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EMPIRICAL STUDY OF THE ROLE OF THE CHINESE GUIDING CASE SYSTEM IN CHINESE LAW



*Dong Yan** and *Jeffery E Thomas***

This article reports on a study of Guiding Case (GC) No 18 in the field of employment law from its selection in 2013 to 2021. The study found that only 4.3 per cent of judgments on the same topic cited GC No 18. However, the study also found that 64 per cent of judgments were decided consistently with the GC. This supports the inference that the GC was influential without being cited. The study also considered the influence of a judicial Meeting Summary on the same topic. The Meeting Summary was cited in 12.1 per cent of judgments, more often than the GC. In addition, a higher proportion of judgments were consistent with the GC after the Meeting Summary, 82.6 per cent compared to 34.6 per cent before. Although the precise relationship between the GC and the Meeting Summary is not clear, both were influential, warrant further study and may contribute to legal reform.

1. China's Guiding Case System and Literature Debate

A decade ago, the Supreme People's Court (SPC) initiated a program to identify certain judicial judgments as guiding cases (GCs). Such cases may, in theory or practice, have greater influence in the legal system than other cases.¹ Indeed, the SPC's legislative power has been restrained to issuing interpretations for any specific clause, and it can exercise that power only when an issue of application arises.² The judicial interpretation ought to be consistent with the goal, principle and original meaning of the clause to find solutions to legal problems.³ The advent of GCs not

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¹ Shucheng Wang, "Guiding Cases as a Form of Statutory Interpretation: Expansion of Supreme People's Court's Judicial Lawmaking Authority in China" (2018) 48 *HKLJ* 1067.

² Chenguang Wang, "Law-making Functions of the Chinese Courts: Judicial Activism in a Country of Rapid Social Changes" (2006) 1 *Frontiers of Law in China* 524.

³ In echo of art 104 (1) of Legislation Law, the Organic Law of the People's Courts (art 18) provides that the SPC may explain the issues on the specific application of law in the trial work and may issue guiding cases.

only provides a wider scope of effect in terms of subject matter but also directly offers judges additional possible solutions to specific problems, which has attracted great attention in academia.⁴

(a) *Advent of Modern GC System*

China has a well-established civil law tradition but does not completely reject the idea of case law. Over 2,000 years ago, the Han dynasty recognised Lu (律), Ling (令), Ke (科) and Bi (比), among which Bi was a form of case law. There are a number of other evidences that show some tradition of case law in the Chinese legal system.⁵ The modern role of Chinese case law began in the early 1980s, shortly after recovery of the legal system from the interruption of the Cultural Revolution.⁶ In 1985, SPC commenced its now well-established practice of publishing “typical cases” in its official publication, the Gazette of SPC, alongside other guidance documents, including regulations, speeches, judicial interpretations and replies.⁷ However, those printed cases only offered informal guidance to the lower courts, as there were no formal rules regarding the use of such cases.

In November 2010, the SPC released the Provisions of the SPC Concerning Work on Case Guidance (the Provisions). In December 2011, the first batch of GCs was released, initiating a Case Guidance System with Chinese Characteristics. The Decision of the CPC Central Committee on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law sets forth the goal of the judicial reform as “strengthening and standardizing the systems of judicial interpretations and case guidance, and unify[ing] the standards for the application of law”.⁸ Under this GC system, the SPC issues batches of GCs on a regular basis. By identifying cases that provide guidance on the adjudication

⁴ See Bjorn Ahl, “Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People’s Court” (2014) 271 *China Q* 121; Fengping Gao, “China’s Guiding Cases System as the Instrument to Improve China’s Case Guidance System, which Includes Both Guiding Cases and Typical Cases” (2017) 45 *International J Legal Info* 230; Vai Io Lo, “Towards the Rule of Law: Judicial Lawmaking in China” (2016) 28 *Bond Law Review* 149.

⁵ See Mark Jia, Note, “Chinese Common Law? Guiding Cases and Judicial Reform” (2016) 129 *Harv Law Review* 2213; Yang Li, “Practice and Theory of the Guiding Case System in China” (2016) 46 *HKLJ* 307.

⁶ Stanley B Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Palo Alto: Stanford University Press, 1999).

⁷ Susan Finder, “The Supreme People’s Court of the People’s Republic of China” (1993) 7 *CJAL* 145.

⁸ Decision of the CPC Central Committee on Several Major Issues Concerning the Comprehensive Promotion of the Rule of Law (中共中央关于全面推进依法治国若干重大问题的决定), passed at the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China on 23 October 2014, available at http://www.gov.cn/xinwen/2014-10/28/content_2771714.htm.

and enforcement work of courts across China, the SPC aims to regulate judges' discretionary power and address the problem that "similar cases are adjudicated differently".⁹

(b) *The Layout and Focus of GCs*

According to the rules for implementation, there are eight components of a GC: a title, key words, main points of judgment, relevant legal provisions, basic facts, results of the judgment, judgment's reasoning and notes including the names of the judges.¹⁰ Unlike the actual judgment, the GC is an edited version with a summary of the original judgment and a greater in-depth analysis of reasoning to offer guidance.¹¹ In order to have broad application, the basic facts of a GC are stated in the summary, and the main points of judgment are generalised.¹² Therefore, the length of the main points of judgment is typically between 100 and 500 words.

