

THE EVOLUTION, STRUCTURE, AND CHALLENGES OF CHINA’ S CASE GUIDANCE SYSTEM

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Cao Yiyang*

Abstract:

The establishment and development of the case guidance system represent a pivotal innovation in China's judicial reform. Since the Supreme People's Court issued the first batch of guiding cases in 2011, this system has grown into a multi-layered architecture comprising guiding cases, reference cases from higher people's courts, Gazette cases, and various trial reference and consulting cases. Within China's judicial framework, these different types of cases have distinct functions, positions, and legal effects. However, the maturing system faces multilayered challenges including uncertainty in factual and legal determinations, statutory lag amid emerging digital disputes, inconsistent case naming that leads to mistaken citation, inconsistency in balancing competing interests in complex cases, and a lack of coordinated conflict and withdrawal mechanisms among the proliferating case sources. Coupled with widespread judicial confusion over case validity hierarchy, these flaws result in disparate similar-case rulings, erode legal predictability and damage judicial credibility. Therefore, the case guidance system requires substantive theoretical refinement and practical reforms. Targeted optimization necessitates clarifying case validity hierarchies, standardizing case naming and screening procedures, building unified conflict and withdrawal mechanisms, and integrating decentralized case resources via the People's Court Case Database to unify judicial citation and retrieval rules. These measures are critical to enhancing judicial credibility, ensuring uniform legal application, and fulfilling the public's expectations for justice.

Keywords: Case Guidance System, Guiding Cases, Reference Cases, People's Court Case Database, Judicial Uniformity

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I. INTRODUCTION

China's case guidance system has evolved from scattered individual guiding cases into a unified but multi-layered case reference architecture. While this multi-tiered architecture expands the volume of judicial reference materials and enriches practical judicial guidance, the coexistence of multiple types of case guidance sources has spawned prominent practical dilemmas. This article primarily argues that ambiguous hierarchies, inconsistent naming standards, flawed screening rules, non-standard citation norms and inadequate exit mechanisms across diverse case guidance materials severely undermine the functionality of the current system. Specifically, the proliferation of overlapping case guidance sources creates tangible obstacles for four judicial practices: standardized judicial citation, efficient similar case retrieval, effective resolution of inter-case conflicts, and maintenance of long-term legal predictability. Against this backdrop, clarifying and standardizing the above institutional components is indispensable for the sound maturation and sustainable operation of China's multi-layered case reference architecture.

In the 1980s, China began to explore the construction of the case guidance system. The Supreme People's Court (SPC) and the higher people's courts issued some typical cases to guide the trial work of courts at all levels. In October 1999, the SPC, in *Outline for the Five-year Reform of the People's Courts*, stated, "Typical cases that have applicable legal problems should be discussed and decided by the judicial committee of the Supreme People's Court. They should then be published for reference by the lower courts when trying similar cases." In October 2005, the SPC's second five-year reform outline clearly advocated "establishing and improving the case guidance system." In November 2010, the SPC issued provisions on guiding cases, marking the initial establishment of the case guidance system. This novel judicial reform aims at a more professional court system, changing China's traditional civil law system, in which case law is totally absent in practice. In December 2011, the Court issued the first batch of guiding cases, indicating that the case guidance system had been established and had begun to operate. In 2015, the Court issued *Detailed Rules for The Implementation of The Provisions of the Supreme People's Court on Guiding Cases*, which further refined the relevant contents and implementation methods of the case guidance system, indicating that the system had progressed from theory into practice in China. From the perspective of practice, the SPC issued

267 guiding cases from December 2011 to December 2025. The higher people's courts in some provinces also actively promote the case guidance system, striving to explore innovation in judicial practice¹. For example, the Higher People's Court of Jiangsu Province² and the Higher People's Court of Tianjin³ both implement the reference case system, but sometimes called the case guidance system. The implementation of the case guidance system is conducive to the in-depth summary of trial experience and practical guidance of trial work, playing an important role in maintaining the certainty and predictability of law, which promotes similar judgments for similar cases, improves judicial efficiency, and encourages judicial fairness and justice⁴.

The case guidance system is the product of China's judicial reform and legal system innovation⁵. The purpose of a case guidance system is to unify the applicable standards of law, solve the problem of "similar cases should be treated similarly," improve the quality and efficiency of trials, and respond to the requirements for judicial justice.⁶ The establishment and implementation of this system not only plays an important role in promoting the construction of a fair, efficient, and authoritative judicial system but also in advancing the modernization of the national governance system and governance capabilities. The research on how to continuously develop the system and apply it to trial practice can provide insight into improving

1 Jiangsu Sheng Gaoji Renmin Fayuan (江苏省高级人民法院), Jiangsu Sheng Gaoji Renmin Fayuan Cankao Anli (江苏省高级人民法院参考案例) [Reference Cases of Jiangsu Higher People's Court] 3 (2021).

2 Tianjin Shi Gaoji Renmin Fayuan (天津市高级人民法院), Tianjin Shi Gaoji Renmin Fayuan Cankao Anli (天津市高级人民法院参考案例) [Reference Cases of Tianjin Higher People's Court] 2 (2019).

3 Chen Shusen (陈树森), Woguo Anli Zhidao Zhidu Yanjiu (我国案例指导制度研究) [Guiding Case System in China] 11 (2017).

4 Cao Yiyang (曹奕阳), Zhongguo Shengwu Duoyangxing Baohu Gongyi Susong de Xianzhuang, Wenti ji Chulu (中国生物多样性保护公益诉讼的现状、问题及出路) [Status Quo, Problems and Prospects of Public Interest Litigation for Biodiversity Conservation in China], 3 Zhongguo Faxue (中国法学) [China Legal Science] 88, 115 (2024).

5 Chen Xingliang (陈兴良), Zhongguo Anli Zhidao Zhidu Yanjiu (中国案例指导制度研究) [Chinese System of Directive Cases] 1 (2014).

6 Cao Yiyang (曹奕阳), Rengong Zhineng Leisi Anli Jian Suo Jizhi de Fazhan yu Wanshan (人工智能类案检索机制的发展与完善) [The Development and Improvement of the AI-Based Similar Case Retrieval Mechanism], 2 Keji yu Falü (科技与法律) [Science, Technology and Law] 127, 138 (2024).

judicial fairness and meeting the people's new demands and expectations for justice. My research focuses on several issues related to the case guidance system.

II. FUNCTIONS AND POSITIONS OF DIFFERENT CASES IN CHINA

The case guidance system is an important innovation of the judicial system, with the development experiencing a process from theoretical contention to practical exploration and then formal implementation. The case guidance system has been in operation for 15 years, since the Supreme People's Court (SPC) announced the first set of guiding cases in 2011. Thus, it has had a more extensive impact on China's judicial practice, and has an important role and significance in promoting the rule of law in China.

Practically, the case guidance system selects cases that have been legally effective and typical, instructive, or complex, to provide reference and guidance for the judges in finding facts, the application of law, and methods of adjudication when they hear similar cases, to help the judges grasp the unified standards of adjudication, and to realize similar judgements for similar cases, thus avoiding the phenomenon of judicial injustice⁷. Therefore, the case plays an important and fundamental role in the implementation process of the case guidance system, which is related to the quality and effectiveness of the case guiding. In what follows, this article provides an introduction and discussion on the guiding cases applied in the operation of the current case guidance system to demonstrate an important aspect of the basic content of the case guidance system.

The so-called "case-based guidance materials" in this article refer to a wide range, including the guiding cases issued by the SPC, the cases issued in the *Gazette of the Supreme People's Court*, and the reference cases issued by higher people's courts and consulting cases issued by other organs. Under the background of the operation of the case guidance system, previous cases can play a major or minor reference and guidance role in the judicial adjudication of the court. Therefore, for convenience of description, we call all of them "case-based guidance materials," although different from the "guiding cases" issued by the SPC.

⁷ Lei Hong (雷鸿), *Anli Zhidao Zhidu yu Faguan Nengdongxing* (案例指导制度与法官能动性) [Case Guidance System and Judge's Initiative], 5 *Renmin Sifa* (人民司法) [People's Jurisprudence] 42, 45 (2012).

To systematically analyze the current landscape, this article proposes an analytical framework characterized by a “unitary and multi-layer” structure. In other words, the guiding cases are the core, while reference cases, Gazette cases, and consulting cases are the supplement and auxiliary⁸. Pursuant to Article 7 of the *Provisions of the Supreme People’s Court (SPC) on Case Guidance*, “the people’s courts at all levels should refer to similar cases when judging” for the guiding cases issued by the SPC, which explains that they have the effect of “shall refer to.” Crucially, the legal consequence of the phrase “shall refer to” in Article 7 of the *Provisions of the Supreme People’s Court (SPC) on Case Guidance* establishes more than mere persuasive authority; it imposes a binding obligation. Specifically, for SPC guiding cases, this entails a duty to search for similar cases, a duty to reason by distinguishing or following the precedent, and a duty to cite the case in the judgment when applicable. According to Article 9 of the *Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases*, where a retrieved similar case is a guiding case, the people’s court shall make a judgment by reference to the case. Therefore, the guiding cases are in the dominant position from the perspective of hierarchy, while the reference cases, Gazette cases, and consulting cases are in auxiliary positions. The following is a brief introduction to the basic situation of various case-based guidance materials.

