CHINESE SOCIAL CREDIT SYSTEM: NEW CHALLENGES FOR THE RIGHT TO PRIVACY?

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Abstract: *The Social Credit system (SCS) in China is being applied in an increasing number of areas of everyday life. This system is built around rewarding and punishing specific forms of social behavior. The question arises whether this system is a new challenge to the right to privacy. The study, which is supported by literature, sheds light on how novel this thought is. This paper uses the comparative method, normative method, and legal-logical methods of induction and deduction. According to the research, the SCS in basic is a state project. The key distinctions between the SCS and similar systems in Western countries include the impact on individuals, state dependency, punitive policy, the breadth of consequences, and cultural differences. In addition, one of the tools of the SCS in China is 'shame', which is focused on maintaining harmonious relations within a society. In the West, the focus is more on the citizens' rights.*

Keywords: *Law; Security; Human Rights; Right to Privacy; Social Credit System; China*

INTRODUCTION

In the modern world, there is a constant struggle of individuals and social groups for better protection of human rights (HR), especially the right to privacy. Under the growing influence of Information and Communications Technology (ICT), some new forms of systemic solutions that directly affect HR have appeared. Namely, back in 2014, the Chinese government, intending to create a new form of social control of citizen's behavior, presented a system with the impressive name of 'Social Credit System' (SCS), which came to life in 2020. Today, this system is experiencing a dramatic development throughout China and represents a real revolution in the lives of ordinary Chinese citizens, as well as a revolution in terms of economy. This system is based on rewarding and punishing certain types of social behavior. In other words, the behavior of Chinese citizens (including businesspeople) is 'scored': their honor, honesty, and sincerity are measured to determine their further position and privileges in society, based on the obtained result (e.g. getting hospital accommodation under more favorable conditions, traveling abroad by plane, renting an apartment, etc.).

Today, the SCS in China is being applied in an increasing number of areas of everyday life, expanding its reach to foreign workers and companies operating in China, as well as to Chinese workers employed abroad. China's growing economic, political and military power, as well as various initiatives such as the Belt and Road, the New Silk Road, and the like, are leading to an accelerated expansion of its influence around the world (also in Europe and especially on the African continent). It entails legal regulation of certain institutes as well as legal heritage. With this in mind, the question arises whether this will lead to SCS becoming a model that European countries will follow, or even a new alternative to existing orders around the world. In this paper, the authors will try to answer this question, balancing between the, often rigid, attitudes that can be heard in the West regarding the SCS and HR protection in China, and the Chinese understanding that their way of life and understanding of citizens' rights represent an internal issue in which the West should not interfere, with the absence of almost any critical approach to this topic. In addition, the paper will emphasize the significance of existing legal systems that directly or indirectly deal with the ranking of individuals, as well as the differences between the Chinese and Western systems.

The authors of this paper believe that it can be rightly argued that the Chinese SCS is both a great novelty and an upgrade of the Western system, based on various quantitative criteria. At the same time, the authors believe and start with the assumption that the Chinese system will exert influence and lead to changes not just in Western countries, but also around the world.

THE CONCEPT OF SOCIAL CREDIT SYSTEM AS ONE OF
THE FORMS OF MASS SURVEILLANCE

One of the evolutionary forms of mass surveillance is the SCS. The term 'social credit' appeared in 2002, when one official wanted to draw a linguistic parallel with social assistance. It is not without reason that the mentioned system, which is essentially based on evaluating and ranking the behavior of officials, businesspeople, and ordinary citizens (with rewards and penalties) has become the subject of wide discussions, not only in the scientific and professional circles in China but also around the globe, primarily in the Western world.

