

Failure to Address a SPC's Guiding Case – a New Cause of Retrial

Author: CHEN, Qiao

In a recent ruling ((2021)辽民申5273号) on a petition for retrial, the High People's Court of Liaoning Province granted a retrial on the basis that both courts of first and second instance failed to distinguish in their decisions a guiding case of the Supreme People's Court (hereinafter the "SPC") cited by the petitioners having similar basic facts, focus of debate and application of law. This ruling echoes the spirit of the *Guiding Opinions on Standardizing Application of Law and Improving Precedent Search (trial version)* (hereinafter the "*Guiding Opinions*") issued by the SPC in 2020. By operation of the *Guiding Opinions*, the SPC establishes a so-called "Case Guidance System" which is similar to stare decisis in a common law system with characteristics peculiar to the Chinese judicial system.

The Case Guidance System may date back to the *Notice by the SPC of Issuing the Minutes of the National Courts' Civil and Commercial Trial Work Conference* (hereinafter the "*Minutes*") in 2019, in which precedent search and reference to guiding cases were mentioned. According to the Minutes, precedents are for reference purposes, and are thus not equivalent to law.

However, in practice certain precedents indeed have binding effects on courts for specific cases. Article 2 of the *Guiding Opinions* enumerates four categories of cases for which a precedent search is required. The scope of the precedent search should generally include SPC's guiding cases, SPC's typical cases and its other decisions which have taken effect, the reference cases published by provincial High People's Courts and other decisions made by the provincial courts which have taken effect, and decisions made by People's Courts higher in the court hierarchy and the determining People's Court which have taken effect

(*Guiding Opinions*, Article 4).

For those cases requiring a precedent search, SPC's guiding cases are treated as binding authorities by operation of Article 9, whilst the other precedents are recognized as persuasive authorities. Article 10 of the *Guiding Opinions* mandates that a People's Court must address any SPC's guiding case in its judgment where the case is cited by a party to the case at issue. Nevertheless, the *Guiding Opinions* are silent on the consequences where a court fails to address a cited SPC's guiding case.

In the case before the High People's Court of Liaoning Province for which retrial was requested, the Court noted that the first- and second-instance courts did not follow a SPC's guiding case (i.e., SPC's guiding case No. 24) cited by the petitioners, nor did they provide reasons for doing so in their judgments. The following chart briefly shows a comparison between SPC's guiding case No. 24 and the case at issue before the High People's Court of Liaoning Province.

	SPC's guiding case No. 24	Case at Issue
Basic Facts	Plaintiff was injured in a car accident. Plaintiff had suffered from osteoporosis before the car accident.	Plaintiffs/petitioners were heirs of the deceased who died of organ failure after a car accident. The deceased had suffered from an underlying disease before the car accident.
Judgment	The impact of the pre-existing health condition of the plaintiff is not a damage-reducing factor for the defendant and thus the damage awarded to the plaintiff should not be reduced.	The pre-existing health condition was found to be a damage-reducing factor for the defendant. Defendant was ordered to pay only 50% of the calculated damage.

The High People's Court of Liaoning Province recognized that the failure of the first and second instance courts to address the cited guiding case *per se* is a sufficient cause for granting a retrial, and ordered the case be retried at the Intermediate People's Court of Benxi City.

This ruling ties in to the judicial trend of requesting use of precedent and analogy established by the SPC's *Minutes* and *Guiding Opinions*. Whilst it was made in the context of torts and traffic law, it is believed that the principle established therein is applicable to cases in other areas of law in which retrial is sought.

Also, as shown by the ruling, the *Guiding Opinions* place higher standards on the parts of both legal practitioners and courts for conducting legal research and developing legal arguments based on precedents. It is expected that the Chinese judicial system will have increasing consistency and predictability as the *Guiding Opinions* operate. This is no doubt good news to all legal proceeding participants, especially to those who are more used to *stare decisis* in a common law system.

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