In accordance with the Provisions on Guiding Case Work of the SPC, the SPC oversees selecting and publishing the cases which could guide the adjudication of all courts in China.¹³ The courts at all levels can recommend a decision as a candidate for the GCs to the SPC's Office for Guiding Case Work (Office).¹⁴ Other individuals such as representatives from the people's congresses, scholars and attorneys may recommend a case to the people's court which originally tried the case or recommend the case to the Office. The cases that have provoked widespread social attention or that are typical might be selected as a GC. Once the case has been confirmed and processed as a GC, the SPC publishes it in the Gazette, the daily newspaper of the SPC and its official website.¹⁵ A number of commercial legal databases (eg PKU Law and Kluwer) have included the GCs and made them accessible for legal professionals.

⁹ Article 7 of the Notice of the Supreme People's Court on Issuing the Provisions on Case Guidance stipulates that "when trying similar cases, people's courts at all levels should use the Guiding Cases issued by the Supreme People's Court as reference". See Notice by the Supreme People's Court on Issuing the "Provisions on Case Guidance Work" (最高人民法院印发《关于案例指导工作的规定》的通知).

¹⁰ Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance (最高人民法院《关于案例指导工作的规定》实施细则).

¹¹ *Ibid.*

¹² See Jinting Deng, "Functional Analysis of China's Guiding Case" (2016) 14 *CIJ* 44; Yunteng Hu, "Several Questions Regarding the Guiding Cases System" *Guang Ming Daily* (29 January 2014), p 16.

¹³ See art 1.

¹⁴ See art 4 of Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance. The recommendation of the GC from the courts below the SPC needs to be approved by their internal judicial committee and superior court.

¹⁵ The database of GCs on SPC website is available at: <https://www.court.gov.cn/fabu-gengduo-77.html> (visited 18 January 2023).

The quantity of GCs has grown gradually in terms of number and scope. As of July 2022, the SPC has promulgated 32 batches of GCs — a total of 185 cases. In 2020, two cases that had been GCs are no longer recognised as such due to the enactment of revisions to the Civil Code in the same year.¹⁶ The collection of GCs has addressed a wide variety of legal issues, including administrative law, civil procedure, company law, consumer protection, contract law, criminal law, intellectual property (trademark, patent, copyright, and utility model), labour and employment, maritime law, property law, torts and unfair competition. A significant minority of GCs (22 per cent) deal with procedural rather than substantive law. Of the 12 labour and employment GCs, only one case concerns a procedure matter (verifying a work-related injury).¹⁷

(c) *The Way of Referring to GCs in Judgments*

The format of Chinese civil judgments was not unified until 2016, when SPC released a notice to standardise it.¹⁸ In accordance with that notice, a judgment consists of the headline, the main body and the signatory. The major part is the main body, which includes the facts, reasoning, references and decisions of judgment. The facts section typically includes the claims, reasoning advanced by the parties and evidence identified by the people's court.¹⁹ The reasoning section includes an analysis and comments on whether the claims of the parties are tenable according to the identified case facts and legal basis, with reasons stated. Reference refers to substantive law or procedural law relied upon by the people's court for the judgment. The main body of judgment is the specific and complete handling of the decision on substantive or procedural issues by the people's court.²⁰

¹⁶ The Notice of Supreme People's Court on Several Guiding Cases is no longer referable (最高人民法院关于部分指导性案例不再参照的通知) and has removed the GC No 9 and GC No 20 from the list of referable cases.

¹⁷ See GC No 69, *Wang Mingde v Leshan Human Resource and Social Security*, regarding verification of work-related injury (王明德诉乐山市人力资源和社会保障局工伤认定案).

¹⁸ Notice of the Supreme People's Court on Issuing the Specifications for Preparing Civil Judgments by the People's Courts and the Style of Civil Litigation Documents (最高人民法院关于印发《人民法院民事裁判文书制作规范》《民事诉讼文书样式》的通知).

¹⁹ In accordance with the Notice of the Supreme People's Court on Issuing the Specifications for Preparing Civil Judgments by the People's Courts and the Style of Civil Litigation Documents, the fact-finding is to be described in the light of the actual circumstances of the case, with clear layers, prominence being given to main points, and an appropriate combination of detailed and concise descriptions with the omission of facts related to disputes of the parties to be avoided. In general, the found facts are to be described in chronological order, or emphasis can be given to the facts related to the determination of the legal relationship or the right of claim. Other facts may be described in an inductive and summarised manner.

²⁰ Sibó Hu, "Reconstruction and Application of Civil Procedural Guiding Case" (2021) 39 *Tribune Political Science and Law* 118.