The legal basis of the SCS in China lies in the State Council's 'Notice Concerning the Issuance of the Planning Outline for the Construction of an SCS (2014-2020)'. This document mentions the aim to promote 'integrity in government affairs', 'commercial sincerity', 'social integrity' and 'judicial public trust', which shows that these measures are targeted at individuals (the focus of this paper), as well as companies, judicial organs, and other governmental authorities. It also explains that the ultimate goal is a uniform SCS based on award and penalty mechanisms, presenting this idea in a general sense, with no references to quantitative measures and the collection of online data (Mac Síthigh and Siems 2019). After the publication of this document, various projects were put into practice, which laid further foundations for the SCS. In this regard, the Chinese authorities have created various mechanisms to punish those who violate the current regulations. One example of this would be the decision of the Supreme People's Court on creating public blacklists of persons who defied legally binding judgments, though now there are even more blacklists compiled by other authorities, i.e. the Ministry of Culture and Tourism lists those who have violated transport rules, such as smoking or carrying prohibited items (Mac Síthigh and Siems 2019). Implementation of this system through assigning negative points can also be seen in the situations when an individual does not visit their grandparents regularly, crosses the street during a red light, illegally disposes of garbage, etc. In case they don't respond to court calls, they will be reminded of their obligations every time they pick up the phone.

Following the act from 2014, several cities in China have also started pilot programs for creating their own SCSs, and by July 2018, that number has reached 40. These pilots share an emphasis on inducing moral and law-abiding behavior by incentivizing citizens, businesses, social organizations, and government agencies to adhere to the Law and regulations in selected key enforcement areas such as food safety and environmental protection. Governments publish blacklists for individuals and organizations with especially 'untrustworthy' or illegal behavior, resulting in sanctions such as limited access to high-speed trains and financial services (Kostka 2018). Some examples of the application of the SCS are related to the cities in Shandong Province (Jiangsu and Rongcheng), where the SCS functioned in such a way that each resident

'started' with 1000 points, whereby they could further increase or decrease them depending on their behavior in the community. Thus, citizens could lose points due to traffic violations, drunk driving, or even because of having a second child (given the Chinese policy of one child still present at the time), and they would get positive points for positive behavior in the community, such as caring for the elderly. The overall result would then be transformed into an appropriate status from A to D, which could affect the individual positively or negatively concerning the local authorities (such as preferential access to subsidies, or in the negative case, getting social security or business permits would be hampered or even denied).

The SCS has been evolving over the past few years, and in 2019 the General Office of the State Council issued a set of 'Guiding Opinions on Accelerating the Construction of an SCS to Build a New Credit-Based Supervision Mechanism'. The act was applied to all levels of government in China, not only to the central government but also at the level of provinces, regions, and local authorities. Neither ministries nor commissions within the State Council were exempted from the application of this act. The 2019 State Council guidance focused on government procurement and the market behavior of companies and consumers. However, the information collected from the CCP (Chinese Communist Party) members and officials have contributed to data sets that eventually will be utilized under the State Supervision Law, which was enacted in 2018 to strengthen monitoring of all employees in the public sector, bring about full coverage of state supervision, advance anti-corruption efforts, and modernize the national governance system. The choice of which data to collect determines what actions are rated: regularity of bill payment, customer satisfaction, liquor purchases, books bought, social media posts, sources of purchases, and so forth. The ratings themselves are based on the core socialist values developed by the CCP leadership. Social credit thus involves data-driven analytics systems in which algorithms can determine the consequences of values-based ratings (Catá Backer 2019, 209-214).

Based on the above, it would be a mistake to conceive the SCS as a single, integrated entity. Instead, the term covers an entire ecology of fragmented initiatives that share a basic set of objectives, operational frameworks, and policy language. From the government's perspective, the two prime objectives are improving legal and regulatory compliance, which is the major purpose of the punishment systems, and developing the financial services industry. For the private sector, this created opportunities to develop their scoring systems, which combine the functions of user ratings on platforms and a loyalty scheme (Creemers 2018).

THE CONCEPT OF SOCIAL CREDIT SYSTEM IN THE WEST

After outlining what the SCS in China is, the question arises of how specific such a system is, concerning what already exists in the West. A particularly interesting one would be the question of how much it differs from the credit systems that exist in Western societies. In the West, the Chinese SCS and any systems similar to it seem to be firmly rejected. This system is often characterized as a "tool of totalitarian surveillance" (Ohlberg, Ahmed and Lang 2017), an "invention of a digital totalitarian state" (Mozur 2019), or an embodiment of Orwell's '1984' and Pavlov's dogs: "act like a good citizen, be rewarded and be made to think you're having fun" (Botsman 2017). Nowadays, we can often hear statements that the Chinese SCS is incompatible with the political and cultural values of the West. These claims largely rely on the view that such systems cannot exist in liberal, democratic states of the West, so they can only be established in authoritarian political regimes in which certain forms of controlling the behavior of individuals already exist, such as systems *Dang'an* and *Hukou* (*Dang'an* is a system of records of the performance and attitudes of citizens, while *Hukou* is a system of household registration in China) (Zhang 2012, 503).