III. GUIDING CASES OF THE SUPREME PEOPLE’S COURT

From December 2011 to December 2025, the SPC issued 47 sets of 267 guiding cases, including 31 administrative guiding cases, accounting for 11.6%; 11 guiding cases on state compensation, accounting for 4.1%; 43 criminal guiding cases, accounting for 16.1%; 161 civil guiding cases, accounting for 60.3%; and 21 execution cases, accounting for 7.9%. While civil cases dominate numerically, this article selects administrative guiding cases as the primary analytical lens precisely because they offer a more manageable and representative sample for examining the structural challenges of the case guidance system. Given the sheer volume of civil cases, it is difficult to isolate the systemic issues regarding hierarchy and naming

8 Ma Yan (马燕), Lun Woguo Yiyuan Duocengji Anli Zhidao Zhidu de Goujian—Jiyu Zhidaoxing Anli Sifa Yingyong Kunjing de Fansi (论我国一元多层级案例指导制度的构建——基于指导性案例司法应用困境的反思) [On the Construction of a Unified Multi-Level Case Guidance System in China: Reflections Based on the Difficulties in the Judicial Application of Guiding Cases], 1 Faxue (法学) [Legal Science] 185, 191 (2019).

without being overwhelmed by the data noise.

There are some defects and deficiencies in Chinese statute law, such as abstraction, rupture, lag, and generality, which need to be interpreted while applied⁹. For the implementation of the case guidance system, the screened cases can be used to interpret the vague and abstract provisions in statute law through the guidance of “interpreting the law by case.” For example, in the norms of administrative law, there are problems, such as vague and outdated legal provisions, uncertain legal concepts, and inconsistent application of laws, which can be interpreted by administrative guiding cases.

Currently, the SPC has issued 31 administrative guiding cases, including 8 cases involving administrative penalty, 1 case involving administrative license, 4 cases involving administrative public interest litigation, 2 cases involving administrative expropriation, 3 cases involving administrative disputes over trademark disputes, and 2 cases involving government information disclosure, 4 cases involving scope of accepting cases and subject confirmation, 3 cases involving administrative work-related injury identification, 1 case involving administrative agreement, 1 case involving administrative registration, and 2 cases of administrative confirmation.

Thus, six of the cases involve administrative penalties, which is the largest number in the administrative cases. This is because the scope of the administrative penalties applied by government administrative departments in performing administrative functions is relatively wide. Further, the four cases are related to the scope of accepting cases and the subject confirmation of administrative litigation, which is also relatively large, given that the scope of accepting cases and the subject of litigation are difficult to define in light of the many disputes in administrative litigation.

The following regulations in *the Provisions of the Supreme People's Court (SPC) on Case Guidance* are made for conditions of cases that have been taken into effect as guiding cases: cases of wide concern by the society; cases that provide for comparative principles

⁹ Chen, *supra* note 3, at 71.

by law; and typical cases¹⁰. The existing guiding cases generally meet these conditions, as they pay more attention to the problems of social life (such as education, market economy, ecological environment, food safety, etc.) and place emphasis on responding to professional, new-type, difficult, and complex legal issues and social hot issues concerned by the general public. Typical examples include two environmental public interest litigation guiding cases: Guiding Case No. 136 (People's Procuratorate of Baishan City, Jilin Province v. Health and Family Planning Bureau of Jiangyuan District, Baishan City and Chinese Medicine Hospital of Jiangyuan District, Baishan City) and Guiding Case No. 137 (People's Procuratorate of Jianchuan County, Yunnan Province v. Forest Public Security Bureau of Jianchuan County). Although the legal status of public interest litigation has been clearly determined in the Administrative Procedure Law and Civil Procedure Law in 2017, the provisions of these two procedure laws are still abstract and general, and their operability is not strong¹¹. For example, the type of public interest litigation is limited, and the subject of who can file public interest litigation is abstract¹². The two guiding cases above were issued to clarify the position and role of the procuratorial organ in environmental administrative public interest litigation. Namely, if, after the procuratorial organ issues the *procuratorial proposal*, the administrative organ still fails to take sufficient, timely, and effective legal supervision measures (i.e., the administrative organ is lazy to perform its legal duties), the procuratorial organ may then, as a public interest litigant, institute administrative public interest litigation and order the administrative organ to perform its legal duties. The above two cases have their distinct emphasis: Case No. 136 is the first case of administrative accompanying civil public interest litigation in China, and clarifies that if the people's procuratorate institutes environmental civil public interest litigation and administrative public

10 Zuigao Renmin Fayuan Guanyu Yinfa "Guanyu Anli Zhidao Gongzuo de Guiding" de Tongzhi, Fashi [2010] No. 51 (最高人民法院关于印发《关于案例指导工作的规定》的通知, 法释【2010】51号) [Notice of the Supreme People's Court on Issuing the Provisions on Case Guidance] (promulgated by the Judicial Comm. Sup. People's Ct., Nov. 26, 2010, effective Nov. 26, 2010) Sup. People's Ct. Gaz., Dec. 2010 (China).

11 Cao Yiyang (曹奕阳), Jiancha Jiguan Tiji Huanjing Xingzheng Gongyi Susong de Shijian Fansi yu Zhidu Youhua (检察机关提起环境行政公益诉讼的实践反思与制度优化) [Practical Reflection and System Optimization on Environmental Administrative Public Interest Litigation Initiated by Procuratorial Organs], 10 Jiangnan Luntan (江汉论坛) [Jiangnan Tribune] 123, 127 (2018).

12 Id. at 127.

interest litigation on the same environmental pollution act at the same time, it adopts the adjudication method of respective registration—hearing together and prescribing judgement separately; Case No. 137 involves administrative public interest litigation, and it determines two criteria for judging whether the administrative organ performs its legal duties. However, while these guiding cases successfully clarified the procedural ambiguities of the 2017 Procedural Law, they also inadvertently triggered a hierarchy problem. Because these SPC guiding cases established the standard for "slackness in performance of statutory duties," numerous reference cases and Gazette cases have since attempted to apply or refine this standard. Consequently, when multiple case sources address the same legal question regarding administrative inaction, judges face uncertainty as to whether the binding effect of Guiding Case No. 137 supersedes the persuasive authority of these subsequent local cases. The problems in the two cases are analyzed in the following cases:

Cases No. 40 and No. 94¹³ involve administrative work-related injury identification. The legal provisions on work-related injury identification are abstract in real life, for example, the lack of accurate understanding of the workplace, work reason, and other factors in the identification of work-related injury¹⁴. The understanding of the standards on work-related injury deviates, and the conclusion of work-related injuries is controversial, whereas the legitimate rights and interests of workers are often not guaranteed in time. This kind of phenomenon has been perplexing employers and the injured for a long time. The above problems are responded to by the guiding cases in a timely manner, by clarifying the vague concept of *workplace* and *work reason*, and by refining the operation process, resulting in a positive significance¹⁵. Nevertheless, this clarification has created an overlap problem. The specific standards set by Guiding Cases No. 40

13 Sun Lixing Su Tianjin Gao Xin Jishu Chanye Yuan Laodong Renshi Ju (孙立兴诉天津高新技术产业园区劳动人事局) [Sun Lixing v. Labor Personnel Bureau of Tianjin High-Technology Industry Park], Sup. People's Ct. Guiding Case No. 40 (China); Chongqing Shi Fuling Zhida Wuye Guanli Youxian Gongsi Su Chongqing Shi Fuling Qu Renli Ziyuan he Shehui Baozhang Ju (重庆市涪陵志大物业管理有限公司诉重庆市涪陵区人力资源和社会保障局) [Chongqing Municipality Fuling Zhida Property Management Co. v. Human Resources & Social Security Bureau of Fuling District, Chongqing Municipality], Sup. People's Ct. Guiding Case No. 94 (China).

14 Hou Xiaoyan (侯晓燕), Zhidaoxing Anli Sifa Shiyong Jishu ji Qizhi Tuixiang Wanshan (指导性案例司法应用技术及其制度完善) [Judicial Application Techniques and Institutional Improvement of Guiding Cases] (2023).

15 Id. at 200.

and 94, particularly regarding the expansion of workplace, have been adopted and slightly modified by various cases in judicial practice. As a result, when a judge searches for similar cases, they encounter a multi-layered set of materials offering subtly different interpretations of work reason, making it difficult to determine which precedent should prevail in a novel factual scenario.

Guiding Cases No. 113¹⁶ and No. 114¹⁷ both involve administrative disputes over trademark disputes. Guiding Case No. 113 is the case of the “Jordan” trademark dispute, which is the first case to be tried by the SPC in the form of an “all media” live trial.¹⁸ It is of great significance to promote the honest operation of market subjects and to maintain fair competition in the market. The judgement conclusions for the two cases of administrative disputes over trademark disputes are: “For violation of the principle of good faith, and malicious application for a registered trademark, the registered trademark does not have legitimacy”¹⁹, and “The trademark administrative organ should give the applicant a reasonable opportunity to make corrections,” respectively²⁰.

