGOs, law firms and individual lawyers has used this judicial tool to remind the government what it means, in practice, “*being a country of Rule of Law*”<sup>116</sup>, asking Chinese leaders to follow-through with their promises and to apply the norms that were already approved by them, through a collective claim of the public interest. The latter, for a little while, has been for Chinese citizens one of the few instruments of political participation allowed, and the only way to make their voices heard.

A few years ago, however, this trend began to slow down.

NGOs and lawyers dealing with public interest litigation have always been considered as moderate, as they choose cases with both a direct impact on the livelihood of ordinary citizen and a lower political ramification (i.e.: consumer, environmental or educational rights protection, anti-discrimination protection etc.). Despite this, in the last several years they have been victims of harassment,

---

<sup>115</sup> Chinese scholars, in fact, often refer to “gongyi susong” using expressions like 现代型诉讼, (*xiandaixing susong*, , litt. “litigation of modern typology”) or 新型诉讼, (*xinxiang susong*: litt. “litigation of new typology). Regarding this topic, see S. Novaretti, “Le ragioni del pubblico: le “azioni nel pubblico interesse” in Cina”, Edizioni Scientifiche Italiane, Napoli, 2011, p. 40, note 7.

<sup>116</sup> See PRC Constitution, art. 5.1: “People’s Republic of China implements the Rule of Law”.

intimidation and abuse by the PRC's government, as a result of what Carl Minzner described as the Chinese leaders' "*turn against law*".<sup>117</sup>.

The skepticism and distrust of the government towards civil society involvement in public choices - and its concern for anything that might threaten, even remotely, social stability - have become, then, even more evident after the approval of the Amendment of the PRC's Civil Procedure Law", in force from the 31<sup>st</sup> August 2012.

The Law contained, at the article 55, the first provision dedicated to Public Interest Litigation (PIL) in the history of Chinese legislation. Although it was received with great enthusiasm, being welcomed as a big step forward in the development of PIL, it seemed immediately clear that that this "development" would not have been in the direction hoped for by public interest lawyers and grassroots social organizations.

The article 55, in fact, states that:

*"For conduct that pollutes environment, infringes upon the lawful rights and interests of vast consumers or otherwise damages the public interest, an authority or relevant organization as prescribed by law may institute an action in a people's court".*

Until then, activists and organizations had been able to take advantage of the absence of specific provisions to file lawsuits in defense of the public interest. Even if, most of the time, the rigidity of the rules relating to the right of standing had provided the excuse for the People's Courts not to accept such cases, other times they had been successful, or – at least – they had been able to attract the public's attention on specific violations of the common good.

Irony of fate (or of the Party), the amendment that was supposed to open the doors to the public interest litigation, ended up leaving out many potential "players". In the new legal environment, not only individual citizens, but - in practice - also NGOs were not allowed to file lawsuits in the public interest, since at the approval of the new Civil Procedure Law, in the whole Chinese legislation there was no mention of such a right for any social organization.

Moreover, it seemed very likely that, even if the laws regulating the fields specifically listed in article 55 (i.e.: environment and consumer protection) have been amended, the right of standing in case of violation of the public interest would be attributed merely to the association(s) more linked to (or controlled by) the government.

These predictions have come true in October 2013, when the new Law of the People's Republic of China on the Protection of Consumer Rights and Interests was approved. The Law allows merely one government-sponsored NGO (i.e.:

---

<sup>117</sup> Carl Minzner, "Chinese State Council White Papers and the "Turn against Law"", 29 August 2012, disponibile all'indirizzo: <http://sinolaw.typepad.com/chinese-law-and-politics-/2012/08/chinese-state-council-white-papers-and-the-turn-against-law.html>

the China consumers' Association) to file lawsuits in case of “*infringement upon the lawful rights and interests of vast consumers*”<sup>118</sup>.

Nobody, therefore, would be surprised if also the revision of the Law of the People’s Republic of China on Environment Protection had followed this path, and this actually was the case, at least until its final approval.

It is interesting to note that, under the 1989 Law on Environmental Protection, any natural person, legal entity or social organization, regardless of whether they were personally affected, technically could engage in environmental public interest litigation by filing a lawsuit against an alleged polluter<sup>119</sup>. In reality, though, NGOs that tried to initiate such lawsuits often faced challenges to their standing. That’s why experts and activists have followed the process of revision of the Law with much apprehension, especially after the publication of the second Draft, which attributed to the All- China Environmental Federation - an association founded by the Ministry of Environment itself, and financed by it - the monopoly of the right of standing in cases of environmental pollution<sup>120</sup>.

In this context, the enactment of the new Law on Environmental Protection, on 24<sup>th</sup> April 2014, came as a real game changer.

The Law, at article 58, provides that:

*“In case of environmental pollution, ecological damages or acts that damage the public interest, the following social organizations may file lawsuit in a People’s Court:*

- 1) *NGOs registered with the Civil Affair Agencies of Municipal People’s Government or above level;*
- 2) *NGOs with more than five years of experience in environmental matters and in good standing.*

*The People’s courts shall, according to law, accept the lawsuits filed by social organizations which conform to the above requirements.*

*Social organizations that file lawsuits may not gain economic benefits through litigation”.*

---

<sup>118</sup> “For infringement upon the lawful rights and interests of vast consumers, the China consumers' Association and the consumer associations formed in provinces, autonomous regions, and municipalities directly under the Central Government may file lawsuits in the people's court”. See Law of the People's Republic of China on the Protection of Consumer Rights (amended), amended for the second time in accordance with the Decision on Amending the Law of the People's Republic of China on the Protection of consumer Rights and Interests adopted at the 5th Session of the Standing Committee of the Twelfth National People's Congress on October 25, 2013, art. 47.