Although they involve other goals as well, most credit systems in the West have control, management, and behavior change as their primary goals, thus striving to create certain norms and values in a society. In both China and the West, the SCSs are in some cases voluntary (an individual must log in and log out based on consent – in Uber or Sesame Credit), while in other cases they are mandatory (regardless of personal choice). Furthermore, in both societies SCSs function as reputational systems of individuals or economic entities that are often on the verge of legality, oftentimes even crossing it.

In the West, rating systems are also well known outside credit systems (Mac Síthigh and Siems 2019). They can be easily found in the private sector in companies such as Airbnb, eBay, and Uber, which enable their users to rate each other based on various characteristics, such as politeness, etc. In the same vein, certain technologies follow the health habits of individuals, such as their sports and sleeping habits, and based on this data they categorize and often evaluate people (Frischmann and Selinger 2018). Judging from these examples, rankings nowadays can be found everywhere.

In the West, individuals are also ranked as travelers, clients, students, as well as products. Examples of this are all around us: agencies that deal with tracking devices to record driving patterns; landlords who choose tenants based on 'tenant blacklists' in the rental market (Barker and Silver-Greenberg 2016). The most well-known examples of rating systems are credit scores in the United States (e.g. FICO score) and other countries (e.g. Schufa in Germany), which assess a person's creditworthiness mainly based on financial criteria, and whose scores are often used by banks, insurance, and credit card companies.

Today, thanks to the rapid development of ICT methods, assessing people based on their physical and digital activities is becoming massively widespread in the West (Citron and Pasquale 2014, 1-33; Hurley and Adebayo 2017, 148; Harris 2018; Waszul 2019). However, we can see the expansion of rating systems not only in consumer behavior but in other areas of life as well. Peeple, AdviceRobo, FriendlyScore, and TrustingSocial are just some examples of a growing Western 'scored society'.

The scoring system can also be found in the public sector. It is implemented by public authorities in almost all Western countries, assessing the value, reliability, and credibility of citizens, school tests being the best example. These tests are likely to affect which university a person will enroll in and whether they will find a suitable job; they are in most cases comparative and are graded according to the results of other students. Andrew Yang, an American businessman and a former candidate in the 2020 Democratic Party presidential primaries, recently proposed introducing digital social credit methods. He believes that digital social credits could improve civic engagement and lead to a higher percentage of volunteers; in his proposal, credits can be obtained "by participating in a city fair", "teaching a local student" or "volunteering at a local shelter" (Roose 2018).

The concept of social credit is also mentioned at lower levels of government, such as municipalities, where the idea of using technology to incentivize good citizenship by creating a catalog of 'good deeds' has been promoted. Examples of these good deeds include voting, helping the elderly, attending first aid courses, organizing cultural events, and attending self-employment workshops. One idea suggests that citizens can choose and apply the good deeds from the municipal catalog, which will then be recorded and evaluated; based on the results, each citizen will receive a reward from the "municipal benefits" (Catalog of Good Deeds: Building Civil Society Through Daily Acts of Kindness 2016) catalog. The mentioned awards include free public transport and bicycle rental, tickets for cultural events, and communal housing at a reduced cost. Different versions of this system already exist in Barcelona in Spain (Social Coin), Cascais in Portugal (Innovative CityPoints), and Hull in the UK (HullCoin).