IV. REFERENCE CASES OF THE HIGHER PEOPLE’S COURT

In December 2011, the SPC issued the Notice on the Issuance of the First Set of Guiding Cases, which pointed out that “All the higher people’s courts can guide the judicial work of people’s courts and

16 Michael Jeffrey Jordan Su Shangbiao Ping Shen Weiyuanhui yu Qiaodan Tiyu Gufen Youxian Gongsi (迈克尔·杰弗里·乔丹诉商标评审委员会与乔丹体育股份有限公司) [Michael Jeffrey Jordan v. Trademark Review & Adjudication Board of the State Administration for Industry & Commerce & Qiaodan Sports Co.], Sup. People’s Ct. Guiding Case No. 113 (China).

17 Parfums Christian Dior Su Shangbiao Ping Shen Weiyuanhui (克里斯蒂昂·迪奥香料公司诉商标评审委员会) [Parfums Christian Dior v. Trademark Review & Adjudication Board of the State Administration for Industry & Commerce], Sup. People’s Ct. Guiding Case No. 114 (China).

18 Michael Jeffrey Jordan, Guiding Case No. 113.

19 Michael Jeffrey Jordan Su Shangbiao Ping Shen Weiyuanhui yu Qiaodan Tiyu Gufen Youxian Gongsi (迈克尔·杰弗里·乔丹诉商标评审委员会与乔丹体育股份有限公司) [Michael Jeffrey Jordan v. Trademark Review & Adjudication Board of the State Administration for Industry & Commerce & Qiaodan Sports Co.], (2016) Zuigao Renmin Fayuan Xingzheng Zaishen An No. 27 (China).

20 Parfums Christian Dior Su Shangbiao Ping Shen Weiyuanhui (克里斯蒂昂·迪奥香料公司诉商标评审委员会) [Parfums Christian Dior v. Trademark Review & Adjudication Board of the State Administration for Industry & Commerce], (2018) Zuigao Renmin Fayuan Xingzheng Zaishen An No. 26 (China).

special courts at all levels in the jurisdiction by issuing reference cases and other forms.”²¹The notice clearly states that the reference cases issued by higher people’s courts have guiding and reference value. After the announcement, the higher people’s courts in many regions responded positively, and issued suggestions by combining with the current situation of local judicial practice to strengthen the work of reference cases, and published reference cases in succession (see Table 1).

Table 1: Situations of reference cases issued by various higher people’s courts.

Issuance court	Formulated and issued documents	Total number of reference cases	Cut-off date
Shanghai Higher People’s Court	<i>Opinions of Shanghai Higher People’s Court on Strengthening the Work of Reference cases</i>	162	2023.6
Anhui Higher People’s Court	<i>Opinions of Anhui Higher People’s Court on Strengthening the Work of Reference cases</i>	72	2023.5
Liaoning Higher People’s Court	<i>Opinions of Liaoning Higher People’s Court on Strengthening the Work of Reference cases (Trial)</i>	44	2021.12
Henan Higher People’s Court	None	47	2022.8
Shaanxi Higher People’s Court	<i>Issuance System of Shaanxi Higher People’s Court on Consulting Cases</i>	168	2022.5
Chongqing Higher People’s Court	<i>Opinions of Chongqing Higher People’s Court on Strengthening the Work of Reference cases</i>	39	2020.9

21 Zuigao Renmin Fayuan Guanyu Fabuj Di Yi Pi Zhidao Anli de Tongzhi (最高人民法院关于发布第一批指导性案例的通知) [Notice of the Supreme People’s Court on Issuing the First Set of Guiding Cases] (promulgated by the Sup. People’s Ct., Dec. 20, 2011) (China).

A. Compilation and clearing of reference cases

(1) Strict case selection

The general procedure of case selection in the case guidance system is that the case-handling judges of the basic people's court and the intermediate people's court submit a declaration, which is approved and recommended by the transaction tribunal where they work, and then the department in charge of reference case review of the court organizes screening and discussion, which is reported to the Judicial Committee for discussion and approval. The basic people's court then submits the declaration to the intermediate people's court, and the intermediate court reports it, together with the self-reported cases, to the higher people's court in a centralized way after the cases have been examined and approved. The higher people's court integrates the cases tried by itself, and reports to the Judicial Committee of the higher people's court for discussion through the preliminary trial of the "guidance office for reference cases," asking for the opinions of the relevant transaction tribunals, and the approved cases are determined as reference cases after being issued²². Taking the selection of the fourth batch of reference cases issued by Liaoning Higher People's Court as an example, the court selected 3 representative cases as reference cases from more than 300 cases submitted by people's courts at all levels according to the standard of *Opinions on Strengthening the Work of Reference Cases (Trial)*. This proportion of less than 1% suggests a strict selection.

(2) A special team and persons are assigned to be responsible for case preparation

For example, the Beijing Higher People's Court has set up a special research office, "which is responsible for the registration and material review of alternative reference cases, putting forward preliminary review opinions, soliciting opinions from various judicial departments, conducting comprehensive review, reporting to the judicial committee for discussion, and numbering and issuing reference cases." *Opinions on Strengthening the Work of Reference Case* issued by Sichuan Higher People's Court stipulates that "each trial business department of the provincial court shall appoint a

22 Li Tao (李涛) & Fan Yu (范玉), Xingshi Zhidaoxing Anli de Shengcheng, Shiyong Zhang'ai Yiji Zhidu Tupu (刑事指导性案例的生成、适用障碍以及制度突破) [The Formation, Application Barriers and Institutional Breakthrough of Criminal Guiding Cases], 4 *Falü Shiyong* (法律适用) [Journal of Law Application] 24, 29 (2017).

special person to act as the case communication editor, and each intermediate and basic court shall appoint a special person to act as the case communication editor in the centralized management department of case selection work.”²³

(3) Set up reward and assessment mechanisms

Relevant reward systems have been established in some regions to give spiritual or material rewards to individuals whose prepared and reported cases are selected as reference cases. For example, Liaoning Higher People’s Court stipulates that the completion of the task of compiling and reporting reference cases should be taken as the content of annual performance evaluation: “The provincial court shall summarize and report the case work at the end of each year, commend the advanced units and individuals of case selection work throughout the year, and reward the authors whose cases are selected as guiding cases and reference cases.”²⁴ Sichuan Higher People’s Court has incorporated case selection work into the annual performance appraisal of the people’s courts at all levels throughout the whole province. For those selected as reference cases, relevant individual contributions and rewards will be given.

(4) Centralized clearing of reference cases

Centralized clearing of reference cases can ensure the quality of cases and facilitate the retrieval and learning of judges in people’s courts at all levels. For example, “*Opinions on Strengthening the Work of Reference Cases (Trial)*” issued by Liaoning Higher People’s Court stipulates that such centralized clearing “strengthen the management of invalid withdrawal of reference cases, and timely clean up the original reference cases that conflict with the new law and the reference cases that have lost their reference value.”²⁵ Chongqing Higher People’s Court requires that the issued reference cases be cleaned up every year to ensure the reference value of the

23 Sichuan Sheng Gaoji Renmin Fayuan Guanyu Jiaqiang Cankao Anli Gongzuo de Yijian (四川省高级人民法院关于加强参考案例工作的意见) [Opinions of Sichuan Higher People’s Court on Strengthening the Work of Reference Cases] art. 7 (promulgated by the Sichuan Higher People’s Ct.) (China).

24 Liaoning Sheng Gaoji Renmin Fayuan Guanyu Jiaqiang Cankao Anli Gongzuo de Yijian (Shixing) (辽宁省高级人民法院关于加强参考案例工作的意见 (试行)) [Opinions of Liaoning Higher People’s Court on Strengthening the Work of Reference Cases (Trial)] art. 17 (promulgated by the Liaoning Higher People’s Ct.) (China).

25 Id. art. 15.

reference cases and timely abolishment of the reference cases that conflict with the newly promulgated laws, judicial interpretations, and guiding cases²⁶.

B. Functions and characteristics of reference cases

(1) The combination of supervision and guidance with correct social value orientation

The reference cases of higher people's courts focus on the combination of the economic and social development status under the jurisdiction, uphold the rule of law by taking the correct value orientation as the channel, accurately interpret and correctly apply the legal provisions, and guide and supervise the trial work of the lower courts²⁷. For example, the reference Case No. 29 issued by Henan Higher People's Court is a case of Li Moumou suing Jiyuan Human Resources and Social Security Bureau for work-related injury identification, and the judgement holds that, although the law does not clearly stipulate that the organ for work-related injury identification should inform the interested parties to participate in the administrative confirmation process, "based on the requirements of due procedure, the administrative organ should hear the suggestions of the administrative management counterpart and interested parties in the administrative procedure, guarantee their right to be informed, their right to participate and their right to relief, and in particular, inform them and give them the opportunities to state and defend before making an adverse administrative decision."²⁸ This kind of judgement can encourage the administrative organ to improve the administrative procedure for cases involving work-related injury identification, protect the legitimate rights and interests of interested

26 Zhang Wei, Chongqing Higher People's Court Will Issue Opinions on Strengthening the Work of Reference Cases (重庆市高级人民法院将出台加强参考案例工作的意见) [Chongqing Higher People's Court Will Issue Opinions on Strengthening the Work of Reference Cases], Renmin Fayuan Bao (人民法院报) Legal Daily, at 5.

