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History of the China's Case Guidance System and Judicial Reform

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ABSTRACT

This thesis delineates the history of the development of the Case Guidance System (CGS) by combing through the Work Reports of the Supreme People's Court (SPC) since 1980 and specific legal norms on case guidance work. The development of the CGS in China can be divided into five periods: (1) From 1949 to 1978, when cases typically presented social conflicts and served as materials for law-making. (2) From 1978 to 1985, it was for interpreting statutes. (3) From 1985 to 2003, both judicial interpretation and cases were imperative and formed the "two-leg way" for law application. This period witnessed the exploration of the openness of the judicial trail. (4) From 2004 to 2018, there was a strong emphasis on the construction of the cases guidance system, and normative documents were formulated and issued. (5) From 2020 to 2023, the Retrieval of Similar Cases emerged and expand to consider other non-guiding cases to be used. The development of the CGS in China has three characteristics: (1) It has undergone a transformation from being a source of materials for law-making to a tool for the uniform application of laws, rather than a source of laws. (2) It possesses the function of publicizing the rule of law to citizens. (3) The Guiding Cases issued by the SPC have highly binding force, but the other non-guiding cases gradually be emphasized and could be considered in the trail, which means the scope of cases have expended and the new platform is forming.

Keywords: Case Guidance System; Work Reports of the Supreme People's Court; the uniform application of laws; History of judicial cases system



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INTRODUCTION

The laws of any society are enacted for the purpose of maintaining and consolidating its social system and social order, and it is only through a full understanding of the social context in which a particular law arises that the significance and role of these laws can be understood. ¹Cases, both in common law and civil law countries, are playing an increasingly important role. The traditional view is that the main difference between the common law system and the civil law system lies in the different sources of law, with the former taking precedent as the source of law and the latter regarding written law as the source. Mark Jia defines common law as the “almost exclusively judge-made law, while civil law is almost exclusively the law of systemized codes.”²

But with the integration of the two legal systems, precedent and statutory law complement and coordinate with each other. In recent times, civil law countries have paid more attention to cases as an important way of interpreting enactments. Although civil law countries do not have the tradition of following precedents, in order to guarantee the reasonable and effective operation of the case mechanism, many countries have adopted a series of procedural provisions in the design of the system to ensure that the judgement of the lower courts do not deviate from the jurisprudence of the Court of Final Appeal as far as possible, so as to ensure the coherence and consistency in the application of the law.³ The application of guiding cases indeed implicates a move toward the adoption of case law in the

¹ 瞿同祖: “中国法律与中国社会”, 商务印书馆 · 2010. vii. (Qu Tongzu, *Chinese Law and Chinese Society*, The Commercial Press, 2010, vii.

² Jia, Mark, *Chinese Common Law? Guiding Cases and Judicial Reform* (June 10, 2016). *Harvard Law Review*, Vol. 129, No. 8, p. 2213, 2234, Available at SSRN: <https://ssrn.com/abstract=2793857>.

³ Xie Shaojing, “Research on the Guiding Case System of the Supreme People's Court” (PhD DISS., University of Wuhan, 2015), p. 48.

country.⁴ The CGS is case system with Chinese character, which formally mentioned by the Outline for the Second Five-Year Reform of the People's Courts (2004-2008)(hereafter named Second Five-Year) in 2005.⁵ But in 2003, before formulating the former official document, the SPC already had started devising the CGS.⁶ Someone evaluated it as constituting an innovative system developed the in-depth content of China's rule-of-law system, having enriched and developed the in-depth of China's judicial system by their functions of remedying deficiencies in statutory law, unifying the judiciary, regulating adjudication, and promoting an impartial judiciary.⁷

Actually, at the beginning, there are many disputes about the implementation of CGS. First is whether China could adapt the precedent system. As for this question, the consensus is that China doesn't need to adopt the precedent system, but ought to strengthen the function of cases. The reason including: (1) The precedent is not suitable for China's current political system; (2) China does not have the long and solid historical tradition of case law that exists in the United Kingdom or other common law countries; (3) Chinese judges lack experience in case law methodology; (4) Case law itself has its

⁴ Mo Zhang, Pushing the Envelope: Application of Guiding Cases in Chinese Courts and Development of Case Law in China, 26 Wash. Int'l L.J. 269 (2017). Available at: <https://digitalcommons.law.uw.edu/wilj/vol26/iss2/5>

⁵ 《人民法院第二个五年改革纲要（2004-2008）》（The 2nd Five-Year Outline of the Program for Reform of People's Courts (2004-2008) (No. 18 [2005] of SPC)). Article 14, "A case guidance system will be established and perfected, and attention is being paid to the role of guiding cases in unifying standards for the application of the law, guiding the trial work of lower courts, and enriching and developing jurisprudential theories. The SPC will formulate normative documents on the case-guidance system, stipulate the criteria for selecting guiding cases, the procedures for selecting them, the manner in which they are to be issued, and the rules for guiding them." English version is available at: <https://www.cecc.gov/resources/legal-provisions/second-five-year-reform-program-for-the-peoples-courts-2004-2008-cecc>.

⁶ 刘作翔.“中国案例指导制度的最新进展及其问题.”东方法学.03(2015):39-46 p.40. Doi:10.19404/j.cnki.dffx.2015.03.004. (Liu Zuoxiang, "The Latest Progress and Problems of China's Case Guidance System", Oriental Law, No. 3, 2015, p. 40.)

⁷ Mei Gechlik, China Law Connect, Issue 1, June 2018. Judge GUO Feng, Deputy Director, Research Office of the Supreme People's Court, "On the Issue of the Supreme Court's Guiding Cases". p19. Available: <https://law.stanford.edu/publications/china-law-connect-issue-1/>

shortcomings.⁸ Therefore, China doesn't have precedent and even more precedent system, and it uses new word that is Case Guidance System to identify the difference and avoid to use precedent. But we have to confess that case law has played a longstanding supplementary instrument in Chinese law, which can date back to the Western Zhou Dynasty and the Spring and Autumn Period.⁹ This history is one kind of the foundation to utilize the judicial source behind the judicial cases.

Second is the difference between the real precedent in common law system and it. In order to answer this question, the first thing need to figure out is why China want to development CGS. Actually, the reason China carry out the CGS including: (1) There are many similar cases that ought to have similar judgement, but have so big different judgement, which raise great impact; (2) Implementing the CGS will have a positive impact on effectively utilizing our existing judicial resources and improving judicial efficiency; (3) Restricting the discretionary power of judges; (4) Making full use of every judicial decision.¹⁰

And with The Decision of the Fourth Plenary Session of the 18th Communist Party of China (CPC) Central Committee on Some Major Issues Concerning Comprehensively Promoting the Rule of Law (hereinafter referred to as the Decision) proposes to "strengthen and standardize judicial interpretation and case guidance, and unify the standards for the application of law", the CGS that used to just regarding as measure of judicial reform upgraded to the ruling

⁸ 沈宗灵. "当代中国的判例——一个比较法研究." 中国法学. 03(1992): 32-36. doi:10.14111/j.cnki.zgfx.1992.03.006. (Shen Zongling. "Jurisprudence in Contemporary China: A Study of Comparative Law", Chinese Law, 1992 (3).)

⁹ Deng, Jinting, The Guiding Case System in Mainland China (August 14, 2013). *Frontiers of Law in China*, Vol. 10, No. 3.P.4 , Available at SSRN: <https://ssrn.com/abstract=2318958> or <http://dx.doi.org/10.2139/ssrn.2318958>

¹⁰ 刘作翔: "我国为什么要实行案例指导制度", 法律适用. 08(2006): 5-8. p.5-6. doi:CNKI:SUN:FLSY.0.2006-08-002.