THE LEGAL SYSTEM OF THE EUROPEAN UNION (GDPR)

General Data Protection Regulation from 2018 (GDPR) represents a turning point in the protection of personal data in the European Union (EU). Personal data protection has become a noticeable worldwide trend. Any form of data processing must have a legal basis and consent; if there is none, such activity is illegal. When it comes to the GDPR, data processing does not require consent when: the processing is necessary to perform a contract between the parties, and the processing is in the legitimate interest of the controller of the data and it does not violate the fundamental rights of the

subject. On the other hand, the Chinese concept is somewhat different from the solutions set by the GDPR.

First of all, the Chinese standard expands the term sensitive personal information by including within this term any personal data that, in case of loss or misuse, may cause damage to personality, property, reputation, or health. Second, when it comes to certain types of consent to the collection of personal data, the GDPR does not require explicit consent to the sharing of data, invoking the legitimate interest of a controller or a third party. Unlike the GDPR, this one is not in the Chinese standard. Third, a significant difference between the Chinese standard and the GDPR is also related to the privacy notice: The Chinese standard is much stricter and is not explicitly stating what information can be omitted from the notice if an individual has access to that data from some other sources, but the privacy notice must be created on a one-by-one basis. Fourth, another difference between the Chinese system concerning the GDPR is that the Chinese standard provides for more detailed requirements concerning security testing and procedures for entities that process personal information. This is because the Chinese data protection system is based on a broader interpretation of the concept of national security risk, unlike the GDPR. Fifth, article 17 of the GDPR is particularly interesting since it regulates the right to be forgotten, i.e. the right to be erased. According to the mentioned article, the data subject has the right to the erasure of their data, and under certain conditions, the operator must delete that data without undue delay. The problem is that the Chinese understanding of the concept of privacy and Western understanding are not identical things. If privacy is seen as the right of people to decide for themselves what information about themselves to share with others, the question arises as to whether this is enough in the XXI century, the century of ICT and social networks.

Given that individuals consciously share a lot of personal data via social networks, as well as the fact that personal data is a 'commodity' sold on the market (even without the knowledge of its owners), the dilemma is whether the existing International Law and technology-neutral GDPR can cover all the 'loopholes' that appear in the application of regulations. It seems that the current legal frameworks sometimes give priority to the data collection phase and sometimes to the data processing phase. Therefore, the International legal framework regarding human rights and the protection of personal data contains a shortcoming in its application in certain situations, as well as corresponding procedural shortcomings.

CONCLUSION

It can be concluded that the SCS in China should not be viewed from a black and white perspective, nor as something completely new. If we compare the SCS with EU regulations, primarily with the data protection system set by the GDPR, and practice in western societies, it is noticeable that these are two completely different regimes, and by comparing these two systems we can come to certain conclusions. The main differences between the SCS and existing similar systems in the Western countries are in detail shown in Table 1.

Table 1: The Main Differences Between SCS in China and Western Countries (Source: Authors' depiction)

Systems	State Project	Consequences on the Individual	Main Focus	Data Collector	Image in the Mass Media
Western Countries	NO	Affect a person to a limited extent	Individuals	Private companies and Banks	Negative
China	YES	Affect a person in all areas of life	Society	Primarily state; private companies	Positive

It can be stated with confidence that the SCS in China may significantly help the resolution of numerous problems in society. For example, the SCS can contribute to reducing the crime rate, raising the environmental awareness of Chinese citizens, raising the financial discipline of citizens, leading to greater compliance with traffic regulations, improving the social responsibility of companies, etc.

As a result of good behavior, citizens gain a positive score that opens up other benefits and opportunities. Besides, it can be concluded that if citizens trust large companies or banks to which they entrust piles of personal data, then why should they not trust the state or local authorities. Of course, this could be accepted, provided that the government acts following the proclaimed principles of transparency, justice, and fairness and that large companies (such as Alibaba or Alipay) do not gain too much power in relation to the state. This is not the case only in China, but also in the developed countries of the West, where powerful insurance companies apply similar schemes, i.e. collect data from social networks to determine the number of insurance premiums. Also, private companies very often download citizens' data from other sources, such as state databases. This practice is known not only in China, but also in the United States and Western Europe (for example, in air transport). For example, the development has reached such a point in China that the system of so-called emotional surveillance through brain waves that monitor the behavior of employees has already begun to be widely applied, to help employers increase productivity and profits.