27 Jiangsu Sheng Gaoji Renmin Fayuan Ketizu (江苏省高级人民法院课题组), Li Yusheng (李玉生), Lü Na (吕娜), et al., Gaoji Fayuan Cankao Xing Anli Bianxuan Biaozhun Tanta—Jiyu Jiangsu Fayuan Anli Gongzuo Shijian de Sikao (高级法院参考性案例编选标准探讨——基于江苏法院案例工作实践的思考) [Discussion on the Standards for the Compilation of Reference Cases by Higher People's Courts: Reflections Based on Case Practice in Jiangsu Courts], 12 Falü Shiyong (法律适用) [Journal of Law Application] 28, 33 (2018).

28 Li Qinghua Su Jiyuan Shi Renli Ziyuan he Shehui Baozhang Ju (李青花诉济源市人力资源和社会保障和社会保障局) [Li Qinghua v. Jiyuan Human Resources & Social Security Bureau], Henan Sheng Gaoji Renmin Fayuan Cankao Anli No. 29 (China).

parties, and promote the fairness of the procedure. Thus, Case No. 29 emphasizes that the exercise of discretion should conform to the social value orientation of fairness and justice.²⁹

(2) Make up for the lack of legal provisions and guiding cases in the judgement of new types of cases

Due to the principle, abstraction, and even lag of legal provisions, they are often difficult to adapt to the trial needs of new types of cases.³⁰ Further, the number of guiding cases issued by the SPC is very small, which makes it difficult to cover all new types of cases. Reference cases are often able to flexibly adapt to the requirements of new situations and new policies, make fair judgements by using judicial methods, and solve the difficult legal problems newly appearing in judicial practice, so they can become a necessary supplement to the legal provisions and guiding cases. For example, in the case of Zhu Moumou suing the Education Bureau of Pudong New Area of Shanghai to perform its legal duties, the People's Court of Pudong New Area of Shanghai held that after trial, the administrative department of education should perform the legal duty of an "enrollment nearby" arrangement rather than the arrangement of "nearest enrollment." However, the department should grasp the principle of entering school nearby as a whole, and fully consider block distribution, community size, and other situations to allow school-age children and juveniles to study in the schools in nearby areas to protect the right of students to receive education.³¹ The plaintiff refused and instituted an appeal. Shanghai No. 1 Intermediate People's Court made the No. 216 administrative judgement (2014) HYZXZZ, rejecting the appeal and maintaining the original judgement. According to Article 12 of the *Compulsory Education Law of the People's Republic of China*³², the Shanghai Higher People's Court listed this case as a reference case and determined the principle of "enrollment nearby" in compulsory education, which is conducive to solving the application of law in new

²⁹ Id.

³⁰ Chen, *supra* note 3, at 13.

³¹ Zhu Moumou Su Shanghai Shi Pudong Xinqu Jiaoyu Ju (朱某某诉上海市浦东新区教育局) [Zhu Moumou v. Education Bureau of Pudong New Area, Shanghai], Adjudication Committee of Shanghai Higher People's Court, Oct. 8, 2016 (China).

³² *Yiwu Jiaoyu Fa* (义务教育法) [Compulsory Education Law of the People's Republic of China] art. 12 (promulgated by the Standing Comm. Nat'l People's Cong., June 29, 2006, amended Apr. 24, 2015) 2015 Fagui Huibian [Laws & Regulations Compilation] (China).

types of cases³³. A typical reference case ruled by Tianjin Higher People's Court is the criminal case of Sun Mou, Xu Mou, Zhou Mou et al. v. Fraud & Illegal Business Operation. This case targets emerging digital financial crimes relying on fake trading platforms, third-party payment channels and manipulated transaction data. Facing blank statutory provisions on cyber platform data fraud, cross-border data flows and algorithmic trading platforms (KD/AK/FA), this reference case clarified the identification standard of fraud accomplishment, criminal amount calculation rule based on electronic transaction data, and the principle for currency conversion, delivering unified adjudication rules for tech-enabled new-type financial crimes when written laws fail to keep pace with digital industry development.³⁴

(3) Provide useful references in the application of law and the admissibility of evidence

The reference cases can provide reference and guidance for the lower people's courts in the jurisdiction in terms of fact finding, evidence admissibility, application of law, litigation procedure, etc., which is conducive to unifying the scale of judgement, standardizing the discretion of judges, and avoiding the deviation and injustice of legal judgement³⁵. For example, Anhui Higher People's Court issued the "Ma Rumin intentional injury case" in the fifth set of reference cases, which "aims to clarify the identification of inconsistent witness testimony and other verbal evidence in criminal proceedings."³⁶ It has reference value for the judge to conduct "evidence admissibility and fact finding" when there is inconsistent verbal evidence in criminal proceedings.³⁷

33 Shanghai Shi Di Yi Zhongji Renmin Fayuan (上海市第一中级人民法院) [The First Intermediate People's Court of Shanghai Municipality], Administrative Judgment No. 216 (2014) Hu Yi Zhong Xing Zhong Zi (China).

34 Tianjin Shi Gaoji Renmin Fayuan (天津市高级人民法院) [The Higher People's Court of Tianjin Municipality], Tianjin Shi Gaoji Renmin Fayuan Xingshi Panjue Shu No. 75 (2021) (China).

35 Zhang Zhiming (张志铭), Zhongguo Fayuan Anli Zhidao Zhidu Jiazhi Gongneng zhi Renzhi (中国法院案例指导制度价值功能之认知) [The Cognition of the Value and Function of China's Court Case Guidance System], 3 Xuexi yu Tansuo (学习与探索) [Study & Exploration] 65, 70 (2012).

36 Anhui Sheng Di Wu Pi Cankao Anli (安徽省第五批参考案例) [Fifth Batch of Reference Cases of Anhui Province], Renmin Fayuan Bao (人民法院报) [People's Court Daily], Nov. 22, 2017 (China).

37 Id.

(4) Local characteristics and pertinence of guidance

The guiding cases issued by the SPC are for 34 provincial administrative regions in China and have general applicability. The reference cases issued by the local higher people's courts have regional characteristics that can provide targeted references and guidance for the lower people's courts in the jurisdiction. For example, Tianjin is famous for its intangible cultural heritage. As a result, the Tianjin Higher People's Court specially issued relevant reference cases to protect folk artists, continue inheritance, and carry forward the intangible cultural heritage. For example, among the first four reference cases issued on December 31, 2015, Case No. 3 is the intellectual property protection case of intangible cultural heritage: Zhang Yu of Tianjin Clay Figurine Zhang Family Painting and Sculpture Workshop suing the false publicity dispute of Chen Yiqian, Ya Guan Research Institute and Tianying Jiuzhou Company³⁸. As to whether Chen Yiqian's use of the title "the sixth-generation successor of clay Figurine Zhang" constitutes false publicity, the people's court held after trial that the use of the title "the sixth-generation successor of clay Figurine Zhang" when introducing Chen Yiqian is a description of Chen Yiqian's school, and is the inheritance of the painted sculpture artist as well as his recognition in related fields. Moreover, if the title is used together with his personal name when introducing his identity, it will not lead to a misunderstanding of the relevant public about the source of goods that is related to the Clay Figurine Zhang Family and Zhang Yu, and it is not sufficient to cause market confusion. Therefore, it does not constitute unfair competition or false publicity³⁹. Thus, reference Case No. 3 of the Tianjin Higher People's Court sets an example for the judgements of similar cases and a standard for accurately judging whether there has been an act of unfair competition.

38 Tianjin Shi Niren Zhang Shijia Huisu Lao Zuofang ji Zhang Yu Su Chen Yiqian, Ningxia Yaguan Yanjiuyuan ji Tianying Jiuzhou Gongsi (天津市泥人张世家绘塑老作坊及张宇诉陈毅谦、宁夏雅冠研究院以及天影九州公司) [Tianjin Clay Figurine Zhang Family Painted Sculpture Workshop & Zhang Yu v. Chen Yiqian, Ningxia Ya Guan Research Institute & Tianying Jiuzhou Co.] (China).

39 Zhang Yu Su Chen Yiqian, Ningxia Yaguan Yanjiuyuan ji Tianying Jiuzhou Gongsi (张宇诉陈毅谦、宁夏雅冠研究院及天影九州公司) [Zhang Yu v. Chen Yiqian, Ningxia Ya Guan Research Institute & Tianying Jiuzhou Co.], Tianjin Shi Gaoji Renmin Fayuan Cankao Anli No. 3 (China).