(Liu Zuoxiang, "Why should China implement the Case Guidance System", *Application of Law*, 08(2006): 5-8, pp. 5-6.

party's guidance of "support for justice".¹¹ Therefore, the CGS's function including: (1) Unifying standards for the application of law and guiding the trial work of the court; (2) Safeguarding judicial justice, improving judicial efficiency, establishing legal authority; (3) Enriching and developing legal theory, and realizing the benign interaction between judicial practice and theoretical research.¹² Simply put, CGS is a legal apparatus designed to summarize adjudicative experiences, to promote judicial consistency, and truncate judicial discrepancies across lower courts, rather than a law forming source like precedent and do not have normative implications.¹³

Because Chinese judgement can't automatically become guiding case, it must be selected and edited to meet the reform desires of the Chinese political and legal elite and judge do not have additional powers who just follow the statute law. Indeed, the CGS does not existed in the two legal system, and it is produced in a specific historical stage of China's judicial practice and has its own positive significance.¹⁴ Because China's comparatively conservative constitutional structure permits judicial interpretation to become a source of law but precludes judges from invading legislative power

¹¹ 刘作翔.“中国案例指导制度的最新进展及其问题.”东方法学.03(2015):39-46 p.39. Doi:10.19404/j.cnki.dffx.2015.03.004. (Liu Zuoxiang, "The Latest Progress and Problems of China's Case Guidance System", *Oriental Law*, No. 3, 2015, p. 39.)

¹² 胡云腾 & 于同志: “案例指导制度若干重大疑难争议问题研究” 法学研究.06(2008):3-24. doi:CNKI:SUN:LAWS.0.2008-06-002. (Hu Yunteng & Yu Comrade: "Research on Some Major Difficult and Controversial Issues of Case Guidance System" *legal research*.06(2008):3-24.)

¹³ Li Guo & Bulelani Jili (2018) The emergence of guiding cases in China, *Peking University Law Journal*, 6:2, p275-276, DOI: 10.1080/20517483.2018.1603643

¹⁴ 秦旺: “论我国案例指导制度的构建和适用方法——以《最高人民法院公报》为分析样本”. 法律方法与法律思维. 00(2007):205-221. doi:CNKI:SUN:FFFS.0.2007-00-021. (Qin Wang. "On the Construction and Application Method of China's Case System -- Taking the Bulletin of the Supreme People's Court as an Analysis Sample", *Legal Methods and Legal Thinking* (4), p. 207.) This paper specifically analyzing the different between "case" and "precedent" and shows the CGS is a special system in China.

and thus their decisions cannot have binding effect.¹⁵ Even though someone argues that the current GCS and common law system have the tendency to become more and more similar systems in reality.¹⁶

With the development GCS, the problem behind it gradually appear. There are two part of case system, one is the generation of precedent, another is the binding force of precedents, and the former is the base and the later is the purpose. The former is settled down through the SPC's administration to function, which issued the Provisions of the Supreme People's Court Concerning Work on Case Guidance (hereafter named Provision)¹⁷ to institutionalize selection and generation of guiding cases, and the Notice of the Research Office of the Supreme People's Court on Issuing the Opinions on Style for Compiling and Submitting Guiding Cases and the Format for Guiding Cases¹⁸ to standardize the writing format. The later part usually leads two questions, one is how to apply guiding cases, because guiding case have the overlapping function with judicial interpretation but without that strong binding force like interpretation.

Even though, there is opinion regarding guiding cases as a form of statutory interpretation, which expansion of SPC's judicial

¹⁵ Yang Li, "Practice and Theory of the Guiding Case System in China." *Hong Kong Law Journal* 46, no. 1 (2016): 307-338, p312.

¹⁶ Deng, Jinting, *The Guiding Case System in Mainland China* (August 14, 2013). *Frontiers of Law in China*, Vol. 10, No. 3. , Available at SSRN: <https://ssrn.com/abstract=2318958> or <http://dx.doi.org/10.2139/ssrn.2318958>

¹⁷ 最高人民法院关于案例指导工作的规定 (Provisions of the Supreme People's Court Concerning Work on Case Guidance, promulgated by the Adjudication Comm. of the Sup. People's Ct., Nov. 15, 2010, issued Nov. 26, 2010) Beida Falü Xinxi Wang (北大法律信息网) [Chinalawinfo], http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=143870, translated in Stanford Law Sch., *China Guiding Cases Project* (2015), <https://cgc.law.stanford.edu/wp-content/uploads/sites/2/2015/08/guiding-cases-rules-20101126-english.pdf>

¹⁸ 最高人民法院研究室关于印发《关于编写报送指导性案例体例的意见》、《指导性案例样式》的通知. (Notice of the Research Office of the Supreme People's Court on Issuing the Opinions on Style for Compiling and Submitting Guiding Cases and the Format for Guiding Cases, No. 2 [2012] of the Research Office of the Supreme People's Court). Source: https://www.pkulaw.com/en_law/c999c21c84d3b54ebdfb.html

lawmaking authority.¹⁹ Guiding case is not legally binding and cannot be invoked as a basis for judgment, but only as a reference for judgment. Therefore, the GCS is in a awkward position due to its non-mandatory reference role. Based on former fundamental nature of binding force, the effect of application of guiding case is not optimistic. Application of guiding case has become the biggest problem, which raises many attention.²⁰

It is intuitively see from the data that the application rate of guiding cases is very low. The number of guiding cases applied in adjudication is only more than 10,000, accounting for only about 0.01% compared with the more than 100 million adjudication documents published in the Judgement Online.²¹ The role of guiding cases play in daily judicial practice is rather limited.²² Therefore, there are many interesting, potential, complicated issues behind GCS needed to explore.

Actually, there are many papers to research China's case law, about its purpose, nature, characters, operation, problems, even though many of them describe the history of CGS, most of them just simply display and without a specific analyzing as well as shed light

¹⁹ Wang, Shucheng, Guiding Cases as a Form of Statutory Interpretation (October 11, 2018). Hong Kong Law Journal, Vol. 48, No. 3, 2018, Available at SSRN: <https://ssrn.com/abstract=3264562> or <http://dx.doi.org/10.2139/ssrn.3264562>

²⁰ Guo Ye and Sun Shu released a series of "Judicial Application of Guiding Cases of the Supreme People's Court", starting from 2016 and until now carry on. The newest one is Report on the Judicial Application of Guiding Cases of the Supreme People's Court in 2022, in Applied Law of China, No. 4, 2023.

²¹ As of November 15, 2024, a total of 150,509,604 judicial documents have been published on the Judicial Documents website. Source of information: <https://wenshu.court.gov.cn/website/wenshu/181029CR4M5A62CH/index.html?>. As of November 15, 2024, a total of 11767 judicial cases have been applied guiding cases. Source of information: <https://www.pkulaw.com/case/guidcase?SearchKeywordType=Title&MatchType=Exact&RangeType=Piece>

²² See Wang, Shucheng. "Guiding Cases and Bureaucratization of Judicial Precedents in China" University of Pennsylvania Asian Law Review 14, no. 2 (2019): 96-135. Hou Xiaoyan. "The Current Situation, Causes and Solutions of the Application of Guiding Cases", Jiaotong University Law, 2022 (4) : 64-66. 侯晓燕: "指导性案例适用失范的现状、成因及其出路". 交大法学. 04(2022): 64-66. (Hou Xiaoyan. "The Current Situation, Causes and Solutions of the Application of Guiding Cases", Jiaotong University Law, 2022 (4) : 64-66.

on the characters of its development. In addition, with the emphasize of the function of judicial case in China, there are many new judicial policy and case system issued through SPC, which is not analyzed by former research. Therefore, this thesis aims to depicts the history of the development of the case guidance system by sorting out the Work Reports of the SPC since 1980, as well as specific legal norms on case guidance work.

The reason for choosing the Work Report is that the Work Report of the SPC is, on the one hand, a summary of the key work of the People's court over the past year (or five years), with a variety of events and data, which shows the results as well as analyses the problems. Because according to the Constitution Law of China²³, the SPC is responsible to the National People's Congress (NPC) and its Standing Committee (NPCSC), and the Work Report is one way to show its working achievements and be supervised by the NPC and NPCSC. On the other hand, the Work Report also deploys the work tasks for the second year and points out the direction for the development of People's court for the next step.