Under the GC system, the lower courts are obliged to refer to the applicable GCs when rendering a judgment. There are three criteria behind the requirement to “refer to” GCs: first, the judges ought to scan the database of GCs (although it is rather limited), particularly those GCs that are similar to the case being adjudicated, prior to rendering judgment. Second, where a case is similar to a GC, judges should try their best to follow the GC to promote a consistent result. Third, the results of the adjudication of a case should not be “clearly different” from the decision of a similar GC.²¹

However, the GC system did not include any specific directions regarding how to reference the GC or identify which part of a GC is binding. Consequently, in 2015, the SPC issued “Detailed Implementation Rules on the Provisions Concerning Work of Case Guidance” (Detailed Implementation Rules). Under these rules, a judgment is to be rendered with reference to the main points of the judgment in the relevant GC. Where a people’s court at any level refers to a GC in the trial of a similar case, the GC should be referred to as part of the reasoning rather than as the legal basis for the judgment.²² Therefore, “main points” ought to be referenced in the reasoning part of the judgment.²³ Also, when a public prosecution organ, a party to a case and his counsel or a litigation representative cites a GC as a ground for appeal or defence, the person handling the case should respond to it. Indeed, it does not undermine the role of GCs but strengthens that role and the persuasiveness of the ruling or judgment when the judges objectively demonstrate their reasoning underlying the ruling or judgment, which also enhances the transparency and credibility of adjudication.²⁴

In accordance with the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation) 2020, the judges ought to check for GCs under the three criteria.²⁵ When the

²¹ *Ibid.*

²² Although the SPC has required that the courts at all levels shall refer to GCs, they cannot be cited as a legal reference in the final part of the judgment but could be cited in the reasoning factors.

²³ Articles 9 to 11 of the Detailed Implementing Rules provide clear rules on how to refer to GCs, primarily covering the standards for determining “similar cases”, which specific sections of a GC should be referenced and, for a case that refers to GCs, which part(s) of the ruling or judgment should reflect the reference.

²⁴ Gao Feng, “The Compilation and Application of China’s Guiding Cases” (2017), available at <https://law.stanford.edu/china-guiding-cases-project/>

²⁵ Article 2 of the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation) states:

“A people’s court handling a case under any of the following circumstances shall retrieve the GCs: 1. where the case is to be submitted to the professional (presiding) judge meeting or the judicial committee for discussion; 2. where there is no clear judgment rules or uniform judgment rules have not been formed; 3. where the president and division chief

parties have raised the GCs, the judge ought to respond with reasons.²⁶ When a judge refuses to refer to a GC where it may be applicable, a compelling reason should be provided. If a judge neither refers to the GC nor explains his refusal to reference a related GC, which has resulted in a dramatic departure of the adjudication from the GC, the parties involved have rights of appeal and petition. Indeed, the party that benefited from the GC ought to request that the judge take the GC into consideration. Otherwise, the judgment that fails to refer to the GC is not considered a judicial refusal to refer to the GC.

(d) *Literature Debate*

GCs have generated significant discussion among scholars and officials. Most studies consider the advent of the GC system as an approach and try to explore the influence of GC upon daily practice by the people's court at all levels.²⁷ Some proponents identify their potential to fill statutory lacunae, unify legal standards, improve judicial efficiency and limit judicial discretion.²⁸ Others point to the benefits of judicial flexibility, professionalism and integrity.²⁹ Meanwhile, less sanguine commentators have raised doubts as to China's institutional readiness to use GCs, while others — even supporters — have focused attention on constitutional and political difficulties in the system's design.³⁰

The actual role of the GC system has been studied through empirical research and remains controversial. Many have regarded it as the new form of case law.³¹ Others believe it is incomparable to the common law system but instead is a sort of case law within the civil law system.³² In addition, a growing body of literature shows through empirical studies that GCs have played a rather limited role in daily judicial practice.³³

judges of the people's court require to retrieve similar cases according to the authority of trial supervision and administration”.

²⁶ See art 10 of the Guiding Opinions on Unifying the Application of Laws to Strengthen the Retrieval of Similar Cases (for Trial Implementation).

²⁷ See Jia (n 5 above); Jocelyn Limmer, “China's New ‘Common Law’: Using China's Guiding Cases to Understand How to Do Business in the People's Republic of China” (2013) 21 *Williamette Journal International & Dispute Resolution* 96.

²⁸ Xiaoyi Jiang and Shao Ling, “The Guiding Case System in China” (2013) 1 *China Legal Science* 106.

²⁹ See Finder (n 7 above); Gao (n 4 above).

³⁰ See Ping Yu and Seth Gurgel, “Stare Decisis in China? The Newly Enacted Guiding Case System” in Marco Wan (ed), *Reading the Legal Case: Cross-Currents between Law and the Humanities* (London: Routledge, 2012) pp 142–158; Jia (n 5 above); Xingfu Lu, “Departure from Guiding Cases and Its Reflections” (2022) 44 *Global Law Review* 87.

³¹ Li Guo and Bulelani Jili, “The Emergence of Guiding Cases in China” (2018) 6 *Peking University Law Journal* 273.

³² See Jia (n 5 above).