V. GAZETTE CASES, TRIAL REFERENCE CASES, AND CONSULTING CASES

A. Cases in the Gazette of the Supreme People's Court

There are two columns in the *Gazette of the Supreme People's Court*: one is “selected publication of judgement documents,” which publishes the judgement documents made by each judicial tribunal of the SPC, and the second is “cases,” which publish cases recommended by local people's courts. The SPC began to publish the first set of cases in the *Gazette* in 1985 and has since then regularly published typical cases. The cases are screened out by strict standards and procedures with the characteristics of typicality, authority, and authenticity⁴⁰. Its editing procedure is for the editorial department of the *Gazette* to select relevant cases and to submit them to the relevant judicial tribunals of the court for opinions. If the judicial tribunal gives a positive opinion, the case will be submitted to the president of the court for review. Only with the consent of the SPC can it be published in the *Gazette* as a case to guide judicial practice⁴¹.

In the Fabao database of Peking University, by setting the “reference level” as “Gazette case,” “case cause” as “administration,” and the time period from 1985 to December 2025, 165 administrative litigation cases are retrieved, of which 160 are published by the SPC and 5 are published by the Supreme People's Procuratorate. Further analysis and statistics in Fabao of Peking University show that the administrative Gazette cases issued by the SPC come from 22 provinces in China. Among them, 41 cases originated from the cases tried by the SPC, including 15 cases in Shanghai, 25 cases in Jiangsu Province, 7 cases in Sichuan Province, and others from Guizhou, Yunnan, and other western provinces. Judging from the trial level of the court in Gazette cases, the trial level of the case involves all levels of courts, including the SPC, the higher people's court, the intermediate people's court, the basic people's court, and the special

40 Lin Feifei (林菲菲), *Falu Yuanze Sifa Shiyong de Shiji—Yi Zuigao Renmin Fayuan Gongbao Anli Wei Yanjiu Duixiang* (法律原则司法适用的时机——以最高人民法院公报案例为研究对象) [The Timing of the Judicial Application of Legal Principles: Taking Cases in the Gazette of the Supreme People's Court as the Object], 1 *Nanchang Daxue Faxue Pinglun* (南昌大学法学评论) [Nanchang University Law Review] 196, 206 (2016).

41 Zhou Daoluan (周道鸾), *Historical Development of China's Case System* (中国案例制度的历史发展) [Historical Development of China's Case System], 5 *Falu Shiyong* (法律适用) [Journal of Law Application] 2, 8 (2004).

court. According to the types of administrative cases, there are 33 cases of administrative penalty, which is the most common in Gazette cases.

From the perspective of judgement reasons, the existing Gazette cases are mainly divided into the following types:

(1) Unclear interpretation of legal provisions

For example, in the fifth issuance of the administrative Gazette case in 2014 as “Inner Mongolia Qiushi Real Estate Development Co., Ltd. suing Hohhot Civil Air Defense Office for civil air defense administrative expropriation”⁴², the court found out that after trial: Adjustment objects free of various administrative charges in the project of basic-need housing building are not explicitly stipulated in *Several opinions on solving the housing difficulties of urban low-income families* issued by the State Council and *Measures for administration of affordable housing* issued jointly by the Ministry of Construction and other six ministries and commissions. However, from the perspective of legislative intent, the object should be legal construction behaviour. Hohhot Intermediate People’s Court holds that the applicable object should not include illegal construction behaviour.

(2) Adjust the conflict of laws

With the increasing number of legislations, conflicts between laws, regulations, rules, and legal interpretations occur from time to time. Only by resolving and adjusting the contradictions and conflicts can we avoid the improper and confusing the application of law. Some of the cases in the Gazette are typical cases dedicated to the adjustment of legal conflicts, which can be used as references for judges to interpret the law and eliminate contradictions. For example, in the sixth issuance of the Gazette case in 2006 as “Botan Company suing Xiamen Customs of disputes for administrative penalty decision”⁴³, the court interprets whether the administrative regulations formulated according to the laws before the amendment are naturally

42 Neimenggu Qiushi Fangdichan Kaifa Youxian Gongsi Su Hohhot Shi Renfang Bangongshi (内蒙古秋实房地产开发有限公司诉呼和浩特市人民防空办公室) [Inner Mongolia Qiushi Real Estate Development Co. v. Civil Air Defense Office of Hohhot City], Sup. People’s Ct. Gaz., Issue 5, 2014 (No. 211) (China).

43 Botan Gongsi Su Xiamen Haiguan (博坦公司诉厦门海关) [Paktanle Co. v. Xiamen Customs], Sup. People’s Ct. Gaz., Issue 6, 2006 (No. 116) (China).

invalid when the laws have been amended, and clarifies the following rules in the Gazette: after the relevant laws have been amended, as long as they are not explicitly repealed and do not conflict with the amended laws, they are still valid and can be applied.

(3) Solve the concurrence of articles

Part of the cases in the Gazette aim to solve the problem of concurrence of articles and clarify the application of articles in the case of concurrence. An example is the Gazette case in 2017 of “Guangling District People’s Procuratorate of Yangzhou City, Jiangsu Province v. Beijing Sunshine 100 Biotechnology Development Co., Ltd., Xi Wenyu, et al. (case regarding production and sale of toxic and harmful food)”⁴⁴. The lawyer of the defendant Xi Wenyu proposed that Xi Wenyu’s act of producing and selling Shanqishen capsules containing buformin hydrochloride, which has been banned by the state, constituted the crime of producing and selling counterfeit drugs. However, Yangzhou Intermediate People’s Court held that Shanqishen capsule is a health food, and the main ingredients marked in the instruction manual are food raw materials with the same homology as medicine and food and raw materials of traditional Chinese medicine that can be used for health food. Thus, the capsules should be recognized as health food, and the defendant must be convicted and punished according to the crime of producing and selling toxic and harmful food, while excluding the crime of producing and selling counterfeit drugs⁴⁵. Therefore, when we meet the problem of concurrence of articles, the Gazette can clarify the application of law and make the judges know how to employ the correct law into the judgement.

(4) Make up for legal loopholes

The Gazette cases offer interpretations for items not stipulated by law to make up for legal loopholes⁴⁶. This function is critically important in the context of rapid technological development, where statutory law often lags behind social reality. For example, in the sixth

44 Jiangsu Sheng Yangzhou Shi Guangling Qu Renmin Jianchayuan Su Beijing Yangguang 100 Shengwu Keji Fazhan Youxian Gongsi, Xi Wenyu deng (江苏省扬州市广陵区人民检察院诉北京阳光一佰生物技术开发有限公司、习文有等) [Guangling District People’s Procuratorate of Yangzhou City, Jiangsu Province v. Beijing Sunshine 100 Biotechnology Development Co., Xi Wenyu, et al.], Sup. People’s Ct. Gaz., Issue 2, 2017 (No. 244) (China).

45 Id. (judgment abstract).

46 Chen, *supra* note 30, at 23.

issuance of the Gazette case in 2018 as “Beijing Orient Tide Science and Technology Development Co., Ltd. v. Patent Reexamination Board of the State Intellectual Property Office, and Daiichi Sankyo Company Limited (as a third party) (administrative dispute over the invalidation of the patent for invention)”⁴⁷, the court clearly pointed out that during the period of invalidation of patent right, the modifications to the Markush claim should be made only by following the principle of strict restriction; a class or individual compound with new properties and functions cannot be produced due to modification, and case factors need to be fully considered⁴⁸. In the case of new types of cases in the field of intellectual property, the Gazette cases provide timely guidance and reasonable interpretation under the situation that there is no clear provision in the law, which makes up for the loopholes of the law and can be prepared for the legislation in the future. More recently, the 2025 Gazette case of Hailiang Education Management Group Co., Ltd., et al. v. Zhejiang Ronghuai Education Group Co., Ltd., et al. demonstrates this mechanism in the digital age. Given the absence of explicit statutory rules governing covert keyword use in search engine paid ranking, the Gazette case clarified that unauthorized covert use of competitors’ well-known business identifiers for traffic diversion constitutes unfair competition under Paragraph 2 of Article 2 of the Anti-unfair Competition Law. It fills regulatory gaps in internet competitive behaviors, delivers uniform adjudication rules for unregulated digital market acts, and provides normative guidance for future trials of tech-driven commercial disputes.⁴⁹

47 Beijing Wansheng Yaoye Youxian Gongsi Su Guojia Zhishi Chanquan Ju Zhuanli Fushen Weiyuanhui ji Disan Ren Daiichi Sankyo Kabushiki Kaisha Faming Zhuanli Quan Wuxiao Xingzheng Jiufen (北京万生药业有限责任公司与国家知识产权局专利复审委员会、第三人第一三共株式会社发明专利权无效行政纠纷案) [Beijing Wansheng Pharmaceutical Co. v. Patent Reexamination Board of the China National Intellectual Property Administration & Third Party Daiichi Sankyo Co., Administrative Dispute over Invalidation of Invention Patent Rights], Sup. People’s Ct. Gaz., Issue 6, 2018 (No. 260) (China).