Therefore, the development path of the relevant judicial policies and systems can be seen from the Work Report. Moreover, it is possible to find out from the Work Report what the case guidance system looked like before it was standardized. The selection of specific provisions is to further understand the history of the standardization of the case guidance system and to clarify the specific provisions therein.

²³ The Constitution of the People's Republic of China, Articles 113, "The Supreme People's Court is responsible to the National People's Congress and the Standing Committee of the National People's Congress. The local People's courts at all levels are responsible to the organs of state power that gave rise to them." Source: http://www.npc.gov.cn/c2/c30834/201905/t20190521_281393.html

WORK REPORTS OF THE CHINA'S SUPREME PEOPLE'S COURT

This part analyses the Work Reports issued by the SPC since 1980 and examines the history of the development of the case guidance system in China, attempting to address the following issues: first, the background and purpose of the use of cases in China's judicial practice; second, the role-playing of cases in China's judicial practice and their transformation; and, third, the future path of the development of cases in China, as well as their limitations. It should be noted that the earliest Work Report that can be found through searching is 1980, so the case development history before 1980 is mainly obtained through reading and sorting out other literature.

1 The Work Reports of the China's Supreme People's Court

1.1 The early days of the build of country - 1978²⁴

There was a special background to the summarisation of case experience in this period: in the early years of the founding of the country, laws were imperfectly formulated and enacted, judges mainly rely on policy to make the final decision. Then summarised on the basis of these cases and using the regular behind them for two ways: one is directly to another specific work of adjudication; another is to become basic material to establish and perfect legislation. The summaries of cases during this period were mainly focused on the criminal field, and included both summaries of a particular type of case and summaries of all types of criminal cases.

Firstly, a summary of cases of rape of underage girls. In this period, the rape of underage girls was a prominent crime, in order to crack down on the crime and protect the physical and mental health of immature girls, the SPC mobilised typical cases of rape of underage

²⁴ 周道鸾: “中国案例制度的历史发展”. 法律适用. 05(2004):2-8. doi:CNKI:SUN:FLSY.0.2004-05-000.(Zhou Daoluan.(2004).The development history of China's case system. Application of Law. No.5.)

girls from all over the country in May and June 1953, carried out inspections and summaries, and in early 1954 drafted the "Summary of Experiences in Dealing with the Cases of Rape of Underage Girls and Opinions on the Handling of Crimes of Rape of Underage Girls". After another two years of practical examination, the Summary of the Examination of Cases of Rape of Underage Girls since 1955 was drafted, which played a very good role in guiding the work of criminal trials, raising awareness, unifying sentencing standards, and cracking down on the criminal activities of rape of young girls.

The second is a summary of the accusation, kinds of punishment, and sentencing ranges. The background was that the courts had tried a large number of criminal cases and had accumulated a wealth of experience, but the fact that the new country had not formulated and enacted a criminal law had led to inconsistencies in determining the offences and applying the penalties. The SPC therefore organized its forces to mobilize and review 19,200 criminal cases tried by the People's courts at all levels, from which it selected 5,500 cases as the basic material for studying the problem, and, with reference to some of the materials summarizing the experience gained in criminal trials, drew up the nine categories of crimes, 92 accusation and 10 types of penalties common to criminal trial work at the time.

In various important meetings, speeches and documents, the role of cases in the early years of the founding of the nation was also highlighted. The National Judicial Conference held in 1956 clearly stated that the courts should focus on compiling typical cases, which would be validated and then sent to courts at all levels for comparative use. In March 1962, Mao Zedong, in response to some of the problems that existed at that time with regard to democracy and the rule of law, pointed out that "it is not possible to do without laws; criminal law and civil law must be worked out, and not only must laws be enacted, but cases must also be compiled." In December 1962, the SPC issued the Provisions on Certain Issues Concerning the Work of the People's Courts, which made principle provisions on 10 major

issues in trial practice, one of which was to “summarise the experience of the trial work and select cases to guide the work”, and made specific provisions on the selection and application of cases.

In this period, the brief of a particular type of case was mainly for the purpose of trial practice, while the brief of criminal cases as a whole was to provide basic material for the formulation and enactment of laws. In other words, the cases in this period were summarized for the sake of the adjudication itself as well as for the further enactment of the law, playing the role of presenting the social contradictions and the basic material for the enactment of the law.

1.2 Second phrase development: 1978-1985

In 1978, the Third Session of the Eleventh Conference of the Communist Party of China (CPC) put forward the policy of developing socialist democracy and strengthening the socialist legal system. Under the guidance of the spirit of the Third Session of the Eleventh Conference of the CPC, important laws such as the Criminal Law, the Criminal Procedure Law and the Civil Procedure Law were promulgated and put into effect one after another. The SPC, on the basis of its investigations and studies, has, on the one hand, actively made judicial interpretations in response to questions about the application of the law raised in trials and, on the other hand, has guided the trial work of courts throughout the country through the issuance of cases.

In 1978, the SPC corrected wrongful convictions by compiling and selecting cases. Such as Liu Dianqing case that was wrongful case during the the Cultural Revolution (1966-1976). In the second half of 1982, the SPC and some of the Higher People's Courts selected and issued a number of typical cases of economic crimes that were better in terms of implementing policies and using the law, for the reference of People's courts in dealing with the similar cases. Since June 1983, the SPC has selected and compiled a number of criminal cases, which have played a role in the correct conviction and sentencing of cases by local courts. In the five years since 1983-1988, the SPC has formally

issued 293 cases, mainly for the purpose of standardizing sentencing standards for some major, complex criminal cases, providing examples for the conviction and sentencing of some newly emerging criminal cases, and some civil and economic cases that have emerged in the process of reform and opening up.

Of these 293 cases, many were issued internally between 1980 and 1984 in the form of "documents of the SPC" (red-titled documents), of which only 55 were published in the Gazette (1985-1988). The fact that the SPC issued cases in the form of official documents during this period emphasize the role of case, but it was characterized by a high number of criminal cases and a low number of civil cases, focusing on legal application, issuing internally, lack of transparency, irregularity of publication and poor quality.

Therefore, under the direction of developing and strengthening socialist democracy and the rule of law, and in the face of the successive publication of laws, practice is faced with the problem of how to apply the law. Cases, as one of the tools for resolving the application of the law, operated systematically within the SPC. As a result, cases in this period began to solve the problem of the application of the law, but were characterized by imbalance (civil and criminal), lack of publicity, irregularity and low quality.

1.3 Third phrase of development:1985-2003

1.3.1 Waling on two legs: cases and judicial interpretation

Based on the 13th National Congress of the Communist Party said, "raise the degree of openness of the leading organs, to let the people know about important situations, and to let the people discuss important issues". In order to further increase the degree of openness of court proceedings, in 1984 the SPC decided to set up Gazette of the SPC, which has been openly circulated since January 1985 both at home and abroad. The Gazette is a compilation of the official literature of the SPC, and is the authoritative carrier to release judicial interpretations, judicial documents, typical cases and other types of

important judicial information.²⁵ The Gazette marks the entry of the case system of new China into a more standardized track. The criteria for selecting cases, the sources of cases, the procedures for selecting cases, the content of cases, and the issuance of cases have all become more standardized. As a result, since 1985, the SPC has not issued any more cases in the form of internal documents, realizing the full publicity of cases, enhancing the openness and transparency of cases, and further improving the quality of cases as a whole.

Cases from this period serve two purposes. Firstly, the role of education and publicity for the rule of law. The People's courts, through public trials, use typical cases to teach the law and educate on the rule of law. For example, "through public trials, the use of typical cases to carry out extensive publicity and education on the rule of law" (1985), "selecting typical cases to lecture on the law, to carry out vivid and concrete ideals, the rule of law and discipline education" (1986).