³³ See Shucheng Wang, “Guiding Cases and Bureaucratization of Judicial Precedents in China” (2019) 14 *University of Pennsylvania Asian Law Review*, 96; Mo Zhang, “Pushing the Envelope:

The key findings show that only a handful of GCs have been actually referenced in judgments, which means the majority of GCs have not been referenced by any court.³⁴ However, even though a majority of judgments have not referenced a GC, it may be possible that courts were influenced by the GC even though it was not referenced. Therefore, it is possible that GCs provide somewhat “soft” guidance in terms of affecting outcomes in individual cases.

The relationship between the GC and other soft legal resources is largely unexplored, especially when both of them are addressing the same issues. Soft legal resources are distinct from formal laws and regulations and include such things as policy documents from local government and judicial Meeting Summaries.

In addition, little consideration has been given to the role of GCs in the development of post-GC statutory rules. Although the GC was designed as a supplementary source to address the vacuum left by in statutory rules, it is possible that a GC may influence new rules made after the designation of a GC. In this regard, it may share some similarities with soft legal resources such as the Meeting Summaries issued by the SPC, which will be discussed later.

2. Research Method

We undertook a case study of a specific GC to better understand the GC system. By focusing on a specific GC, we can better identify and trace its influence. However, because there is not as robust a custom of case citation in China as there is in a common law system, it is more difficult to trace the influence of a GC.³⁵ This challenge influenced our selection of the GC for our case study. We considered several factors. First, we wanted to select a GC from the early time when the GC database was established to have a larger number of potentially similar cases for possible tracing. Second, to consider the influence of the GC, it was necessary to analyse the details of subsequent case judgments rather than simply relying on whether the GC had been cited. Third, we wanted the selected GC to address an area of law that has evolved over time so that we could consider whether the GC might have influenced changes in legal policy, such

Application of Guiding Cases in Chinese Courts and Development of Case Law in China” (2017) 26 *Pacific Rim Law & Policy Journal* 269; Xiaohai Zhao and Ye Guo, “Research on Judicial Application of the Civil Guiding Cases of the Supreme People’s Court” (2017) 1 *Journal of Law Application* 58.

³⁴ Ye Guo and Mei Sun, “Report on the Application in Judicial Proceedings of Supreme People’s Court Guiding Cases (2021)” (2022) 4 *China J Applied Jurisprudence* 203.

³⁵ See Wang (n 33 above).

as a change in the position of the SPC judicial committee or changes in regulation on the same topic.

In order to explore the actual effect of GC, this study has selected GC case No 18 as an example for three reasons: first, it was one of the early GCs which allowed this study to follow the gradual adoption of GC over time. Second, it matches the timing of the creation of the online judgment database by the SPC in 2013, which allows this study to easily identify those cases that have referred to the GC or may have been influenced by it. Third, the subject of this GC was also addressed in a Meeting Summary (会议纪要) (MS) of the judicial division of the SPC in 2016, which allows for some comparison between the GC and the MS.

(a) Case Selection: GC No 18 in 2013

Chinese labour law has created a comprehensive protection system for workers, particularly against unfair dismissal. In order to protect the stability of employment, Chinese labour does not allow dismissal “at-will” but requires employers to have cause for dismissal and to follow several procedural rules.³⁶ The employer may only unilaterally terminate an employment contract for an employee’s misconduct or incompetence, or if an employer dissolves.³⁷

It is the obligation of the employer to prove that an employee is incompetent. However, the labour laws have not specified the criteria for “incompetence” in one’s work, which has created a challenge for employers.³⁸ The performance evaluation system is therefore very important to show the competence of workers, but the law does not offer any criteria to classify the performance outcome or a performance report.

Employers have developed many ways to evaluate employee performance, which may lead to a presumption of “incompetence”. Among the various ways of evaluating performance is a ranking system promoted by

³⁶ Lifeng Hu, “Regulation of Unjust Dismissal under American Labour Law” (2009) 31 *Global Law Review* 130.

³⁷ As art 40 of Labour Contract Law states:

“Under any of the following circumstances, the employer may dissolve the labour contract if it notifies the employee in writing 30 days in advance or after it pays the employee an extra month’s wages: (2) the employee is incompetent to his position or is still so after training or changing his position”.

³⁸ See Samuel Estreicher and Jeffrey M Hirsch, “Comparative Wrongful Dismissal Law: Reassessing American Exceptionalism” (2014) 92 *NCL Review* 343; Haina Lu, “The Right to Employment Security in Chinese Labour Law: Latest Developments in Light of International Law” (2015) 10 *Frontiers of Law in China* 136; Thomas F Remington and Xiao Wen Cui, “The Impact of the 2008 Labour Contract Law on Labour Disputes in China” (2015) 15 *Journal of East Asian Studies* 271.

human resource management. Using this ranking method, some employers have singled out the bottom performers as those who are incompetent, also called “dismissal of bottom performance”. From a legal standpoint, it is questionable whether “bottom performance” is a legitimate justification for dismissal, as it has a rather remote relationship to “incompetence”.

