

Legal Commentary

July 28, 2020

Dispute Resolution Law

Commentary on Supreme Court's Guiding Opinions on Similar Cases

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On July 27, 2020, the Supreme People's Court published the *Guiding Opinions on Unifying the Application of Law and Strengthening the Research of Similar Cases (for Trial Implementation)* ("**Guiding Opinions**"). The *Guiding Opinions* signal a significant move made at the national level to ensure the consistency of judicial practice in China. Notably, the *Guiding Opinions* provide a clear definition, scope, and hierarchy for similar cases, which serve as essential guidance for China's judiciary. Among the similar cases the *Guiding Opinions* define, *de facto* binding effect is given only to guiding cases published by the Supreme People's Court, while other similar cases serve only as references for adjudication (Article 9). Aside from this, the *Guiding Opinions* also specify when and how the research of similar cases should be conducted (Articles 2-3, and 5-11), and request lower courts to take measures to enhance case research work (Articles 12-13). The *Guiding Opinions* will become effective on July 31, 2020 (Article 14).

Among the high courts, the Beijing High People's Court and the Jiangsu High People's Court have also published guidelines on the research and use of similar cases. On December 2, 2019, the Beijing High People's Court published the *Guiding Opinions on Standardizing the Exercise of Discretion in Civil Disputes to Ensure the Unified Application of Law (Trial)* ("**Beijing High Court Opinions**"). The Jiangsu High People's Court published on July 14, 2020 the *Stipulations on Establishing Mandatory Similar Case Search Report Mechanism (Trial)* ("**Jiangsu High Court Stipulations**"). While the *Beijing High Court Opinions* provide detailed mechanisms enabling the use of similar cases, the *Guiding Opinions* and the *Jiangsu High Court Stipulations* provide more general and high-level guidance.

Definition, scope and hierarchy of similar cases (Articles 1, 4, and 9)

The *Guiding Opinions* explicitly limit the scope of similar cases to those decisions which have become effective. It is also provided that similar cases should have similarities with the pending case in terms of basic facts, issues in dispute, application of laws, etc. (Article 1).

As to the scope of similar cases, Article 4 of the *Guiding Opinions* specifies that the scope of similar cases

generally includes: (1) guiding cases published by the Supreme People’s Court; (2) typical cases published the Supreme People’s Court and cases in which the Supreme People’s Court has rendered an effective judgment; (3) reference cases published by the high people’s court of the province and cases in which the high court has rendered an effective judgment; and (4) cases in which an effective judgment has been rendered by the court reviewing the pending case or its immediately superior court. That is, similar cases cover all “exemplary cases” which the Supreme People’s Court and all high courts have published and effective decisions rendered by the Supreme People’s Court and all high courts.¹ Meanwhile, Article 4 also provides that “[e]xcept for guiding cases, priority for research shall be given to decisions and cases occurring within the past three years; where similar cases are found among those in the preceding order, no further research is required.” That is, except for guiding cases, relative priority is given to those similar cases decided within the past three years and in the order described in Article 4.

Article 9 also provides that, among the similar cases, binding effect is given only to guiding cases which are not in conflict with the most recent laws, administrative regulations, and judicial interpretations (Article 9). Other similar cases only serve as reference for adjudication (Article 9).

When and how to conduct similar case research (Articles 2-3, and 5-11)

The *Guiding Opinions* limit mandatory similar case research to the following four situations: “(1) the case is to be submitted to the assembly of professional (presiding) judges or the judicial committee for discussion, (2) there are no clear adjudicating rules or unified adjudicating rules have not yet been formulated, (3) the president of a court or the chief judge of a tribunal requests similar case research in accordance with his authority on adjudication supervision and administration, and (4) other cases for which similar case research is necessary” (Article 2). This language is to ensure that, on one hand, similar case research is conducted in significant and controversial cases and, on the other hand, courts are allowed to forgo similar case research in certain routine cases, which may ensure more flexible use of similar case research.

Meanwhile, the *Beijing High Court Opinions* request that similar case research be conducted in all ordinary civil cases. It thus appears that the Supreme People’s Court intends to give the lowers courts and local courts more discretion in determining the extent to which similar case research is required.

It is also stipulated that the presiding judge should be responsible for the authenticity and accuracy of similar case research, and designated databases include **China Judgements Online** and **Database of Chinese Trial Cases** (Article 3). The approaches that may be used include keyword search, related rules search, related cases search, etc. (Article 5). The presiding judge is required to compare the cases searched with the case he is handling to decide whether there exist any similar cases (Article 6). For those cases in which similar case research is mandatory, certain forms of a report are required, which can either be an explanation or a special report and should be archived as part of the case file (Article 7). It is also requested that, during the research process, the report specify items including the researcher, timing, platforms used, approach, result, holdings of the similar cases, issues of the pending case, etc.

¹ Note: we use the term “exemplary cases” to refer to three types of cases, including the guiding cases and typical cases published by Supreme Court, and reference cases published by high courts.

(Article 8). For criminal cases, the court should specify in its decision whether a guiding case presented by a party can be used and for other types of similar cases, the court may specify this through an explanation (Article 10). The *Guiding Opinions* also clarify which mechanism should be implemented if the similar cases differ on the application of law (Article 11).

Measures to enhance similar case research (Articles 12-13)

Lower courts are encouraged to take measures to enhance similar case research, including to provide trainings, enhance R&D, and establish databases (Article 12). Lower courts are also required to periodically summarize their work related to similar case research, which should be published within the court systems and filed to a higher court for recording (Article 13).

In conclusion, we foresee similar cases playing an important role in future judicial practice in China—a concept similar to, yet distinct from, *stare decisis* under the common law.

Important Announcement

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