At the same time, the People's Courts have also reported on the results of some major cases by means of press conferences, achieving some good social results. For example, "the SPC and some local courts have held many press conferences to announce the results of some major economic crime cases, which have caused a great deal of repercussions throughout the country and have had a good social effect" (1994). "The SPC with the support and co-operation of the press and publicity departments, held press conferences and focused reports, announcing to the public the results of 49 major cases of public concern and influence, with favourable social reactions" (1995).

Secondly, the analyses of typical cases within the People's courts have become one of the sources of material on which help judicial decisions made. The 1985 Work Report reads, "the SPC, the local People's courts at all levels and the special courts are taking measures to conduct in-depth and systematic investigations and studies, to

²⁵ The link to check Gazette of the SPC: <http://gongbao.court.gov.cn/SinglePage.html?result=introduction>

analyse typical cases and to draw the line between crimes and non-crimes and between felonies and misdemeanours, so as to combat the perpetrators of serious economic crimes with greater vigour and accuracy, and to safeguard and promote the smooth progress of the reform of the economic system and the construction of socialist modernization.” In other words, the court’s analyses of typical cases during this period focused mainly on the criminal field, aiming to define the boundaries between crimes and non-crimes in criminal cases and to facilitate trials.

Subsequently, as society developed, the People’s courts, in conjunction with judicial practice, expanded the role of the cases from defining crimes and misdemeanours in criminal cases to the unification of sentencing standards, and then to some of the new civil and economic cases that had emerged in the process of reform and opening up, providing examples of the handling of these new cases, and drawing on them for reference for the adjudication of similar cases by the People’s courts at all levels. For example, it “explains how to apply the law to new and difficult issues encountered by lower-level People’s courts in handling cases, and issues cases for specific guidance”(1986).

“It has mainly standardized sentencing standards for some major and complex criminal cases; provided examples of the conviction and sentencing of some newly emerging criminal cases; and provided examples of the trial of some civil and economic cases that have emerged in the process of reform and opening up” (1988). “The SPC also issues cases in due course for the benefit and reference of People’s courts at all levels when they hear similar cases” (1998).

This period should also not overlook judicial interpretations, which, like cases, have the function of coordinating the work of the courts throughout the country)²⁶. After 1990, judicial interpretations

²⁶ 周道鸾: “中国案例制度的历史发展”. 法律适用. 05(2004):2-8. doi:CNKI:SUN:FLSY.0.2004-05-000.(Zhou Daoluan.(2004).The development history of China's case system. Application of Law. No.5.)

became the most frequent means of solving problems of legal application in the Work Reports, with relatively little reference to cases. In 1990, the SPC issued 31 judicial interpretations on criminal, civil, economic and maritime matters, 318 in the five years from 1989 to 1993, 110 in the five years from 1993 to 1997, and 31 in 1999. From 1985 to 2003, a total of 428 judicial interpretations and 427 model cases were published in the Gazette of the SPC, which were used for the purpose of explaining and referring to the application of the law. Therefore, the number of judicial interpretation and model case published in this phrase in basically same.

Table 1 the number of judicial interpretation and model cases during 1985-2003

Year	Judicial interpretation	Model cases
1985	18	15
1986	20	12
1987	17	12
1988	24	14
1989	13	20
1990	17	18
1991	4	13
1992	16	17
1993	23	22
1994	19	22
1995	15	22
1996	26	23
1997	18	22
1998	33	22
1999	22	39
2000	35	35
2001	45	35
2002	41	33
2003	22	31
Sum total	428	427

Source: author's compilation based on Gazette of the SPC²⁷

Some of the judicial interpretations were not published in the Gazette. Including the Answers to Questions on the Implementation

²⁷ Communiqué Introduction, Supreme People's Court of the People's Republic of China available online via <http://gongbao.court.gov.cn/SinglePage.html?result=introduction>

of the Supplementary Provisions on the Punishment of Corruption and Bribery(1990), the Summary of the Working Symposium of the National Courts on Reduction of Sentences and Parole (1990), and the Interpretation of Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases of Fraudulent Purchase of Foreign Exchange, Foreign Exchange Evasion and Illegal Trade in Foreign Exchange (1999), which were not published in the Gazette.

In fact, the definition of the relationship between judicial interpretations and cases remains a controversial issue. Someone believed that judicial interpretations are a distortion of cases, since in the drafting of judicial interpretations, basically every provision is supported and sourced by a specific case²⁸; the other view was also expressed that cases, especially guiding cases, were not the same as judicial interpretations²⁹. This paper does not discuss the differences between the two, but simply uses the two as a way for the SPC to coordinate the uniform application of the law at all levels of courts.

In the era of increasing the openness of court trials, the public availability of cases is both material for rule of law education and internal analysis of uniform judicial decisions. On the one hand, through public trials and press releases, the law is popularized for the public; on the other hand, based on the trial experience of practical cases, the application of the law is further unified. And with the development of society, the judicial interpretations formed from cases have gradually become an important and standardized basis for adjudication, enabling the SPC to achieve uniformity in the application of the law through the “two-legged approach” of cases and judicial interpretations.

²⁸ Yu Lingyun, *Case Analysis and Research Methods in Administrative Law* (Second Edition), Tsinghua University Press, 2019.

²⁹ Mr. Hu in his article published in the official journal of SPCC explicitly declines to consider guiding cases as a new form of judicial interpretations and confirms the factual binding force of guiding cases.¹⁰⁴ Also, there is no “and so on” in Article Six. The list is exclusive. The issuance of a different provision especially on case guidance exactly proves the non-inclusion of guiding cases in judicial interpretations.

1.3.2 Central and local levels

In addition to the standardized publication of cases through the Gazette, the relevant departments of the SPC also selected and compiled a variety of trial cases during this period for the purposes of teaching, research and guidance in the conduct of trials. However, none of these cases have been discussed by the Judicial Committee of the SPC or validated by the leadership of the SPC, and couldn't fully represent the views of the SPC, and their authority is not comparable to that of the cases published in the Gazette.

The carriers of the selected cases include: Since 1992, the China Senior Judges Training Centre (the predecessor of the National Judges College) and the School of Law of Renmin University of China have jointly edited and published *The Essentials of China's Trial Cases*. In 1992, the Institute of Applied Law of the SPC edited and published *Selected Cases of the People's Courts*. After 1999, the trial courts of the SPC successively edited and published various trial references and trial guides. Thus, the publication of cases in Gazette and the selection of cases by the various trial divisions of the SPC have, on the one hand, made the development of cases more standardized and transparent and, on the other hand, enriched the types and effectiveness of cases.

The good signals released from the SPC about cases and adjudication documents have promoted local innovation and experimentation in cases. In 2000, the Work Report pointed out the problem of the poor quality of adjudication documents, issued the *Style of Criminal Procedure Documents of the Courts*, reformed and standardized the production of adjudication documents, and proposed that, from 2000 onwards, adjudication documents of the SPC would be progressively made available in the media and on the Internet. The disclosure of adjudication documents, and adjudication document as original case, is a reflection of the further importance attached to the role of cases. The public disclosure of adjudication documents, firstly, canceling the restriction that cases can only be circulated and used internally, so that members of the public can

consult and compare them; secondly, it dispels the concern that localities will violate the central government's regulations by releasing and using cases on their own.

Because the adjudication documents are more original than the model cases, if the former can be made public, then will be carefully selected and thorough consideration of other cases for publication, it is less likely to make mistakes. From "will gradually be published in the media and on the Internet" in 2000, to "has been gradually published in the media and on the Internet" in 2001, then to 2002, "Decision documents will be made public", and finally, in 2003, "the reform of judicial documents will be further intensified, and a system of public access to judicial documents will be implemented".