Guiding Case No 18, *ZTE Corporation (Hangzhou) Company v Wang*, was released in 2014, which was the only labour-related GC in over a decade after the establishment of the GC system. In July 2005, Wang Peng started working for ZTE (Hangzhou) Co. (ZTE) as a salesperson. The Employee Performance Management Handbook stipulated that employees’ semi-annual and annual performance appraisals were to be graded as S, A, C1 or C2. Under the employer ZTE’s corporate policy, a grade of C2 (bottom performance) meant that the employee’s “performance need[ed] improvement” and that the employee would be deemed, in principle, “incompetent for the job”. Mr Wang was originally a salesman in the distribution department of the company. In January 2009, he was transferred because of the dissolution of that department. In the second half of 2008, the first half of 2009 and the second half of 2010, the assessment results for Mr Wang were all C2. ZTE assessed Mr Wang as not competent for the job. It also assessed him as still incompetent for the work after his transfer. Therefore, ZTE terminated Mr Wang’s employment with the partial payment of his compensation. On 27 July 2011, Mr Wang filed an employment arbitration against the dismissal.

The People’s Court ruled in favour of Mr Wang.³⁹ In its “Guiding Cases Judgement Points”, the SPC stated that

“the employee’s rank as the last in the performance appraisal of the employer . . . is not equivalent to ‘incompetent for work’ and does not meet the statutory conditions for the unilateral termination of the employment contract. The employer cannot unilaterally terminate the employment contract accordingly”.

In sum, the court held that an assessment of “bottom performance” does not establish that the employee is incompetent as required by the labour law.

(b) Policy Development: Judicial Meeting Summary in 2016

In 2016, a similar opinion about bottom performance was published in a Meeting Summary (MS), which is a soft form of statutory

³⁹ The case in the first instance was decided by Binjiang People’s Court of Hangzhou in Zhejiang Province in 2011, Case No 885.

interpretation. Prior to embarking on the in-depth analysis of the MS in 2016, we briefly describe its legal status and its general role. Meeting Summaries refer to documents used in recording significant information and matters agreed upon at judicial meetings and are one of the major types of quasi-judicial documents issued by the SPC. The MS in nature is neither a formal law nor a regulation as articulated by the Legislation Law nor a judicial interpretation of the SPC.⁴⁰ Nevertheless, the MS is believed to be of great value in unifying standards of adjudication, implementing or making public policies and closing legal loopholes, and therefore has soft-binding force nationwide.⁴¹ The SPC has issued 54 MSs from 1966 to 2022 (almost one per year).⁴² In practice, there are usually three types of meetings in the courts that issue Meeting Summaries and that have different levels of influence. The most influential meetings are those held by the adjudication committee. A specialised adjudicatory committee conducted within the adjudicatory committee is the next most influential. A third type of meeting is held by specialised judges of each judicial division, which is generally less influential than the first two types of meetings. Once the MS has been issued, it will be released through the media and the official website, the same as with GCs. The SPC requires that lower-level courts have training on how judges should use Meeting Summaries.⁴³

The MS at issue here came from the meeting of the Eighth National Court Work Conference of the Civil and Commercial Division and is the second type of judicial meeting (specialised adjudicatory committee) that produced a Ba Min Meeting Summary (八民纪要). On

⁴⁰ A Notice by the Supreme People's Court regarding Issuing the Meeting Summaries on the Implementation of the Civil Code by Courts Nationwide has stated:

"The Summaries are not judicial interpretations and cannot be cited as the basis for adjudication. After the issuance of the Meeting Summaries, for the cases of first instance and second instance that have not been closed, people's courts may make explanations according to the relevant provisions of the Meeting Summaries when they specifically analyse the reasons for the application of law in the 'Opinions of this Court' section of the written adjudication".

⁴¹ See Meng Hou, "The Impacts of the Meeting Summary on the Judicial Process: From the Perspective of the Supreme People's Court" (2020) 60 *Jilin University Journal Social Sciences Edition* 58; Zhongli Peng, "Research on the Meeting Minutes of the Supreme People's Court" (2021) 39 *Science of Law (Journal of Northwest University of Political Science and Law)* 135.

⁴² The first MS is the MS on Divorce of the Citizens between China and North Korea. The most recent one is the MS on Promoting the Ecological Protection and High-Quality Development of the Yellow River Basin on 25 November 2021.

⁴³ For instance, Notice by the Supreme People's Court regarding Issuing the Meeting Summaries on the Implementation of the Civil Code by Courts Nationwide in 2021 states:

"People's courts at all levels shall organize study and training in various forms so as to effectively conduct publicity, and help general judges, judicial assistants and other relevant personnel accurately understand the spirit of the Meeting Summaries, and correctly apply the Meeting Summaries in the trial of cases" (art 2).

30 November 2015, the Eighth National Court Work Conference of the Civil and Commercial Division⁴⁴ issued an MS (Ba Min Meeting Summary) that stated:

“If an employer unilaterally terminates the employment contract in the form of ‘bottom performance’ or ‘competing to work,’ employees can request the employer to continue the employment contract or pay compensation for the reason that employer unlawfully terminated the employment contract”.⁴⁵

Thus, the MS takes the same position as the GC that bottom performance is not a legitimate basis for termination of an employment contract.