<sup>119</sup> “All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment”. See “Law of the People’s Republic of China on Environment Protection”, art. 6..

<sup>120</sup> On the subject, see Du Jiabao, “Experts, Activists Call Proposed Amendment to China’s Environment Law ‘Monopolization’ of Litigation, Tealeafnation, July 15 2013, available at: <http://www.tealeafnation.com/2013/07/amending-the-environmental-law-will-environmental-public-interest-litigation-be-monopolized/#sthash.JLvqlwi1.dpuf>

According to the Beijing office of the National Resources Defense Council, this norm will apply to about 300 NGOs in China<sup>121</sup>.

Although many practical aspects have yet to be clarified, there is no doubt that the new article 58 can expand the ability of Chinese NGOs to bring environmental lawsuits on behalf of the public in an entirely new way<sup>122</sup>, allowing civil society to play a more active (and less controlled) role, at least in this field.

## Conclusions

When I started my research on this topic I was definitely not optimistic regarding the possibility, for Chinese civil society organizations, to increase their role in policy-making.

In particular, the 2013 CCCP Third Plenum's new focus on "social governance", in my opinion, seemed more of an attempt of the Chinese government to release social pressure and maintain social stability using NGOs as a tool, rather than a genuine recognition, by Chinese leaders, of the importance of involving social forces in the decisions that affect them.

Indeed, the transition from "*social management*" to "*social governance*" has taken place at a time of increased political repression. Since Xi Jinping seized power, in 2012, the state has cracked down on freethinkers<sup>123</sup>. The news of disappearances, intimidation and arrests widely reported by the international press, and the sentencing, in late January, of Xu Zhiyong to four years in jail, show how even those - like Mr. Xu or other activists engaged in public interest lawyering - who in recent years have tried a less confrontational approach, simply calling upon the government to abide by the Constitution and the laws, are no longer tolerated, in China.

In this context, the recent loosening restraint on certain typologies of NGOs can easily be interpreted as the last, clever brainwave of the Party to adapt to the new environment created by the reforms. By outsourcing to NGOs the public services that they can no longer provide, in fact, Chinese leaders may maintain the social harmony threatened by the growing social demand without relaxing their political grip.

---

<sup>121</sup> David Pettit, "A Step Forward For Public Interest Litigation In China", Switchboard (Natural Resources Defence Council Blog), April 28, 2014, available at: [http://switchboard.nrdc.org/blogs/dpettit/a\\_step\\_forward\\_for\\_public\\_inte.html](http://switchboard.nrdc.org/blogs/dpettit/a_step_forward_for_public_inte.html). On the topic, see also Barbara Finamore, "New Weapons in the War on Pollution: China's Environmental Protection Law Amendments", Switchboard (Natural Resources Defence Council Blog), April 24, 2014, available at: [http://switchboard.nrdc.org/blogs/bfinamore/new\\_weapons\\_in\\_the\\_war\\_on\\_poll.html](http://switchboard.nrdc.org/blogs/bfinamore/new_weapons_in_the_war_on_poll.html) (last seen: June 5, 2014).

<sup>122</sup> See Barbara Finamore, cit.

<sup>123</sup> See Editor, "Chinese Civil Society. Beneath the glacier", cit.

It is an attitude that, curiously, reminds me of the role that, as we have seen, social organizations played during the Qing dynasty, when the emperors delegated power to the CSOs of the time, allowing them to manage various social issues on their behalf. During imperial era, the government ended up supporting only the organizations that were liked or whose agenda was useful to it: the recent developments don't seem far from this scenario.

Indeed, in the last several years enormous progress has been made for the party-approved organizations, such as those that provide public services and publicly desired good for the Chinese people; on the other hand government on overtly political or human rights organizations has become even more aggressive, to the point that no one is expecting them to be allowed registration in the near future<sup>124</sup>.

Notwithstanding this, many who work for NGOs feel that allowing new freedoms for civil-society groups will transform the party from the inside, eroding the distinction between service provision and advocacy<sup>125</sup>.

Only time will allow us to understand whether this “peaceful evolution” will ever take place. A recent incident, though, has changed, in a positive way, my perception of the interpretation given by the Chinese government to the concept of social governance: the amendment of the Law on Environmental Protection, on 24<sup>th</sup> April 2014.

As we have noticed, in its article 58 the new Law provides the environmental NGOs more ability to supervise social affairs, expanding the right of standing in case of pollution or ecological damages to a number of environmental social organizations incredibly high not only for China, but also for any Civil law country, notoriously cautious when it comes to group litigation<sup>126</sup>.

The emended Law on Environmental Protection will be effective beginning January 1, 2015, and it is obviously too early to evaluate how successful the provision on NGOs' standing will be in promoting meaningful environmental litigation<sup>127</sup>. Nevertheless, it is, in my opinion, an important signal of change in the relationship between government and society, and – maybe - the first real step towards “*making innovation in social governance*”.

---

<sup>124</sup> See Karla Simon, “Civil Society in China”, cit., p. 340.

<sup>125</sup> See Editor, “Chinese Civil Society. Beneath the glacier”, cit.

<sup>126</sup> On the topic, with reference to the Italian legal system, see Edoardo Ferrante, “L'azione di classe nel diritto italiano” [Class action in the Italian legal system], Cedam, 2012.

<sup>127</sup> See David Pettit, cit.