Table 2 The central reform about adjudication during 2000 to 2003

Year	Specific Content
2000	The production of adjudication documents was reformed and standardized to enhance reasoning, thereby increasing the credibility of the People's court decisions
2001	Decisions of the Supreme People's Court have been progressively published in the media and online
2002	Disclosure of adjudication documents, clarification and formulation of judicial interpretations in preparation for accession to the WTO
2003	Further increase the reform of adjudication documents. Emphasis has been placed on analyses of evidence and elaboration of the applicable law, and the rationality of the adjudication documents has been enhanced. A system of public access to adjudication documents has been implemented, and adjudication documents have been published in the media and on the Internet, so as to enhance the openness and transparency of adjudication results and to accept the supervision of the people.

Source: author's compilation based on the Work Report of SPC from 2000 to 2003.

Beginning in 2002, local courts began to issue their own cases in order to guide their trials, actively exploring the role of cases in trials.

Table 3 The local case innovation during 2002-2004

Time	Province	Document/System	Carrier
2002/7/26	Henan	Several Provisions on the Implementation of the Precedential Judgment System	Local official announcement
2002/10/9	Tianjing	Trial Implementation of Several Opinions on the Implementation of Precedent Guidance in Civil and Commercial Trials	The Tianjin Trial Publication
2003/4/30	Henan	Interim Provisions on Implementing the Typical Case Guidance System (for Trial Implementation)	Guiding typical cases
2003/6/19	Sichuan	The "Rules of Judgement" of the Intermediate People's Court of Chengdu City, Sichuan Province	Judicial Committee Express
2003/6/19	Jiangsu	Opinions on Establishing a Typical Case Release System and Strengthening Case Guidance Work	Refer to the Case Journal
2004/3/26	Sichuan	The "Typical Cases" release system of Sichuan Higher People's Court	The Sichuan Trial

Source: author's compilation based on the current literature.

Thus, the characteristics of the cases in this period include: firstly, there is a plurality of subjects who publish cases, from the central to the local levels involving courts at all levels and their adjudication departments; secondly, there are different criteria for the selection of cases, their names, carriers, etc.; and thirdly, there is no specific reference to how to use these cases, but only a selection and compilation of them.

1.4 Standardized development of case work: 2004-2018

In 2005, the SPC issued the Outline of the Second Five-Year , which explicitly proposed "establishing and perfecting the case guidance system". The SPC formulated normative documents on the case guidance system, stipulating the criteria for the selection of guiding cases, the procedures for selection, the manner of issuance, and the rules for guidance. Accordingly, the SPC listed the research

on the case guidance system as a key research topic for the national courts in 2005, and for the first time carried out large-scale empirical research on the case guidance system on a national scale. In December 2008, the Opinions of the Central Political and Law Commission(CPLC) on Several Issues Concerning the Deepening of the Reform of the Judicial System and Working Mechanisms³⁰ made the case guidance system an important element of the judicial reform of the Party and the State. In 2009, the Opinions of the CPLC on Solving Outstanding Problems in Political and Law Work by Deepening the Study and Practice of the Scientific Outlook on Development³¹, required the central political and law organs to accelerate the construction of a case guidance system in line with China's national conditions.

In December 2009, the SPC issued the Opinions on the In-depth Implementation of the Spirit of the National Political and Legal Work Television and Telephone Conference (Fa [2009] No. 59)³², proposing: the issuance of guiding cases, the strengthening of supervision and guidance of grass-roots level work, and the establishment of a case guidance system as an important initiative for the implementation of the three key areas of work³³, formulating a work programme, identifying functional departments, and actively organizing and carrying out case guidance work.

Every year from 2006 to 2010, the Work Reports of the SPC explicitly mentioned case guidance. In 2006, judicial interpretation was still the way to apply the law accurately, but under the Second Five-Year, the case guidance system began to be improved. In 2007, the system of judicial interpretation and case guidance became part of the working mechanism for judicial interpretation that unified

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http://www.npc.gov.cn/npc//c2/c189/c221/201905/t20190522_110339.html

Source:

³¹

http://www.npc.gov.cn/npc////c2/c189/c222/201905/t20190522_84863.html

Source:

³² Source: http://www.law-lib.com/law//law_view.asp?id=305245

³³ The three key tasks are: "vigorously promote the resolution of social contradictions, social management innovation, and fair and clean law enforcement."

standards for adjudication and regulated the discretion of judges. In 2008, the work of judicial interpretation was standardised, and the project and research system for judicial interpretation was improved; at the same time, model cases were continually published in the Official Gazette, accumulating experience for exploring the establishment of a case guidance system. An in-depth study of the case guidance system was conducted on the basis of the research.

In November 2010, the SPC formulated and issued the Provisions of the SPC on Case Guidance (No.51 [2010] of SPC). The aim is to strengthen the guidance of courts at all levels in their trial and execution work through the logic and persuasiveness of guiding cases in the correct application of the law, the scientific nature of the case-guidance system, and the authority of the organ issuing the guiding cases, and thus also as a manifestation of the exercise of the power of trial supervision.³⁴ In 2012, the first batch of guiding cases was issued, and the number of guiding cases issued each year thereafter became a constituent part of the SPC Work Report (except for the 2019 Work Report, which did not address the specific number of guiding cases).

³⁴ 胡云腾, et al. “《关于案例指导工作的规定》的理解与适用”. 人民司法. 03(2011):33-37. p.33. doi:10.19684/j.cnki.1002-4603.2011.03.009. (Hu Yunteng et al. “Understanding and Application of the Provisions on Case Guidance Work”, People's Justice (Applied), 2011, No. 3, p. 33)

Table 4 The specific content related to cases guidance during 2006 to 2019

Year	Specific content
2006	Improving the cases guidance system
2007	Efforts should be made to explore the case guidance system and standardize the discretionary behavior of judges
2008	169 model cases were issued through the Gazette, accumulating experience for exploring the establishment of a case guidance system.
2009	Implementation of a case-guidance system, pilot testing of sentencing norms and harmonisation of adjudication standards
2010	Explore the establishment of a case-guidance system to harmonise the standard of case adjudication
2011	Formulation the Provisions of the SPC on Case Guidance, timely issuance of typical cases, and strengthening of trial guidance for difficult and complex cases
2012	Issuing the first batch of guiding cases, guiding courts at all levels in the proper adjudication of similar cases, and unifying standards for adjudication. The system of case guidance has been improved, and the overall judicial level of the People's courts has been continuously raised.
2013	Strengthening case guidance and strict standards of judicial decision-making
2014	Issuance of 14 guiding cases to unify the standard of judgement in similar cases
2015	Issuance of 22 guiding cases to unify the standard of decision-making in such cases
2016	It has strengthened its case-guidance work, issuing 12 guiding cases to unify judicial standards.
2017	21 guiding cases were issued.
2018	Issuance of 80 guiding cases(5 year from 2013-2017)
2019	No

Source: author's compilation based on the Work Report of SPC from 2006 to 2019.

In May 2015, the SPC issued the Detailed Rules for the Implementation of the Provisions of the SPC on Case Guidance (No. 130[2015] of SPC)(hereafter named Detailed Provisions), for the 2010 release of the Provisions made further additions. In fact, the drafting of the Detailed Provisions, as early as 2010 on the formation of the first

draft, and has been in a variety of work symposiums to solicit views, before and after the public revision of 11 drafts.³⁵ Combining with two normative documents, the characters of guiding case could summary as following: (1) Guideline cases are rewritten and edited versions; (2) Guiding cases go through an administrative selection process; (3) The instructive portion of the guidance case is focused on the main points of the decision; (4) The legal effect of guiding cases is still open and applied in a special way.³⁶ Since then, the normative documents on guidance cases have been developed and published, and guidance cases continue to be published in subsequent years.