The MS is not a recognised source of law within the Chinese legislative hierarchy but does have some influence on judicial determinations.⁴⁶ Consequently, it does not have formal legal status. There are three key functions of the MS which may encourage lower-court judges to follow them. First, the MS can respond to social needs more promptly with the implicit approval of the SPC. Meeting summaries are a kind of judicial policy that allows lower courts to explore possible solutions without a formal determination on an issue by the SPC. Before a judicial interpretation is promulgated, an MS can provide a temporary solution to an urgent issue. In contrast, the formulation of the judicial interpretation is rather complicated and time-consuming. It requires a record to be filed with the National People’s Congress.⁴⁷ In comparison, the formulation and issuance of Meeting Summaries are simpler and faster.

⁴⁴ Between 23 and 24 December 2015, the SPC held the Eighth National Court Work Conference of the Civil and Commercial Division, which included judges from provincial courts, military courts and officials from the NPC and scholars. The key goal was to provide judicial support for the new normal of economic development. Apart from labour disputes, the conference also dealt with other issues such as tort liabilities and property sales contracts.

⁴⁵ See Ba Min Meeting Summary art 6 (4).

⁴⁶ See Susan Finder, *The “Soft Law” of the Supreme People’s Court*, *Supreme People’s Court Monitor* (16 November 2020), available at <https://supremepeoplescourtmonitor.com/2020/11/16/the-soft-law-of-the-supreme-peoples-court/>; Susan Finder, *Supreme People’s Court Issues New Guidance on Cross-Border Commercial & Procedural Legal Issues*, *Supreme People’s Court Monitor*, available at <https://supremepeoplescourtmonitor.com/2022/01/28/supreme-peoples-court-issues-new-guidance-on-cross-border-commercial-procedural-issues/> (visited 28 January 2022). The relative level of authority for labour laws in China will always depend upon the hierarchical status of the law-making body responsible for enacting the particular law. The hierarchical standing of any law-making body is organised (from most to least powerful) as follows: (1) the National People’s Congress (NPC), (2) the Standing Committee of the NPC, (3) the State Council and the Ministries (equivalent to Provincial Government) and (4) Judicial Interpretations from the SPC. No matter what designation is given to a particular piece of legislation, its authoritative status is determined by the hierarchical position of its enacting body. Thus, for example, a regulation released by the State Council will “out-rank” any Ministerial regulation produced by the Ministries.

⁴⁷ In accordance with the 2007 Provisions of the Supreme People’s Court on Judicial Interpretation, the procedure for a judicial interpretation is rather complicated. Those steps include, but

Second, the MS also provides working principles and rules for the internal management of the courts. For example, in 2018, the SPC issued the Meeting Summary of the National Court Work Meeting on Bankruptcy Trials (全国法院破产审判工作会议纪要), which not only deals with the application of legal issues relating to the administrator system, bankruptcy reorganisation and cross-border bankruptcy but also with the development of the internal bankruptcy case information management system and the training of judges hearing bankruptcy cases, covering far more than judicial interpretations would. As a consequence of this management function of Meeting Summaries, lower courts are likely to pay attention to them and follow their recommendations, both procedural and interpretive.

Third, Meeting Summaries can fill the gaps left in judicial interpretation. The main function of judicial interpretation is to provide judges with uniform standards for the application of law. When the formal judicial interpretation does not provide clear guidance for an individual case, an MS may address the issue.

For these reasons, Meeting Summaries can play a significant role in unifying the law and its application in the absence of judicial interpretation. Moreover, the Meeting Summaries have judicial significance because they are discussed and determined by judges, reflecting some consensus among judges and even, to some extent, a consensus among law practitioners and jurists.⁴⁸ Meeting Summaries perhaps are similar to the prevailing opinion (*Herrschende Meinung*) concept in German jurisprudence. The prevailing opinion concept refers to academic and judicial opinions on the application of a particular law in the existing legal framework gradually generated over a period of time, which represents the views held by the majority of law practitioners and jurists.

(c) *Research Design*

Three questions arise from this context for the legal issue of bottom performance and dismissal: (1) what was the impact of No 18 GC on courts dealing with the bottom performance dismissals since 2014? (2) Why did the SPC issue the November 2016 MS that addressed the same issue when there was already a GC on it? (3) What was the impact of the MS,

are not limited to, the following: field research by the research department of the SPC, internal discussion within relevant judicial divisions, wide consultation with the public and the special committee of the NPC and final approval by the judicial committee of the SPC.

⁴⁸ See Peng (n 40 above).

and how does it compare to the impact of the GC? Answering those three questions will help to better understand the role of GCs and will provide a comparison between the GC (formal case law) and the MS (informal interpretation).