48 Id. at 18–29 (judgment abstract).

49 Hailiang Jiaoyu Guanli Jituan Youxian Gongsi deng Su Zhejiang Ronghuai Jiaoyu Jituan Youxian Gongsi deng Qinhai Shangbiao Quan ji Buzhengdang Jingzheng Jiufen (海亮教育管理集团有限公司等与浙江荣怀教育集团有限公司等侵害商标权及不正当竞争纠纷案) [Hailiang Education Management Group Co. et al. v. Zhejiang Ronghuai Education Group Co. et al., Trademark Infringement and Unfair Competition Dispute], Sup. People’s Ct. Gaz., Issue 3, 2025 (No. 343), at 29–48 (China).

B. Trial reference cases and consulting cases

The trial reference cases are mainly the cases published by the SPC and its tribunals in the *People's Judicature*, *People's Court Daily*, and *Journal of Law Application*, as well as the cases in various publications compiled and published by the subordinate units of the SPC and its transaction tribunals.

The cases have been issued regularly in the “case” column of *People's Judicature*⁵⁰ since 2009, and include administrative trial, civil trial, criminal trial, intellectual property trial, and other types. The text of the case focuses on analyzing the judgement reasons and results of the original case and clarifying the focus of the dispute with a generally deeper legal analysis of the case, which can provide reference and guidance for the judicial workers to handle similar cases in practice.

The People's Court Daily is the official newspaper managed by the SPC. Since 2005, the “case guidance” column has been opened, and typical cases have been selected and issued regularly by special topics. For example, nine cases of environmental resources trial of people's court issued on November 29th, 2018, involved the protection of high-quality development of the Yangtze River Economic Belt. It briefly introduced the cases from three aspects: basic case, judgement result, and typical significance.

Since December 2016, judicial cases have been added to the *Journal of Law Application*, which focuses on typical judicial cases and case systems all over the world. The results of published cases can provide references for trial practice and case studies. Further, each judicial tribunal of the SPC has published research publications, such as *Reference for Criminal Trial*, *Administrative Law Enforcement and Administrative Trial*⁵¹, *Reference and Guidance for Civil Trial*, and *Trial Guidance for Civil and Commercial Cases*.

In addition to the above journals for publishing the cases, there are also some book publications for recording the cases. For example,

50 Renmin Sifa (人民司法) [People's Judicature]. As a publication of the Supreme People's Court, People's Judicature carries articles on judicial interpretation, analyzes typical cases, reflects new situations and problems in judicial work, and reports trials of major cases of public concern.

51 Xingzheng Zhifa yu Xingzheng Shenpan (行政执法与行政审判) [Administrative Law Enforcement and Administrative Trial].

National Judges College and Renmin University of China Law School have jointly compiled *the Overview of Chinese Trial Cases* since 1992 and selected a comprehensive edition for trial cases year by year, including commercial cases, administrative cases, criminal cases, and civil cases, and the representative cases are included in it by category. The *Selected Cases of the People's Courts* edited by the China Institute of Applied Jurisprudence of the Supreme People's Court is a serial publication of case studies (founded in 1992), which is instructive, practical, professional, informative, and academic⁵². The case structure is divided into seven parts: title, key points, case index, details of case, trial, comments and supplementary evaluation after compilation⁵³. To strengthen the guidance of judicial adjudication, two columns—"special planning" and "extraterritorial collection"—in the book particularly "increase the proportion of cases with guiding significance to the application of law tried by various higher people's courts"⁵⁴. All these trial reference case formats present cases in the form of newspapers and books, which pay more attention to academic, theoretical analysis and discussion of principle issues, and summary of trial experience.

Regarding consulting cases, the publishers of such cases are mainly the Information Bureau of the SPC, the trial tribunals of the high people's courts, and the local intermediate people's courts. The last update was made at the end of April 2022 in Fabao of Peking University, and 1277 cases can be retrieved. Among them, 503 cases were tried by intermediate people's courts, and 348 cases were tried by higher people's courts. Civil and intellectual property cases account for a large proportion. Although there is no clear judicial document to give the consulting case a legal effect, it still has certain reference and guidance value in judicial practice, and it pays attention to the current legal hot issues, which can promote the spirit of the rule of law of socialism with Chinese characteristics and popularize legal knowledge. For example, after the issuance and implementation of the Law on the Protection of Heroes and Martyrs, the public generally

52 China Institute of Applied Jurisprudence of the Supreme People's Court, Preface to Selected Cases of the People's Courts (1992–1999): State Compensation Volume (2000).

53 Zuigao Renmin Fayuan Bangongting Guanyu Jiaqiang Renmin Fayuan Jingxuan Anli Bianji Gongzuo de Tongzhi, Fa Ban [2005] No. 275 (最高人民法院办公厅关于加强人民法院精选案例编辑工作的通知, 法办【2005】275号) [Notice on Strengthening the Editing of Selected Cases of the People's Courts, Official Document No. 275 [2005]] (promulgated by the Gen. Office Sup. People's Ct., June 23, 2005) Sup. People's Ct. Gaz., (China).

54 Id.

pays attention to the protection of the reputation of heroes and martyrs. In response to social concerns, the public interest litigation case of Huai'an People's Procuratorate suing Zeng Yun against martyrs' reputations was included in the consulting cases in 2018⁵⁵.

C. Risks of guiding cases being eroded by SPC-reviewed reference cases

Since July 2023, the Supreme People's Court has successively issued the Notice on the Development of the People's Court Case Database and the Notice on Accelerating the Development of the People's Court Case Database, kicking off the construction of the database. On 27 February 2024, the People's Court Case Database was officially launched and opened to the public, hosting 3,711 cases on its launch day and achieving full coverage of common criminal charges and frequently occurring causes of action. On 6 May 2024, the SPC promulgated *Work Procedures for the Construction and Operation of the Case Base of the People's Courts*. This marks the formal institutionalization of the database, ushering in a new phase of standardized development and systematic improvement. Guiding cases and SPC-reviewed reference cases are both included in the People's Court Case Database. Though they differ in the basis of legal effect, they share highly similar practical functions.

While traditional sources such as Gazette cases, Trial References, and Consulting Cases retain historical and academic value, the People's Court Case Database now serves as the centralized, mandatory platform for judicial guidance. This development fundamentally transforms the problems previously associated with case naming, screening, and retrieval. However, it leaves the question of the precise hierarchy of authority only partially resolved.

Both categories require judges to conduct searches in the People's Court Case Database prior to case trial. Where a retrieved case is deemed a similar case, judges shall make reference to it when rendering decisions on the current case and cite it in the reasoning section of the judgment. In this way, they serve to provide specific adjudicative rules and ensure the uniform application of law. Nevertheless, it is hard to draw a clear line between guiding cases and SPC-reviewed reference cases in terms of the criteria for selection,

⁵⁵ Huai'an Shi Renmin Jianchayuan Su Zeng Yun (淮安市人民检察院诉曾云) [Huai'an People's Procuratorate v. Zeng Yun], Zixun Anli No. 28, Huai'an Intermediate People's Court, 2018 (China).

release, review and database inclusion. The standard for guiding cases is that they shall be universally instructive for the trial of similar cases, while reference cases are required to possess referential and exemplary value for the adjudication of similar cases. In judicial practice, distinguishing between the two in a precise manner proves difficult. In practice, the distinction is only implemented in general terms. Guiding cases are selected and released under stringent standards, whereas SPC-reviewed reference cases are reviewed and included in the database under relatively lenient rules.

In conclusion, SPC-reviewed reference cases adopt admission criteria similar to those for guiding cases and perform comparable institutional functions. Given their simpler and more efficient inclusion procedures, people's courts in practice tend to prioritize reviewing and admitting SPC-reviewed reference cases over selecting and releasing guiding cases. Consequently, guiding cases face the risk of being gradually marginalized and overshadowed by SPC-reviewed reference cases.

VI. THE RELATIONSHIP BETWEEN GUIDING CASES AND OTHER TYPES OF CASES

This section discusses and elaborates on the similarities and differences between the guiding cases issued by the SPC and the reference cases, Gazette cases, trial reference cases, and consulting cases issued by other organs or institutions.

A. The overlap and conflict between guiding cases and other types of cases

In the existing case guidance system, the guiding cases occupying the core status have a certain relevance and similarity to other auxiliary and supplementary cases.

(1) Overlap between guiding cases and other cases

Many types of cases share similarities. Although the publishing subjects, screening scope, and review and selection procedures of each case are different, the source of cases is the effective judgement of people's courts at all levels. Therefore, there is overlap and repetition between guiding cases and other cases. The first set of guiding cases was published on December 20, 2011, and the earliest time of other types of cases, such as Gazette cases, can be traced back to 1985. Many of these cases became the basis of guiding case selection and were

later selected and transformed into guiding cases by way of “selecting the best from the best”⁵⁶. In particular, a large number of early guiding cases overlap with the Gazette cases. An example is the case of the Dongtai Branch of Yancheng Aokang Food Co., Ltd. suing Dongtai Administration for Industry and Commerce of Yancheng for administrative penalty, which is not only a guiding case of the SPC (No. 60) but also a reference case of Jiangsu Province (No. 111 in 2013), and it is also a case of *People’s Judicature* (No.14 issuance in 2014)⁵⁷ and a case of *the Gazette* of SPC (No. 6 issuance in 2014)⁵⁸. The overlap among all kinds of case-based guidance materials can easily make the generation and application of cases become disordered and chaotic, thus blocking the limited channels for case issuance and hindering cases with more reference and guidance values from being issued.