This possibility will certainly be attractive to employers in the West, especially if they manage to overcome the legal obstacles that could be in their way.

Another important feature of the Chinese system is authority: not only that it is all-encompassing, but it is also a state project. Whether certain technologies are used by private or public parties (such as state governments) makes a crucial difference. This is important because the state government, as sovereign on its territory, has a more extensive range of means to reward or punish citizens at its disposals, such as the use of physical force or the power to demand from companies to refuse services. For this project, China is developing a centralized database ecosystem whose sources are both public and private, and the outcome produced from the data has consequences in both the public and private sectors. Data sharing between government institutions and private companies (Alibaba, Tencent, and Baidu) leads to the creation of a centralized database through which many aspects of an individual's public and private life are recorded: commercial data (e.g. shopping habits,) social data (e.g. contacts from social platforms), as well as digital data (e.g. internet search history). Such a huge database will enable China to expand the logic of the system from a 'good citizen' to a 'good person', intending to create not only a 'perfect citizen' but also a 'perfect person'.

One more crucial difference between these two systems is also the consequence it has on the individual. A high or low score or even being blacklisted can have far-reaching consequences for an individual in China. Due to the very scope of the system and the fact that it is implemented by the state, the HR that are affected are basic HR such as the right to education, health, and housing, as well as freedom of movement and freedom of speech. Of course, the consequences of being blacklisted in the West can be severe as well, i.e. person who is classified as dangerous, or has a low FICO score – their basic HR can be potentially violated, even outside the original context in which the assessment is made.

However, one cannot deny the cultural contrasts that exist in these vastly diverse societies. One of the tools of the SCS in China is 'shame', which is considered to be an efficient means of social control, focused on maintaining harmonious relations within a society. In the West, on contrary, the focus is more on citizens' rights (Bedford and Hwang 2003, 127-133; Sheikh 2014, 387-403). While in Western societies there is a low threshold in terms of rights violations, one of the features of Chinese society and culture is a dose of mistrust towards strangers, hence the SCS seems like an appropriate trust-building tool. We can see this difference in the legal solutions that exist in these societies, regarding concerns about the state collection of citizens' data or the state use of data collected by other entities, especially due to many misuses of that data which occurred in the XX century. As a result of these misuses, in the West, especially in the European Union, a large number of legal regulations concerning data protection have been enacted, while provisions dealing with this issue in China are rare and fragmentary (Chen and Cheung 2017, 356).

Another particular part of the problem is the media, especially in the West, which report on the SCS in China in a very negative and sensationalist way for commercial and other reasons. This system contains certain novelties, but it should be emphasized that the accelerated technological development has brought numerous challenges related to respect for HR (primarily the right to privacy and non-discrimination) not only in China but worldwide as well. That is why legislators around the world are facing a great challenge of having to understand modern technologies not only from a strictly legal point of view (which IT experts so often resent) but also have to understand modern technologies and their scope and possibilities. On the other hand, creators of software must also make detailed analyses of the impact of new software concerning International guaranteed HR. Therefore, the media should avoid sensationalist headlines, and rather focus on conducting more detailed analyses of the shortcomings and virtues of the SCS before giving its final assessment.

Besides, the Chinese stance that every society has a sovereign right to its way of life and internal development, and that others should respect that without forcibly imposing their socio-political order, is not without grounds. Although there are opinions that such an attitude is just a good excuse for China to bypass the universally accepted postulates of HR protection, the authors believe that one should avoid such a rigid approach to the SCS, and rather take additional measures to improve it and bring it in line with HR standards.

The very fact that such a system will function in the most populous country in the world will have a great impact worldwide, and therefore it is necessary to pay special attention to it, to inspire the creation of human technologies that respect universally accepted HR as a minimum standard. Such an approach would, in the end, lead to a technically advanced society that respects the rights of its citizens and companies.

COMPLIANCE WITH ETHICAL STANDARDS

Statement of human rights:
This article does not contain any studies with human participants performed by any of the authors.

Statement on the welfare of animals:
This article does not contain any studies with animals performed by any of the authors.

Informed consent:
Not applicable.

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