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Chinese Courts Shall Search Similar Precedents

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On July 27, 2020, the Supreme People's Court (SPC) of China announced the Guiding Opinions on Standardizing Application of Law and Strengthening Search for Similar Precedents (Trial), which include 14 rules to take effect on a trial basis as from July 31, 2020.

In China, the Courts often refused to follow or refer to similar precedents and made rulings case by case. As a result, similar cases were often tried and judged in different ways and the same legal provision could be interpreted or applied in diversified ways. The SPC have noted this problem, and after extensive solicitation of opinions and in-depth research, made the Opinions, aiming to prevent the inconsistency and standardize the application of law mainly from the following angles:

- **Scenarios for compulsory search for similar precedents**

The SPC provided the specific scenarios where search for similar precedents is compulsory—1. A case to be submitted to the conference of professional (presiding) judges or the judicial committee for discussion; 2. A case where explicit judging rules are unavailable or no consistent rules have been established; 3. A case where a Court President or Tribunal Chairperson requires search for similar precedents according to his jurisdiction over trial supervision and administration; or 4. Other cases where similar precedents need to be searched. In other scenarios where explicit principles are available or search is not necessary, the Courts and judges may not conduct the search. This list of scenarios will limit the Courts and judges' power of discretion to some extent to prevent the inconsistency.

- **Scope of precedents in four tiers**

In Rule 1, the SPC limits the usable precedents to the earlier cases, similar in terms of the basic facts, focuses of disputes, application of law, which have taken effect, whereas the pending cases cannot be cited as similar precedents.

The SPC further specified in Rule 4 the scope of precedents in four tiers—1. The SPC's announced **guiding** cases; 2. The SPC's announced typical cases and effectively judged cases; 3. The High People's Courts' announced reference cases and effectively judged cases in the same provinces, autonomous regions, or municipalities; and 4. The cases effectively judged by a higher People's Court one level above or the same Court. Where a similar precedent is found in a higher tier, it will be unnecessary to conduct further search in the lower tiers. Precedents during the recent three years shall be given priority consideration for the searches.

Of the four tiers, the top tier, namely the SPC's announced guiding cases, shall be binding and followed, unless the cases contradict with the new law, administrative regulations, or judicial interpretation or has been replaced by a new guiding case. Other tiers are of reference value.

The SPC's announced cases, guiding or typical, can be cited by all Courts throughout the country, but the local Courts' cases can only be cited in the same regional Courts or the Courts at the same or lower level in the same region. Therefore, the Courts and judges might refuse to follow or even refer to other regions' precedents. In our opinion, this limitation is not reasonable as the experienced Courts and judges' rulings might be helpful in any regions.

- **Requirements for internal explanation**

Under Rule 7, the judges are supposed to explain and report the search results to the collegiate bench or the relevant judges' conference for discussion and review, which will hopefully enable the judges in charge to absorb others' opinions and wisdom in order to make more justifiable judgments. This also represents the judicial democracy.

Under Rule 8, the search reports are supposed to be objective, complete and accurate. The SPC provides the requisite information and steps for searches, which are helpful to standardize the procedure and ensure quality search.

- **Other source of search results and required response**

In the past, the Courts either refused the relevant parties' citation of precedents for the simple reason that China is not a case law country and judgment shall be made on a case-by-case basis or made no comments on the citation. This situation will be changed under Rule 10 of the Opinions. The relevant parties will be allowed to cite at least the top-tier guiding cases and the Courts shall respond in the judgment text and explain the reasons whether or not to follow or refer to. However, the other lower-tier precedents, not binding, may not receive the same level of attention and can be responded in the simpler form of elucidatory explanation.

- **Principle to resolve inconsistent application of law in precedents**

It happened that the same legal provision is interpreted or applied differently in different precedents. Under Rule 11, in such circumstances, the Courts may put into comprehensive consideration such elements as the Courts' levels, date of judgments, whether the judicial committee had discussion to make resolutions under the provisions of the Supreme People's Court's Implementing Rules on Establishing the Mechanism to Resolve Disputes Over Legal Application. The Courts and judges still have the power of discretion, but the elements of reference listed might be more helpful to address the issue of inconsistency.

- **Two official websites or databases**

The SPC provides in Rule 3 that the judges in charge shall search for similar precedents in the two designated databases—the China Judgments Online and the Database of Chinese Trial Cases at the official websites below:

<http://wenshu.Court.gov.cn/>

<http://www.chncase.cn/case/>

As not all the Chinese Courts publish online their decisions and judgments or relevant evidence and documents, the abovementioned websites do not include all the precedents. In other words, no database or website can provide all the needed information of the precedents. Consequently, the SPC calls on the Courts to enhance research and development and build nationwide authoritative database of precedents, a goal which we hope to be reached in the near future.

To sum up, China, a civil law country as opposed to case law countries, gave very little consideration to similar precedents in the past. The inconsistent application of law has made people doubt about the Courts' creditability. In recent years, some Courts began to accept citation of precedents or limited citation. For example, the Beijing IP Court allows the citation of a maximum of three similar precedents per case.

Although the terms "Guiding Opinions" are used, these are actually the guiding rules and all Chinese Courts are obliged to comply. The lawyers, judges and other professionals should immediately study the search for similar precedents and analyze the results.