1.5 Expand the scope of applicable cases: 2020-2023

Difficulty in application and low application rate have been the problems surrounding the use of guiding cases. Some scholars have analyzed the reasons for the difficulty of application, including three: (1) the effectiveness of guiding cases is unknown. (2) the judge to avoid the burden of judicial argumentation, when the guiding case is put forward, with or without reference to the need to make the obligation of argumentation. (3) judges are not familiar with the method of application of the case (the judges in our country are more favourable to the law of deductive reasoning); as well as the reasons for the low application rate include three: (1) related to the judges' insufficient understanding of the guiding cases. (2) the quality problem of some guiding cases. (3) the fact that the additional function of the cases themselves (e.g. political or policy function) is

³⁵ 郭锋, 吴光侠, 李兵: “《〈关于案例指导工作的规定〉实施细则〉的理解与适用”. 人民司法.17(2015):30-36. p.30. doi:10.19684/j.cnki.1002-4603.2015.17.007. (Guo Feng, Wu Guangman, Li Bing, Understanding and Application of the Implementing Rules of the Provisions on Case Guidance Work, People's Justice (Application), 2015, No. 17, p. 30.)

³⁶ 张骥. 论中国案例指导制度向司法判例制度转型的必要性与正当性. 比较法研究, 2017(5):135. DOI: CNKI:SUN:BJFY.0.2017-05-010 (Zhang Qi, On the Necessity and Legitimacy of Transforming Chinese Case Guiding System into Judicial Precedent System, study of comparative law, 2017, No.5, p135.)

stronger than the guiding function.³⁷ The low number of guiding cases is also responsible for the low usage. By the end of 2023, the SPC issued a total of 224 guiding cases, combined with the total number of cases closed in 2022 of 30,809,860³⁸, guiding cases are difficult to match the various judicial practices. Therefore, the mechanism of Retrieval of Similar Cases is gradually proposed.

The official release of the normative document on Retrieval of Similar Cases came in July 2020, when the SPC issued the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation) (No. 24 [2020] of the SPC)³⁹. In fact, before the formal release of the normative documents on similar cases retrieve, various documents were emphasizing the importance of the similar cases.

It shows that by expanding the scope of cases, the establishment of the Retrieval of Similar Cases has gradually become one of the ways to unify the application of law and improve judicial credibility. But expanding scope of cases also facing how to apply different cases to unify the application of law, because it means there would be a group of similar cases exist at same time and in some aspects they also different with each other, which depend the standards how to judge similarity. There are conflicts even they are concluded to similar cases,⁴⁰ which also lead similar case retrieval has become a reason for

³⁷ 孙海波: “指导性案例的隐性适用及其矫正”. 环球法律评论. 02(2018):144-164. doi:CNKI:SUN:WGFY.0.2018-02-009. (Sun Haibo: The Implicit Use of Guiding Cases and Its Correction, Global Law Review, No. 2, 2018.)

³⁸ See 2022 National Gazette of Judicial Statistics for the Courts: <http://gongbao.court.gov.cn/Details/20587eaf248beb61ed6596018865c.html?sw=%E7%B%9F%E8%AE%A1>

³⁹ Source: <https://www.chinacourt.org/law/detail/2020/07/id/150187.shtml>

⁴⁰ 周维栋: “论司法类案的效力层级及其冲突协调规则”. 中国法律评论. 05(2022): 67-70. (Zhou, Weidong: Effectiveness Hierarchy of Judicial Similar Cases and the Rules for Mediating the Conflicts about Judicial Similar Cases. China Law Review, 05(2022): 67-70.) . 高尚: “司法类案的冲突及解决.” 北方法学. 05(2023): 117-121. DOI: 10.13893/j.cnki.bffx.2023.05.008. (Gao Shang: On the Conflicts between Judicial Cases and its Resolution, Northern Legal Science, No. 5, 2023.).

parties to be dissatisfied with the judgment in many cases, affecting the effectiveness of the similar case retrieval mechanism.⁴¹

Table 5 The documents and its specific contents about promoting the case guidance

Data	Document	Specific Content
2017/4/12	Opinions of the SPC on Implementing the Judicial Accountability System and Improving the Trial Supervision and Management Mechanism (for Trial Implementation)(No. 11 [2017] of the SPC) ⁴²	The People's courts at all levels shall maximize the role of the specialized judges' conferences and the judicial committees in summarizing the trial experiences and unifying adjudicatory standards, and on the basis of improving the reference for similar cases, adjudicatory guidance and other related work mechanisms, establish a compulsory retrieval mechanism for similar cases and associated cases to ensure the unity of adjudicatory standards for similar cases and the unity of application of laws.
2017/7/25	Notice by the SPC of Issuing the Opinions of the Supreme People's Court on the Implementation of the Judicial Accountability System (for Trial Implementation) (No.20 [2017] of SP) ⁴³	In the trial of a case, a judge handling the case shall, on the case handling platform, file system, China Judgments Online, www.faxin.yn.yyttgd.top, the Intelligent Trial System, etc., comprehensively search the similar cases and correlated cases closed concluded or under trial and develop a report on the searching of similar cases and correlated cases. Where there is difficulty in the searching of similar cases and correlated cases, it may be submitted to the trial management office for joint study and suggestion offering jointly with the relevant trial business tribunal, research room and information center.
2018/12/4	The Opinions on Further Comprehensively Implementing the Judicial Accountability System (No. 23 [2018] of SPC)	Improving and perfecting mechanisms for the uniform application of the law. People's courts at all levels shall, on the basis of improving working mechanisms such as class case references and adjudication guidelines, establish a mandatory search mechanism for similar cases and related cases to ensure uniform standards for adjudication of class cases and uniformity in the application of the law. In cases where there are disputes over the

⁴¹ 高一飞、王佳星：“裁判文书写明类案检索情况研究”，《四川轻化工大学学报（社会科学版）》. 03(2021):32-42. (Gao Yifei and Wang Jiaying, Study on the Search Situation of Class Cases Written in Referee Documents, Sichuan University of Light and Chemical Engineering (Social Science Edition), Vol. 3, 2021, pp. 32-42.)

⁴² Source: http://www.pkulaw.yn.yyttgd.top/en_law/fbc11ffee49d0a36bdfb.html

⁴³ Source: https://www.pkulaw.com/en_law/8290a61626380fefbdfb.html

		application of the law or where there is a possibility of "different judgements in similar cases", the judge undertaking the case shall produce a report on the search for related cases and similar cases, and shall explain this in the deliberations of the collegial panel or in the discussions of the conference of professional judges.
2020/7/27	Notice by the SPC on the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation)(No. 24 [2020] of the SPC) Opinions of the SPC on Improving the Working Mechanism for Uniform Legal Application Standards (No.35 [2020] of SPC) ⁴⁴	Provide specific opinions on the work of retrieval reports for similar cases in People's courts, totalling 14 articles.
2020/9/14		Improving the working mechanism for compulsory retrieval reports for similar cases and new types of cases Regulating and improving the retrieval of similar cases: The presiding judge shall work effectively on the retrieval and analysis of similar cases in accordance with the requirements as prescribed in the Guiding Opinions of the Supreme People's Court in Unifying the Application of Law to Strengthen the Retrieval of Similar Cases (for Trial Implementation). For cases which are planned to be submitted to professional judges' meetings or the Judicial Committee for discussion and decision, or which lack clear judgment rules, or unified judgment rules of which are yet to be established, or in which the retrieval of similar cases is required by court or tribunal presidents according to the authority over the supervision

⁴⁴ Source: http://www.pkulaw.cn/yyttgd.top/en_law/b368863290e01a5bbdfb.html

		<p>and administration of trials, the retrieval of similar cases shall be conducted. For cases in which the retrieval of similar cases is required, the presiding judge shall explain the situation in collegial bench reviews, discussions at professional judges' meetings and trial reports, or prepare a special report on the retrieval of similar cases, which will be transferred along with cases and filed for future reference.</p> <p>Regulating the use of results in the retrieval of similar cases: If, during the retrieval of similar cases, a retrieved similar case is a guiding case, the presiding judge shall make a judgment with reference to the case, except for those which conflict with new laws, administrative regulations, or judicial interpretations, or those which have been replaced by new guiding cases. If other similar cases are retrieved, the judge may take them as a reference for making judgments; and if there is an issue of inconsistency in the application of law in a retrieved similar case, such an issue shall be resolved through the mechanism for the resolution of differences in the application of law based on a complete set of factors such as court level, time of trial, and whether such an issue has been discussed by the Judicial Committee. The People's courts at various levels shall summarize and review the information concerning the retrieval of similar cases on a regular basis, and disclose such information in their own courts or other courts within their respective jurisdiction in a certain form for reference by judges in case handling.</p>
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Source: author's compilation based on the documents published by SPC.