This study used a three-step research process to investigate the impact and application of GC No 18 and the related MS. First, the labour litigation cases that related to the dismissal due to “bottom performance” were gathered, which served as the study’s primary dataset. The dataset was limited to the disputes in which Chinese courts rendered judgments between 1 January 2014 and 31 December 2021. The cases were searched through key words such as “bottom performance”, “incompetence” and/or “Article 40 of Labour Contract Law”. The research assistant read through all responsive cases and included those that addressed a similar issue to GC No. 18 in the dataset. The lead author randomly checked those cases included in the dataset and verified the quality of data. In total, 184 relevant labour disputes were identified for the eight-year study period.

Second, the primary data were coded with a set of variables that reflected certain characteristics of those disputes. The coding method was devised to effectively organise and analyse the collected labour disputes, which were examined with respect to several variables, the year of the dispute, the citation of the GC or MS and the outcome of the judgment, in order to achieve a better understanding of those disputes. The study’s coding process served to label the labour disputes with variables to be further analysed. The process of coding relied on the information presented in the judgments collected.

The third phase was to analyse the primary data utilising various analytical methods to produce the study’s results. During the third step, this study utilised NVivo to assist in analysing critical data. NVivo was chosen because it enables effective cross-tabulation analyses. Details of all the identified labour disputes were first saved individually in MS Word format and then imported into NVivo. Within NVivo, the case variables were highlighted. After completing this stage, a cross-tabulation check was conducted within NVivo to explore the underlying trends by cross-examining the variables identified through coding. In the cross-tabulation, the relationships between the variables were investigated.

This study also conducted a close textual analysis of the assembled cases by drawing observations after the release of the GC and MS. We analysed the cases that addressed the same topic as GC No 18 to consider whether the GC might have influenced the outcome. The influence of the MS was also considered. The MS is not generally cited by courts in China, so as with GC No 18, the analysis uses inference to assess the likely influence.

Finally, this study conducted a dozen interviews with workers, HR managers and judges to assess their recognition of the GC and the November 2016 MS. The interviews could be an import resource to confirm the conclusions based on the analysis of the dataset.

3. Findings

In accordance with our research design, the time frame was divided into two phases. The first phase refers to 2014–2016, shortly after GC No 18 was released. The second phase refers to 2017–2021, after the MS was published. This study has reached four conclusions about GC No 18.

First, GC No 18 was rarely referenced by the courts. Indeed, of the 184 cases included in the dataset, only eight judgments (4.3 per cent) referred to GC No 18 to affirm the illegality of dismissing workers with “bottom performance”. In six of those eight cases, the citation to GC No 18 was made by the counsel representing the workers. It is possible that counsel in other cases also brought GC No 18 to the court’s attention but that the court did not make reference to it in the judgment.⁴⁹ In the other two cases (1.1 per cent), the citation to GC No 18 was made by the judges. One of those cases was adjudicated by the Hangzhou Intermediate Court, which is the supervisory institution of the court that decided GC No 18 in the first instance.⁵⁰ Even though the GC was rarely cited, judges who were interviewed said that they welcomed the clarification articulated by GC No 18, but that they were uncertain about when they were dealing with similar cases.⁵¹ Figure 1 provides a visual representation of these data.

Citations to the 2016 MS were also rare, but it is significant that they were more common than citations to GC No 18, even though the time period was three years shorter, from 2017 to 2021. Sixteen out of the 132 cases decided after the MS (12.1 per cent) cited it. As with the GC, the majority of the time, in 10 of the 16 citations (7.8 per cent), counsel representing the workers made the citation, while in six cases (4.5 per cent)

⁴⁹ In accordance with the Notice of the Supreme People’s Court on Issuing the Specifications for Preparing Civil Judgments by the People’s Courts and the Style of Civil Litigation Documents,

“it is unnecessary to copy word for word the written complaint, the written statement of defense or attorney, or evidence submitted in the complaint or defense, the claims and defenses shall be comprehensively described by taking the claims and defenses of the parties in court and the submitted evidence in the case into account”.

⁵⁰ *Feng Guoqing v Beilisheng Electronic (Hangzhou) Ltd Labour Dispute* [(2016) Zhe 01 Civil Final No 1515] [冯国清与贝莱胜电子（杭州）有限公司劳动争议] [(2016) 浙01民终1515号].

⁵¹ Interviews were made by telephone due to the COVID-19 pandemic; four judges/arbitrators in Beijing had replied as of 18 December 2022.