(2) The presentation form of the case text is basically the same

The text presentation of guiding cases and other types of cases refines and summarizes the content of the original judgement document, which is divided into several important modules, such as judgement reason, basic facts, and judgement result, rather than directly recording the full text of the judgement document. Its text is concise, and except for a few types of cases, the general length is not long. The guiding cases issued by the SPC pay more attention to the reference and application of cases and pay close attention to the key points and keywords of judgement when the text is compiled, hoping to convey the “spirit of trial” to the judges with such elements of the text.

(3) The selected case types are essentially similar

56 Chen Yuefeng (陈越峰), Gongbao Anli Dui Xiayiji Fayuan Tonglei Anjian Caipan de Keguan Yingxiang—Yi Guihua Xingzheng Xuke Qinlan Xianglinquan Zhengyi Anjian Wei Kaocha Duixiang (公报案例对下级法院同类案件判决的客观影响——以规划行政许可侵犯相邻权争议案件为考察对象) [Objective Influence of Gazette Cases on Lower Courts’ Decisions in Similar Cases: A Study Based on Disputes over Infringement of Neighboring Rights in Administrative Planning Permit Cases], 5 Zhongguo Faxue (中国法学) [China Legal Science] 176, 191 (2011).

57 Renmin Sifa: Anli (人民司法·案例) [People’s Judicature: Cases], No. 14, 2017, at 40–44.

58 Yancheng Shi Aokang Shipin Youxian Gongsi Dongtai Fen Gongsi Su Yancheng Shi Dongtai Gongshang Xingzheng Guanli Ju Gongshang Xingzheng Chufa An (盐城市奥康食品有限公司东台分公司诉盐城市东台工商行政管理局工商行政处罚案) [Dongtai Branch of Yancheng Aokang Food Co. v. Dongtai County Administration for Industry & Commerce of Yancheng City, Administrative Penalty Case], Sup. People’s Ct. Gaz., Issue 6, 2014 (No. 212) (China).

First are the cases of publicity and education. Such cases mainly popularize legal knowledge, promote, and carry out the concept of rule of law, and actively respond to the concerns of the public about legal hot issues through the form of “law publicity by the case.” For example, environmental public interest litigation brought about by environmental pollution is a hot issue of social concern⁵⁹. As a result, the relevant cases have been issued successively with the theme of public interest litigation by consulting cases, Gazette cases, and guiding cases. On the one hand, such cases show the working process and effect of the people’s courts and people’s procuratorates in public interest litigation; on the other hand, they also better publicize the legal knowledge of environmental protection to the public. For another example, the No.90 guiding case⁶⁰ is about an administrative penalty for road traffic management, which aims to publicize that the motor vehicle should and must “yield to pedestrians” when it passes a pedestrian crossing without signal lights. Moreover, other types of cases are also related to road traffic management.

Second, there are cases of resolving doubts. No matter the guiding cases or other types of cases, they all pay attention to the interpretation of the comparative principles of legal provisions or the ambiguity of legal concepts so as to refine the principled provisions and clarify the ambiguous legal concepts. Besides, they also pay attention to the analysis of new problems or difficult and complex problems that cannot be solved due to the lag of legal provisions, and provide reference solutions, which is convenient for judges to learn and refer to when handling similar cases. Therefore, there are many cases of resolving doubts.

Third are important exemplary cases. Many of the cases selected from the guiding cases and other types of cases are typical cases with general public concern and significant social impact, which can play a good exemplary role and contribute to unifying the judicial scale and judgement standards.

(4) By way of a rigorous screening process

The cases selected from the guiding cases and other cases should

⁵⁹ Cao, *supra* note 11, at 127.

⁶⁰ Bei Huifeng Su Haining Shi Gong’ an Ju Jiaotong Jingcha Dadui Daolu Jiaotong Guanli Xingzheng Chufa An (贝汇丰诉海宁市公安局交通警察大队道路交通管理行政处罚案) [Bei Huifeng v. Traffic Police Brigade of the Public Security Bureau of Haining City, Road Traffic Administration Administrative Penalty Case], Sup. People’s Ct. Guiding Case No. 90 (China).

be screened through the preliminary selection and review procedures, and the effective cases with legal trial procedures, correct applicable laws, and the judgement standing the test of time and judicial practice test can be used to ensure the exemplary and reference value of the cases.

B. Differences between guiding cases and other types of cases

The following subsections address the differences between guiding cases and other types of cases.

(1) Different publishing bodies

The guiding cases are reviewed and determined by the SPC and issued uniformly. The reference cases are issued by the higher people's courts, the Gazette cases are issued by the General Office of the SPC, and the trial reference cases are issued by subordinate units and various transaction tribunals of the SPC.

(2) Different uses of names

According to the provisions of the Notice of the Supreme People's Court on the Issuance of the First Set of Guiding Cases, the name of "guiding cases" is determined and uniformly issued by the SPC, which are the cases that have a guiding effect on the trial and implementation of national courts through the legal selection procedure. The cases issued by the higher people's courts to guide the judicial transactions within the jurisdiction are called "reference cases." As for other cases, they are called according to their own appropriateness, such as the cases issued by the *Gazette of the Supreme People's Court*, which are called "Gazette cases." A typical evidentiary example is the Gao Xiang, Zhao Ming v. Changzhou Tianning Jinmei Garden Owners Committee case. The ruling cites: although China does not implement precedent, this case has been listed as a Guiding Case in the 2015 No. 4 Series of the Gazette of Jiangsu Higher People's Court (No. 53 Reference Case of 2015), and the handling result is of reference significance for this case. Such mixed labeling misclassifies a reference case as a binding guiding case, constituting direct evidence of chaotic case naming and wrongful judicial citation.⁶¹

61 Gao Xiang & Zhao Ming v. Changzhou Tianning Jinmei Garden Owners Committee, Civil Judgment No. 3274 (Changzhou Intermediate People's Ct. 2021) (China).

(3) Different levels of effectiveness

Looking at legal force, some scholars hold that the guiding case lacks the effect of a formal legal source, having no more than a model meaning or reference value. Fang Wencui, for example, argued that such a case is neither a formal source of law nor endowed with a universal and compulsory binding force.⁶² Zhang Jianjun believed it appropriate to regard the case guiding system in China as an informal legal source, taking it as a supplement to formal legal sources, such as legislation and judicial interpretation.⁶³ Others believe that guiding cases have no formal legal effect and do not belong to formal legal sources; instead, they play a reference role for judges in dealing with similar cases and should be, in effect, binding.⁶⁴ Dong Gao and He Xiaoyi held that guiding cases have a certain legal binding force. The basic court must follow the SPC's jurisprudence; once established, the jurisprudence has the same legal effect as the Statute Law.⁶⁵ When the SPC makes a judgment, the higher court should accept it because the Supreme Court has the institutional function of legal interpretation, the compound confirmation authorization of legal norms, and the institutional practice of trial legislation. Guiding cases can be deemed "quasi-legal sources"⁶⁶ and should be contemporary China's official legal source. The addition of guiding cases to further strengthen the legal source status of guiding cases helps us respect the objective existence of guiding cases and rationally recognize and attach

62 Fang Wencui (房文翠), Jiejin Zhengyi Xunqiu Hexie: Anli Zhidao Zhidu de Fa Zhexue Zhi Wei (接近正义寻求和谐: 案例指导制度的法哲学之维) [Approaching Justice and Pursuing Harmony: The Legal Philosophical Dimension of the Case Guidance System], 3 Fazhi yu Shehui Fazhan (法制与社会发展) [Law and Social Development] 46, 52 (2007).

63 Zhang Jianjun (张建军), Jiancha Jiguan Anli Zhidao Zhidu de Goujian he Wanshan—Yi Zhiding Fa de Quexian Wei Shijiao (检察机关案例指导制度的构建和完善——以制定法的缺陷为视角) [Construction and Improvement of the Procuratorial Organ Case Guidance System: From the Perspective of Defects in Statutory Law], 5 Gansu Shehui Kexue (甘肃社会科学) [Gansu Social Sciences] 193, 197 (2011).

64 Qin Wang, On the Construction and Application of China's Case Guidance System—Taking the Supreme People's Court Gazette as an Analysis Sample, in 4 Legal Methodology and Legal Cogitation 207 (Ge Hongyi ed., 2007).

65 Dong Hao (董皞) & He Xiaoyi (贺晓翊), Zhidaoxing Anli Zai Tongyi Falü Shiyong Zhong de Jishu Tantaos (指导性案例在统一法律适用中的技术探讨) [Technical Discussion on Guiding Cases in the Application of Unified Laws], 11 Faxue (法学) [Legal Science] 144, 151 (2008).

66 Lei Lei (雷磊), Zhidaoxing Anli Fayuan Diwei Zai Fansi (指导性案例法源地位再反思) [Re-thinking the Status of Guiding Cases as a Source of Law], 1 Zhongguo Faxue (中国法学) [China Legal Science] 272, 290 (2015).

importance to their function and value as the formal legal foundations of contemporary China. Despite⁶⁷ these rich theoretical debates, a consensus remains elusive regarding the practical hierarchy and operational boundaries of these cases, especially with the advent of the People's Court Case Database.