Therefore, it can also be seen from the Work Report that after the start of the standardization of retrieval reports for similar cases in 2020, the similar cases search, like the case guidance system, plays an important role in the uniform application of the law. The similar cases and guiding case are interconnected to underscore their significance to unify the application of law.

Table 6 The specific content describing guiding cases of Work Report during 2020 to 2023

Year	Specific content
2020	31 guiding cases were issued Establish a mandatory search mechanism for similar cases and related cases.
2021	17 guiding cases were issued Establishment of mechanism for resolving difference in the application of the law through preliminary filtration of similar cases research, study and consultation by a conference of professional judges, and discussion and decision by the Judicial Committee
2022	31 guiding cases were issued Establishing a leading group on the uniform application of law in the SPC, giving full play to the role of the Judicial Committee, the Professional Judges' Conference, judicial interpretations and case guidance in unifying the criteria for adjudication, promoting the retrieval of similar cases, standardisation of sentencing and the use of judicial big data to assist in the handling of cases, strengthening the review of the operational documents of trials in all higher courts, and regulating the discretionary power of judges
2023	119 guiding cases were issued (5 years from 2018-2022) Strengthening and standardising judicial interpretation and case guidance, and promoting a system of mandatory report of retrieval of similar cases to promote uniformity in the application of the law

Source: author's compilation based on the Work Report of SPC from 2020 to 2023.

SPECIFIC PROVISIONS FOR CASE GUIDANCE WORK

2. Specific Provisions for Case Guidance Work

2.1 The Provisions of the China's SPC on Case Guidance

2.1.1 Formulation Process

In 1985, the SPC decided to launch the Gazette, which has been publicly available since January 1985, and in which case is an important element. Using the Gazette as a vehicle, the SPC began to explore the publication of summary of decisions and judgement to guide the trial and enforcement work of courts throughout the country. In October 1999, the SPC issued the Outline of Five-Year Reform Programme for the People's Courts, stating that: from the year 2000 onwards, model cases that related to the problem of application of law, discussed and determined by the Judicial Committees of the SPC, will be published for reference by the lower courts when adjudicating similar cases. In 2005, the SPC issued Second Five-Year, which explicitly proposed "establishing and perfecting the case guidance system".

In 2007, in order to ensure the quality and efficiency of the drafting of the regulations, the SPC set up a drafting group, with the relevant leaders taking the lead in organizing research. The drafting group compiled and collated a large amount of informative research material, summing up the practical experience of local courts at all levels in carrying out case guidance work, and laying a solid theoretical and empirical research foundation for exploring the establishment of a case guidance system with Chinese characteristics. On 5 August 2008, the President of the SPC, Wang Shengjun, gave instructions on a report on the case guidance work: "Fully listen to the opinions and ensure that the 'guidance' is in line with the provisions of the law."

Same year, in accordance with the research and training programme for the establishment of a case-guidance system under the sub-project "Establishment of a case-guidance system" of the cooperation project between the Government of China and the European Union/United Nations Development Programme (UNDP) entitled "Equitable Development, Public Governance --- Strengthening the Rule of Law and Participation in Civil Society", the SPC conducted an in-depth study of the case-guidance system by collecting information, summarizing problems, holding seminars, and organizing experts and scholars in related areas to carry out demonstration work.⁴⁵

In February 2009, the Central Political and Legal Affairs Commission (CPLC) issued the Opinions on Solving Outstanding Problems in Political and Law Work through In-depth Study and Practice of the Scientific Concept of Development, which requires: "Mechanisms for the uniform application of the law should be established and perfected, and discretionary power should be further regulated.

The CPLC organs should accelerate the construction of a case guidance system with regional, hierarchical and procedural characteristics that is in line with China's national conditions, and give full play to the role of guiding cases in regulating discretionary power, coordinating the uniformity of the legal system and regional differences, and reducing arbitrariness in the process of discretionary power." At the 2009 National Conference on the CPLC, the Secretary of the CPLC pointed out, "For several types of cases that are prone to law enforcement deviations and that are more strongly reflected by the public, it is necessary to establish a system of case guidance to regulate the exercise of discretionary power." Consequently, it has

⁴⁵ Governance for Equitable Development Project: Evaluation of Progress on Objectives and Indicators .P22. Source: <https://www.undp.org/china/publications/governance-equitable-development-project-evaluation-progress-objectives-and-indicators>

become essential to promptly implement regulations regarding case guidance.

2.1.2 Specific content of Opinion

There are 10 clauses in the regulations, which briefly stipulate that the main body of guiding cases is the SPC, the conditions for becoming a guiding case, the specific department responsible for the work of guiding cases, the way of recommending guiding cases, the way of referring to guiding cases as “shall be referred to”, and the work of compiling guiding cases. The provisions are relatively concise, focusing mainly on the recommendation, selection and compilation of guiding cases.

2.2 The Detailed Rules for the Implementation of the Provisions of the SPC on Case Guidance

2.2.1 Formulation process

On 26 November 2010, when the Provisions of the SPC on Case Guidance was issued, the basic requirements for courts nationwide to carry out case guidance work was set up. In order to implement the Provisions, the Judicial Interpretation Coordination and Case Guidance Division of the Research Office carefully studied the Provisions of the Supreme People’s Procuratorate on the Work of Case Guidance, the treatises on the case guidance system, and the normative documents and experiences of the high courts of Jiangsu, Guangdong, Sichuan and other provinces in relation to case work, summing up the practical experience of case guidance and making reference to a number of useful practices in foreign countries. The first draft of the Detailed Provisions was finally prepared in December 2010. Subsequently, the Detailed Provisions were discussed and revised at various training seminars, and the views of judges at all levels of courts and some experts and scholars were heard. Between 2010 and 2014, 11 drafts of the Provisions were revised.

2.2.2 *Specific content*

The Detailed Provisions consist of a total of 15 clauses, which are mainly based on the basic process of carrying out case guidance work, and further clarify and refine the Provisions in the light of the experience of case guidance work in recent years. The Detailed Provisions can be summarized in four parts:

First, general provisions (Articles 1 to 4). It mainly stipulates the criteria for the selection of guiding cases, the style, the working organization and the duties of the courts at all levels and their relevant departments in the work of guiding cases.

Secondly, the procedures and requirements for recommending, reviewing and publishing guiding cases (Articles 5 to 8). It mainly stipulates the procedures for recommending proposals by persons outside the court, the materials to be submitted for formally recommending guiding cases, the procedures for reviewing and soliciting opinions, and the issuance of guiding cases.

Thirdly, the reference application of guiding cases (Articles 9 to 12). It mainly stipulates the judgement of similar cases, the scope of reference, citation requirements, and the circumstances in which the guiding cases no longer have guiding effect.

Fourthly, the guarantee of case guidance (Articles 13 and 14). It provides for the construction of the guiding case library and the incentive mechanism for case guidance work.

Therefore, the Detailed Rules, on the basis of the Provisions, focus on three specific provisions: first, the selection criteria for guiding cases; second, the main body and procedures for recommending guiding cases; and third, the way to refer to guiding cases.

