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I. The Origins of the Guiding Cases System

On November 26, 2010, the Supreme People’s Court (“SPC”) promulgated the Provisions of the Supreme People’s Court Concerning Work on Case Guidance. Although these provisions only contain nine articles, they have great significance for constructing the Guiding Cases System (“GCS”) with Chinese characteristics. The GCS is a type of judicial system with Chinese characteristics designed by the SPC to address such phenomena as China’s vast territory, the imbalanced economic and social development amongst different regions, the complexity and variety of legal disputes, and the “same case, different adjudication” phenomenon existing among some courts and even among different judges within the same court. The purpose of the GCS is to summarize experience in adjudication work in a timely manner, guide the adjudication work of courts at various levels, unify the scales of justice and standards of adjudication, regulate judges’ discretionary power, and fully realize the guiding function of typical cases in adjudication work.

In fact, since the new China was established in 1949, and especially since it adopted the reform and opening up policy in 1978, the SPC has emphasized case guidance work. Case documents released by the SPC during the early years of the new China that were relatively influential and had a guiding nature included the Summary of the Inspection of Fornication with Underage Girls Cases Decided Since 1955, and the Summary of Criminal Charges, Punishment Types, and Sentencing Ranges (First Draft), which was prepared based on 5,500 typical cases. In the late 1970s, through internal documents, the SPC issued a selection of nine “counter-revolutionary” cases, including the LIU Dianqing Case, with an intent to correct the unjust, false,

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2 Translators’ note: in this Commentary, we use “Guiding Cases System” to refer to the system under which “guiding cases” are released and regulated in accordance with the Provisions of the Supreme People’s Court Concerning Work on Case Guidance. In the People’s Republic of China (“PRC”), this system has been officially named “案例指导制度” (literally translated as “Case Guidance System”). The choice of the term “案例指导制度” could lead to confusion because, as explained in this Commentary, the term “case guidance system” has been used as a generic term for many years to refer to any case system that has guiding significance.

3 With respect to the typical cases released by the SPC since the establishment of the PRC in 1949, see 李仕春 (LI Shichun), 案例指导制度的另一条思路 (Another Path for the Case Guidance System), 《法学》 (LEGAL SCIENCE), Issue No. 6 (2009); 杨力 (YANG Li), 中国案例指导运作研究 (Research on the Operation of China’s Guiding Cases), 《法律科学》 (SCIENCE OF LAW), Issue No. 6 (2008).


and wrong cases arising from the Cultural Revolution.\(^6\)

In the early 1980s, the SPC released some criminal cases, beginning the attempt to use cases to interpret law. At that time, the criminal cases issued by the SPC through internal documents mainly included the 75 criminal cases selected in three batches in 1983 for the purpose of directing the “strike-hard [initiative]”, and the four cases selected in 1985, including XU Xuqing, (Committing) the Crime of Destroying Soldiers’ Marriages.

In 1985, the Gazette of the Supreme People’s Court of the People’s Republic of China (hereinafter SPC Gazette) began publishing cases that had guiding significance. In the first issue of the 1985 volume, the SPC Gazette published four cases: FAN Ming and LIU Xilong, An Intentional Homicide and Rape Case; SU Feng, An Intentional Homicide Case; A Work Contract Dispute between the Engineering Plastic Plant in Jiangpu County, Nanjing Municipality and its Molding Workshop; and LIAO Changyi and LIAO Lunwan, A Housing Property Dispute. To date, the SPC Gazette has already released over 500 cases. Since 1998, unlike in the past, the cases in the SPC Gazette have not been required to be discussed and affirmed by the Adjudication Committee of the SPC before being released. The authoritativeness of these cases, therefore, has declined.

Since the publication of cases in the SPC Gazette, various case collections have emerged. The Selective Compilation of the People’s Court Cases and the Anthology of Adjudicated Cases in China are among the best. The Selective Compilation of the People’s Court Cases has been compiled by the Research Institute of Applied Legal Studies of the SPC since 1992. The selected cases are categorized into criminal, civil, economic, maritime, and administrative cases. The Anthology of Adjudicated Cases in China has been collaboratively compiled by the Senior Judges Training Center of China (predecessor to the National Judges College) and the Renmin University of China Law School since 1992. The cases in this collection are selected from cases adjudicated in courts at various levels across the country and are published in four separate volumes each year: a volume on the adjudication of criminal cases, a volume on the adjudication of civil cases, a volume on the adjudication of commercial cases, and a volume on the adjudication of administrative cases.

In 1999, various adjudication divisions of the SPC began to successively compile various adjudication references and adjudication guides, including the Reference for Criminal Adjudication, the Guide and Reference for Civil Adjudication, the Guide and Research on Adjudication Supervision, and the Administrative Enforcement of Law and Administrative Adjudication. The publication or the internal issuance of the above-mentioned cases had provided varying degrees of guidance for the adjudicative work of people’s courts. However, an

effective system of guiding cases had not yet been formed.