From the perspective of effectiveness level, the existing guiding cases actually have three grades: the guiding cases issued by the SPC are first grade, the reference cases issued by the higher people's courts are second grade, and other cases are third grade. The guiding cases issued by the SPC are at the core of the case guidance system, and the people's courts at all levels should refer to them when trying similar cases. In other words, when trying similar cases, the people's courts at all levels should refer to the guiding cases and quote the reasoning part of their judgement, in addition to the relevant laws and judicial interpretations. The reference cases of the higher people's court can guide the trial transactions of the people's courts at all levels and special people's courts within the jurisdiction of the province and city where they are located, and the courts within their jurisdiction can use them for references when trying similar cases. Thus, the reference cases have a certain guiding significance and reference value. At present, there is no clear judicial document to give the effectiveness and binding force to Gazette cases, trial reference cases, consulting cases, etc., but they still have certain references and guidance value in judicial practice.

Given this three-grade structure and the integration of cases into the People's Court Case Database, a concrete conflict-resolution mechanism is necessary to prevent inconsistent adjudication. In terms of hierarchical application, SPC-issued first-grade guiding cases take precedence over second-grade reference cases formulated by higher people's courts, while second-grade reference cases prevail over third-grade persuasive cases amid normative conflicts. In terms of temporal application, newly updated cases admitted to the database shall supersede previous rulings of the same grade, which conforms to iterative judicial jurisprudence and updated criteria for law application. In procedural terms, courts bear mandatory explanation obligations once they depart from any database-admitted binding or

67 Kuang Aimin (匡爱民) & Yan Yang (严杨), Zenglie 'Yi Anli Wei Zhidao' Sifa Shenpan Yuanze de Sikao (增列“以案例为指导”司法审判原则的思考) [Thoughts on Adding the “Taking Cases as Guidance” Principle to Judicial Adjudication], 6 (38) Jiangxi Shehui Kexue (江西社会科学) [Jiangxi Social Sciences] 153, 161 (2018).

priority case. Courts must justify such departure via explicit written statements in judgment reasoning by identifying material factual distinctions, legal interpretation divergences or exceptional judicial circumstances, and complete standard archival filings for supervision and review conducted by superior judicial organs.

VII. FOUR CAUSES LEADING TO DIVERGENT JUDGMENTS IN SIMILAR CASES UNDER THE CURRENT CASE GUIDANCE SYSTEM

Under the existing case guidance system, given the number of cases released, different or even contradictory judgements of the same cases can be identified due to their chaotic names and dubious validity. Different judgements of the same cases not only obstruct subjects from learning the stance and attitude of the judiciary toward a specific problem to form a definite behaviour expectation but also reduces judicial credibility.

Based on the analysis of different types of cases, and after eliminating some subjective factors, there are four main reasons judges reach different judgements in the same cases while referring to cases in judicial practice in recent years. The first is wrong application caused by doubtfulness, that is, doubtfulness in the application of law as well as in the finding of facts. The doubtfulness in the application of law includes the uncertainty of what laws and regulations should be applied, as well as the unclarity of laws and regulations or unclear and inaccurate understanding. Due to the varied effectiveness of a large quantity of cases and limited professionalism, the judges at primary courts may be confused in selecting applicable laws and even referring to a case with less effectiveness. The doubtfulness in finding facts refers not only to the unavailability to determine the authenticity of facts due to complexity but also to the difficulty in determining the probative force of relevant evidence. In comparing situations, key facts, and the focuses of disputes between pending cases and guiding cases, judges can hardly determine if cases are similar due to their complexity. Therefore, there may be differences in the finding of facts in determining similar cases. No matter the circumstances, error may be inevitable to different extents, resulting in different judgements.

The second reason is confusion caused by new things. It refers to emerging digital social modes, tech-driven business behaviors and newly arising disputes triggered by internet operation, algorithm application and digital capital transactions, which expose the inherent hysteresis of statutory law and restrict unified judicial adjudication

amid evolving technical scenarios. This mainly refers to novel social operation and interaction modes, novel social phenomena, and novel social behaviours, activities, or related social disputes, which not only reflect the relative hysteresis of law but also amplify the limitation of judicial recognition due to external complexity. For instance, after the release and implementation of new laws, judges' understanding may differ based on their knowledge of the *Civil Code* when making a judgement. Therefore, different judges may make different judgements based on their different understandings. In reality, there are many issues or phenomena, such as Internet platform transactions, artificial intelligence works, ownership, and use of frozen embryos, and innovative business issues in the financial field that lack an express legal basis. Furthermore, judicature lacks the ability to form its own definite opinions and stances. The doubtfulness about relevant issues becomes the cause of different judgements in the same cases.

The third is the wrong application caused by chaotic names. Article 5 of the *Notice by the Supreme People's Court on the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation)* provides that compulsory retrieval is a classified and level-by-level retrieval. In effect, this provision implies the determination of the effectiveness of different cases, which mainly reflects the following: (1) in releasing or referring to reference cases, some courts directly name them with the guiding case or reference case; (2) in selecting reference cases, some judges mistakenly refer to ordinary cases as guiding cases; and (3) there is inconsistency of judgement between guiding cases and the cases to which a judge chooses to refer.

The fourth reason is the deviation caused by complexity. Some cases are not complex in terms of making a judgement merely in accordance with law, but multiple factors should be considered from the perspective of the proper settlement of disputes and thorough resolution of conflicts. For instance, the *Guiding Opinions on Deepening Promotion of the Fusion of Core Socialist Values into Interpretation and Reasoning in Judgement Document* issued by the Supreme People's Court requires that fair judgement should serve as an important measure to establish the code of conduct and social custom, which further standardizes and strengthens the interpretation and reasoning in a judgement document. Therefore, judges must balance multiple claims in which there are mutual benefits or conflicts in making a judgement. In this case, the different orientations or preferences of judges may cause significant differences in judgement.

In conclusion, despite the large quantity of cases released by different subjects, there are conflicts among the cases in terms of their effectiveness. The control mechanism of judicial opinions may fail during citation and application of cases due to incorrect application caused by doubtfulness, confusion caused by new things, wrong application caused by chaotic names, and deviation caused by complexity. Given the deviation in reference to cases among judges at all levels in different regions, there are many circumstances for different judgements in the same case. As a result, people can hardly develop stable expectations based on existing cases, which affects the unified application of law and judicial credibility. It is difficult for people to form stable expectations based on existing cases, which affects the uniform application of the law and the credibility of the judiciary. As American scholar Edmond Kahn said, “Whatever this individual treatment may be, arbitrary inequality will undoubtedly induce a sense of injustice, because equal treatment of similar cases before the courts is a deep implicit expectation in the legal order.”⁶⁸ This phenomenon also deviates from the principle of “similar treatment for similar situations” proposed by Rawls⁶⁹ and affects the certainty and predictability of judgement.

VIII. CONCLUSION

A pivotal institutional evolution within China’s case-based adjudication system lies in the standardized operation of the People’s Court Case Database, which incorporates SPC guiding cases and SPC-reviewed reference cases into a centralized judicial platform. Through the lens of current hierarchical judicial case governance, this paper seeks to affirm the normative value of the national case database while unpacking structural flaws undermining uniform law application. It contextualizes longstanding academic contentions over the legal validity of adjudicative cases, and verifies the practical three-tier validity hierarchy governing judicial case application across Chinese courts. This study identifies four institutional drivers of disparate rulings in analogous cases: evidentiary and legal uncertainty in case adjudication, normative lag of statutory law against digital emerging disputes, disordered official naming of adjudicative precedents, and multi-interest balancing complexity in dispute settlement. Beyond diagnosing adjudicative divergence, this paper

⁶⁸ John Bordley Rawls, *A Theory of Justice* 209 (1971).

⁶⁹ *Id.* at 209.

confirms the corrective potential of systematic case governance to mitigate the marginalization risk of authoritative SPC guiding cases.

This paper advances a four-pronged reform agenda to consolidate the legitimacy of China's case guidance regime and elevate institutional judicial credibility. First, it advocates clarifying a unified case validity hierarchy that prioritizes first-tier SPC guiding cases over higher people's court reference cases and general persuasive judicial cases. Second, it proposes integrating all traditional and newly-released adjudicative sources via the unified People's Court Case Database. Third, it calls for standardizing nationwide case denomination and judicial citation norms to eliminate wrongful case reference. Fourth, it argues for establishing formal case conflict resolution and withdrawal mechanisms, which mandate written adjudicative justification for departing from valid precedents and hierarchical archival supervision by superior courts. Collectively, these measures reinforce Rawls' principle of equal treatment for analogous cases, stabilize public legal predictability, and advance consistent law enforcement nationwide. Admittedly, this reform agenda focuses on doctrinal institutional optimization, leaving room for future socio-legal empirical research to examine its practical implementation effects amid diversified digital judicial scenarios.