2.3 *New development*

Guiding cases are issued after discussion by the Judicial Committee of the SPC and have a higher degree of binding force than general cases. Judges “shall refer to” similar guiding cases when they retrieve them for adjudication, and thus guiding cases have a higher

degree of binding force than other cases. However, the SPC issues a limited number of guiding cases each year, and in the face of a large number of judicial decisions, guiding cases do not meet the requirements of practical adjudication. By the end of 2023, there will be only 224 guiding cases issued by the SPC, which is difficult to match with the tens of thousands of cases each year. Therefore, in order to further unify the application of the law and enhance judicial credibility, on July 31st the SPC issued the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation), establishing a system for searching similar cases. On November 21, 2023, the General Office of the SPC issued Notice No. 551 of the Legal Office (2023), requiring the construction of a National Court Adjudication Documents Database within the courts, in order to give full play to the role of cases in judicial adjudication and to promote the judgement of classes of cases and enhance the visibility of judicial justice.

2.3.1 The mechanism of Retrieval of Similar Cases

Notice by the SPC on the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation) was issued by 2020, which for the purposes of unifying the application of laws and enhancing the judicial credibility. The Guiding Opinions consists of 15 articles, including the concept of similar cases, specific circumstances requiring similar case searches, the platform and scope of the searched cases, the manner of searching, the filing and preparation of the similar case search report, the description of the results of the search by reference to the similar case retrieval, the manner of the People's Courts of response, and the training, among other things.

According to Article 4, the retrieval scope of similar cases generally includes:

- 1) *guiding cases issued by the SPC;*
- 2) *model cases issued by the SPC and cases in which the judgments made by the SPC have taken effect;*
- 3) *reference cases issued by the higher People's courts of the provinces (autonomous regions or municipalities directly under the Central Government) and cases in which the judgments made by such courts have taken effect; and*
- 4) *cases in which the judgments made by the People's court at the next higher level or this People's court have taken effect.*

In addition to guiding cases, priority shall be given to cases in the past three years; and where similar cases have been retrieved already in the previous order of precedence, the People's courts are not required to retrieve more cases.

It can be seen that, although the effectiveness of guiding cases is still in the forefront, the scope of the cases has been expanded, with the aim of further exploiting the role of cases in judicial practice through groups of analogous cases. Facing expanded scope of judicial cases, how to abstract rule form similar group cases is new challenges.⁴⁶

There is one possible way provided by academic angle, that is, the guarantee argument composition of legal reasoning based on similar cases and similar case inferences, under the condition that the importance of similar features and different features is equivalent,

⁴⁶ 宋保振:“类案裁判中的法律方法运用”. *法律方法*. 31(2020): 185-188(Song, Baozheng: “The Use of Legal Methods in Deciding Class Cases”. *Legal Methods*. 31(2020): 185-188). 北京市第三中级人民法院课题组: “类案裁判的适法标准和规范机制研究”. *中国应用法学*. 03(2021): 62. (Beijing Municipal No. 3 Intermediate People's Court: “Research on Lawful Standards and Regulatory Mechanisms of Decision-making in Class Cases”. *China Applied Law*. 03(2021): 62).

supplements the trade-offs argument.⁴⁷ There is also based on practice to provide a method of extracting rules for adjudicating cases that summarise the essential facts and legal consequences of the case, focusing on the dispute in question, to form a normative structure of 'conduct + legal consequences'.⁴⁸

2.3.2 Establishment of the National Court Adjudication Documents Database

Currently, the cases issued by the People's Courts include guiding cases, reference cases, typical cases, and cases in publications and books. These cases have played a positive role in guiding judicial trials, unifying the application of laws, strengthening publicity for the rule of law, and promoting theoretical research. However, due to the overall management and classification management is not in place, to a certain extent, affecting the role of the case to play. In response to these problems, the Party Group of the SPC decided, in conjunction with the thematic education review and rectification, to co-ordinate the management of cases and to build a National Court Adjudication Documents Database.

The Database is used to query, retrieve the case of the case resource base, can assist the judicial trial, unified judgment scale, to prevent "similar case have different decision", through the collection

⁴⁷ 杨知文: "类案适用的司法论证". *法学研究*. 05(2022): 54. (Yang, Zhiwen: "Judicial Argumentation on the Application of Class Cases". *Legal Studies*. 05(2022):54). Legal reasoning mainly refers to the process within the scope of legal rules, as it is necessary to ensure that the entire reasoning process takes place under the major premise of legal rules. Guaranteeing argumentation is to prove the legal reasoning process based on similar cases through the rules of reasons that are relevant and legitimate. Supplementary trade-off arguments include: the exclusion argument of difference importance and the confirmation argument of important similarity..

⁴⁸ 孙跃: "论类案裁判规则及其提炼方法". *湖北社会科学*. 08(2021): 123. (Sun Yue: "On the Rules of Judging Class Cases and Their Refining Methods". *Hubei Social Science*. 08(2021): 123.) ; 张骐: "论裁判规则的规范性". *比较法研究*. 04(2020): 148. (Zhang Qi: "On the Normativity of Adjudication Rules". *Comparative Law Studies*. 04(2020): 148). 张骐: "论案例裁判规则的表达与运用". *现代法学*. 05(2020): 35. (Zhang Qi: "On the Expression and Application of Case Decision Rules". *Modern Law*. 05(2020): 35.)

of cases, screening, timely detection and correction of problems in the judicial trial work, to do to strengthen the supervision and guidance requirements. At the same time, it is convenient for the people to learn the legal provisions and clear rules of conduct through the cases, and promote the front-end resolution of contradictions and disputes, and play the effect of “releasing a case and educating a lot”.

In December 2023, in order to further standardize and deepen judicial disclosure, enhance the application and retrieval capacity of the national court's adjudication documents, and strengthen the application of judicial big data, the SPC issued the Circular of the General Office of the SPC on the Construction of the National Court Adjudication Documents Database (No. 551 [2023] of SPC)⁴⁹, which intends to construct the National Court Adjudication Documents Database. The judging documents to be included in the database are more stringent than those in China Judgements Online, and it is proposed that the database will be put online in January 2024 to support the retrieval of judging documents by the national court officers in the four levels of the court's dedicated network.

CONCLUSION

As can be seen from the descriptive analysis of the above elements, the history of the development of the case guidance system can be divided into five stages.(1)The early period of the founding of the country (1949) to 1978, which has the function of presenting social contradictions and formulating the basic material of laws. (2) During 1978-1985, under the policy of developing and strengthening socialist democracy and the rule of law, facing the successive release of laws, the practice faced the problem of how to apply the law, and the cases in this period began to solve the problem of the application of the law, but were characterized by imbalance (civil and criminal), lack of publicity, irregularity and low quality. (3)During 1985-2003, “judicial

⁴⁹ Source: <http://www.szline.cn/law/2023/1211/709.html>

interpretations” and “cases” appeared frequently in Work Reports, both of them were ways of unifying the application of the law. The number of judicial interpretations and cases published in the Gazette of the SPC were basically equal. And there is following characters : First, multiple subjects release cases, involving courts at all levels and their adjudication departments from the central to the local level. Second, the selection of cases varies in terms of criteria, names, carriers, etc. Third, there is no specific reference to how to utilize the cases but only a selection and compilation of them. Thus, in the third period, the judicial resources of cases are being actively explored, ranging from cases to judicial interpretations and from the central to the local levels.(4) During 2004-2018, the SPC began to embark on the institutional construction of casework, and since then, the number of guiding cases issued each year has become one of the contents of the Work Report.

However, due to the small number of guiding cases, the guiding cases in this matter are characterized by difficulties in application and a low application rate.(5) During 2020-2023, the scope of application of cases was expanded to other non-guiding cases, which further tapping into the resources of cases and the SPC is also actively coordinating the establishment of various case platforms, such as the establishment of National Court Adjudication Documents Database, as proposed in 2023. Meanwhile, the development of the case guidance system in China has three characteristics. First, in terms of its nature, it has experienced a shift from being a source of material for making laws to becoming a tool for uniform application of laws, but not a source of laws. Secondly, in terms of its role, it has the function of publishing the rule of law to the public, and it's also a tool for the uniform application of law. Thirdly, in form, cases guidance system has expend its case scope to other non-guiding cases, and explore other system and platform to dig out the cases judicial potency

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