In 2005, the SPC released the *Second Five-Year Reform Plan of the People’s Court (2004–2008)*, in which the Court suggested “establishing and perfecting a case guidance system” and “emphasizing the significance of the guiding cases in unifying standards used in the application of law”. This was the first time that the SPC officially proposed the concept of a “case guidance system” and “guiding cases” and listed the case guidance system as an important task for judicial reform. Since August 2005, the SPC and the Supreme People’s Procuratorate have collaboratively compiled the *China Adjudication Guidance Series* (including the criminal and administrative volume and the civil volume). This is, in fact, a trial measure in response to the SPC’s release of the *Second Five-Year Reform Plan of the People’s Court* that suggests a reform measure concerning a case guidance system. On November 26, 2010, the SPC released the *Provisions of the Supreme People’s Court Concerning Work on Case Guidance* to formally carry out this important task. The adoption of the *Provisions of the Supreme People’s Court Concerning Work on Case Guidance* not only resolved the long-standing dispute over whether China’s judicial system should include a case guidance system, but also offered basic standards on the authority and the drafting process of guiding cases.

II. The Necessity of Establishing the Guiding Cases System

The SPC established the GCS mainly based on the following considerations:

1. Case guidance has a solid foundation in China’s judicial history

From ancient to contemporary China, precedents and cases have played important roles at both the legislative and judicial levels. During certain special periods, such as the Song and Yuan Dynasties, case law was even the main form of law-making. Ancient China’s judiciary had always paid great attention to the function of cases. In particular, in the Song Dynasty and the Yuan Dynasty, cases were a source of law and had legal force, similar to precedents in the West. There were two types of “li” (“cases”) in the Song period: one was “duan li” (“adjudicated cases”), the established examples of adjudicated cases, the other was “zhihui” (“orders”), the orders signed and transmitted down by officials from the Chancery and other departments. After [Emperor] Gaozong’s crossing to the south, due to the penal code being scattered and lost, the status of “li” had become even more important. Every emperor in the Song Dynasty practiced the compilation of “li”. Among these compilations, the most important ones are: *Shaoxing Criminal and Civil Difficult Duan Li*, *Qiandao New Compilation of Special Imperial Decrees and Duan Li*, and *Kaixi Criminal and Civil Duan Li*. As for “zhihui”, there were numerous of them. During the [Emperor] Ningzong period in the Song Dynasty alone, there were already tens of thousands of them. Since the establishment of

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7 Ancient China’s judiciary had always paid great attention to the function of cases. In particular, in the Song Dynasty and the Yuan Dynasty, cases were a source of law and had legal force, similar to precedents in the West. There were two types of “li” (“cases”) in the Song period: one was “duan li” (“adjudicated cases”), the established examples of adjudicated cases, the other was “zhihui” (“orders”), the orders signed and transmitted down by officials from the Chancery and other departments. After [Emperor] Gaozong’s crossing to the south, due to the penal code being scattered and lost, the status of “li” had become even more important. Every emperor in the Song Dynasty practiced the compilation of “li”. Among these compilations, the most important ones are: *Shaoxing Criminal and Civil Difficult Duan Li*, *Qiandao New Compilation of Special Imperial Decrees and Duan Li*, and *Kaixi Criminal and Civil Duan Li*. As for “zhihui”, there were numerous of them. During the [Emperor] Ningzong period in the Song Dynasty alone, there were already tens of thousands of them. The Yuan Dynasty emphasized very much the importance of cases. Cases in the Yuan period used the form of a mixed compilation of “imperial edicts”, “tiao ge” (“rules”), and “duan li” (“adjudicated cases”). Take *Zhizheng Tiaoage* as an example. There were 1,700 “tiao ge” and 1,059 “duan li”, accounting for more than 90% of the total items (2,905). Cases were an important basis for officers to adjudicate [pending] cases. In addition, it was very common for officials in the Yuan Dynasty to collect and compile cases. There was even a time when “there [were] li to cite, but no law to abide by”. See 张晋藩 (ZHANG JINFAN), *《中国法制史》* (HISTORY OF THE CHINESE LEGAL SYSTEM) (中国政法大学出版社 (China University of Political Science and Law Press), 1999).
the new China, cases have been valued to varying degrees in different historical periods, during which the exploration and practice of case guidance continuously progressed.

It is worth noting that the GCS is a concept adopted to be in contrast with *precedents* in the context of case law. Although case law and statutory law both have pros and cons, with regard to the trend of legal developments, the two are complementary and can effectively supplement each other. In fact, the two most representative legal systems across the globe, namely, the common law system and the civil law system, are developing a method of integration.

In China, the nature and characteristics of the current legislative and judicial systems are such that court cases, even guiding cases, cannot become a source of law. Article 126 of the Constitution of the People's Republic of China provides that “people’s courts exercise adjudication power independently in accordance with legal provisions”. Article 58 of the Constitution also provides that “[t]he National People’s Congress and its Standing Committee exercise the legislative power of the state.” Therefore, the courts do not have the legislative power to make law. If SPC cases had the same legal effect as law, it would mean that the courts possess legislative power, which would violate the spirit of the Constitution. Therefore, SPC cases cannot become precedents under the current framework of the Constitution. For this reason, the SPC has adopted the concept of “guiding cases” in order to differentiate them from precedents, which serve as a source of law. This not only conforms to China’s real situation but also clarifies the effect of the guiding cases.

2. Make sure that similar cases can be handled similarly

In practice, the phenomena of “same case but different adjudication and same law but different interpretation” occur frequently, which leads to parties lacking reasonable expectations for adjudication and also negatively impacts judicial credibility. Although the method of adopting legal interpretations, especially judicial interpretations, helps solve this problem to some extent, the abstract nature of interpretations and their lack of specific targets still make it difficult for judges to deal with specific cases in practice, as cases differ from each other in numerous ways. Therefore, Article 7 of the *Provisions of the Supreme People’s Court Concerning Work on Case Guidance* states that judges “should refer to” guiding cases when adjudicating similar cases so as to achieve the goal of “handling similar cases similarly”.

3. Fill the gaps in statutory law

China is in the midst of a period of social transformation, has a vast territory, has a diverse culture, and has unbalanced regional development. Therefore, although a socialist legal

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8 *Provisions of the Supreme People’s Court Concerning Work on Case Guidance, supra* note 1, art. 7, which stipulates that “people’s courts at all levels should refer to the guiding cases released by the Supreme People’s Court when adjudicating similar cases.”
system has been established, various new problems and new conflicts continue to arise. Statutory law has an inherent lagging characteristic, and in order to maintain its stability, authority, and predictability, it cannot be amended frequently. Thus, in order to settle disputes, case guidance is needed to fill the gaps in statutory law.

III. Expected Functions of the Guiding Cases System

The SPC established the GCS in the hope of achieving the following functions:

1. Unifying applications of law

The GCS has the functions of unifying standards in the application of law, preventing and reducing the instances of “same case, different adjudication”, and guiding, supervising, and restricting judges’ adjudication conduct. In situations where the facts of cases are the same as or similar to those of the guiding cases, judges refer to the guiding cases. Guiding cases can therefore be used as a reference for courts at all levels across the country when adjudicating similar cases, so as to achieve uniformity in the scales of justice. This system can effectively overcome the limitations existing in the operating process of statutory law and is conducive to unifying the application of law, regulating the discretionary power of judges, promoting judicial fairness, and enhancing judicial credibility.

2. Guiding judges in handling cases and regulating their judicial conduct

As current legal provisions are often somewhat abstract and theoretical, judges have much space for discretion during the process of specifically applying the law. Through guiding cases, judges’ conduct in applying the law can be regulated and, in particular, their discretionary power can be restrained. Thus, this helps achieve predictability in adjudication and maintains uniform adjudication.

3. Promoting the development of a rule-of-law society

The release of guiding cases has the functions of publicizing the legal system and educating the public. Through the widespread release of guiding cases, the conduct of the public can be influenced so as to promote the development of a rule-of-law society.  

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IV. Concluding Remarks

In Chinese history, the judiciary has always had the tradition of valuing cases. In China, cases have many functions. For example, they have the effects of spreading legal knowledge to the public, providing research materials to legislators and scholars, and guiding the adjudication of judges in lower level courts and improving their professional competence.

In the early 1980s, the SPC had not formally established the GCS; however, it had actually used cases to guide lower level courts’ adjudication work. This is because China at that time still did not have sufficient laws to be followed, and judicial personnel could not find bases for adjudicating cases. In order to deal with emergency situations such as “rehabilitation” and “strike-hard” occurring during that period, the SPC published cases to compensate for the inadequacy of legislation.

To date, China’s legislation has made tremendous progress and the situation of not having enough laws to follow has fundamentally changed. However, due to the rapid development and changes in Chinese society, statutory law cannot effectively address the current situation. Therefore, the SPC is resorting to cases again.

Furthermore, in today’s China, the rule of law is needed to promote state building and the sound development of the market. The rule of law is founded on systematic, non-contradictory legislation, and the latter needs a sound judicial system to ensure uniform application of legislation. “Uniform application of legislation” refers to giving the same legislation the same application as much as possible. Given that China is a large country, and the political, economic, and social development and needs of each region are different, “uniform application of legislation” is a formidable task. Through cases, the courts may be unconstrained by rigid legal provisions and can make reasonable judgments in accordance with the circumstances of social change. Thus, the GCS emerged in response to the relevant times and conditions.

China’s GCS has two characteristics. First, unlike the precedents in the Anglo-American legal system, which have decisive effect, guiding cases only have guiding effect. This fully respects judges’ autonomy in case adjudication. Second, the GCS can affect judges’ adjudication so as to unify judges’ understanding of legislation, improve their level of legal thinking, and regulate their judicial activities. The emergence of this type of case guidance system with Chinese characteristics exactly illustrates the complexity of current Chinese society and the formidability of the task undertaken by China’s judiciary.

Looking forward, following the development of the rule of law in China, the transformation of Chinese society, and the improvement of the quality of judges and the public’s legal awareness, uniform adjudication can also become possible. At that point, the significance of the GCS will decline. After all, because China is a country with a statutory law tradition, especially given the current situation of low judicial credibility, the SPC’s guiding cases cannot be case law with binding effect and can only have guiding effect.