Figure 1: Judgments with Citation of GC No 18

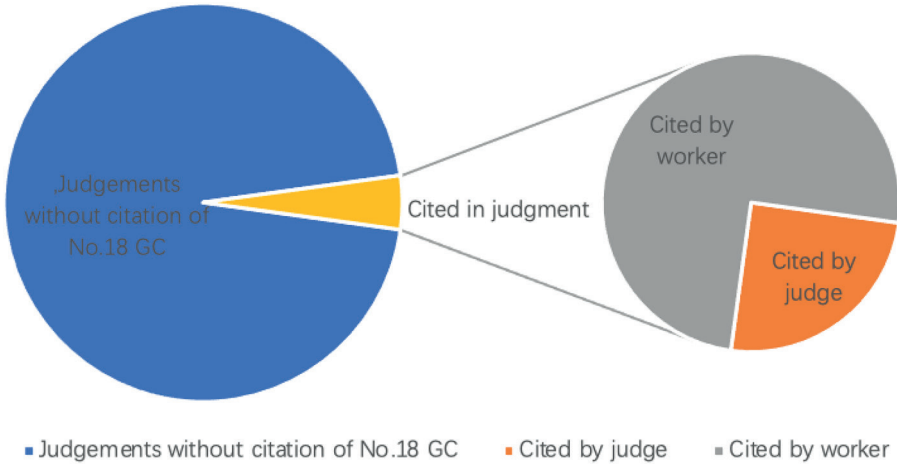
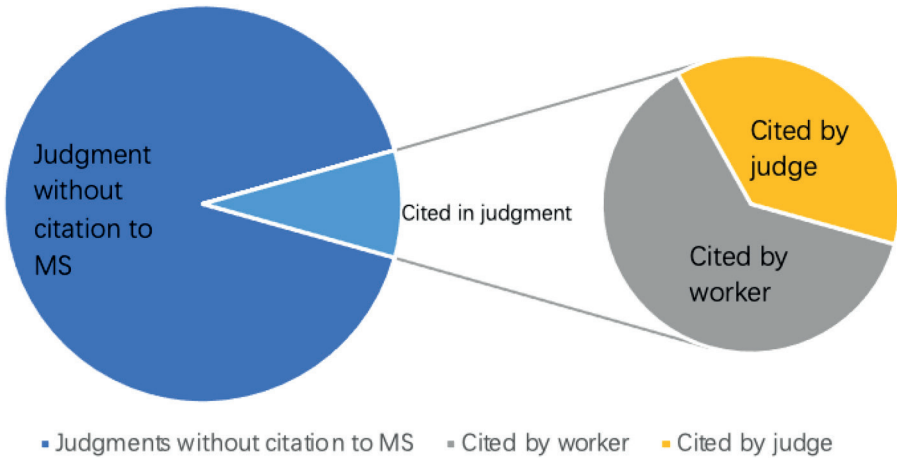


Figure 2: Judgments with Citation of MS



citation was made by the judges. These numbers are still very small compared to the overall dataset, but it is remarkable that the MS was cited more often than the GCs in light of the requirement that judges are obligated to refer to GCs and that GCs are recognised legal authority, while judges have no such obligation for an MS, which is not recognised as having legal authority. Figure 2 provides a visual representation of these data regarding MS citations.

The second significant finding was that GC No 18 may have had substantial influence without being cited. Although nearly all of the cases (176/184) did not mention GC No 18, the majority of cases were decided in favour of the workers. A total of 119 cases were ruled in favour of the

workers without mentioning GC No 18, which is over 64 per cent of the dataset.

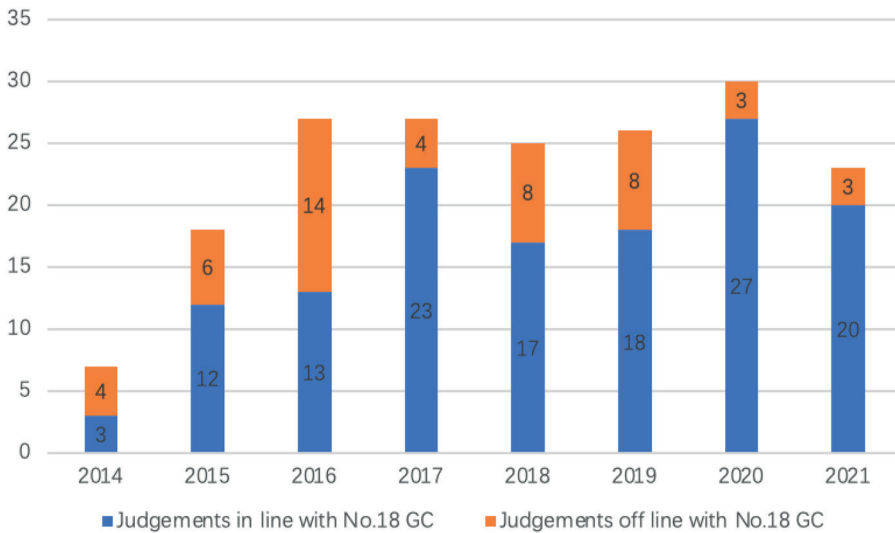
In the 119 cases that ruled for the workers, the courts adopted two different approaches, one substantive and the other more procedural. Approximately 76 per cent of the judgments (90/119) reached a substantive conclusion that “bottom performance” is not enough to prove “incompetence” and therefore could not satisfy the substantial factor needed to trigger the dismissal process as indicated in art 40(2) of the Labour Contract Law. These courts ruled consistently with GC No 18, giving rise to a strong inference that they took it into consideration.

The remaining 24 per cent of cases (29/119) that ruled for workers did not address the legality of using “bottom performance” as a ground for dismissal but instead rejected the lawfulness of the dismissal because the employer had not given the employee a second chance (by replacement or training) in accordance with the procedural requirement set out by art 40(2) of the Labour Contract Law. In these cases, the court did not reach a substantive conclusion about the illegality of “bottom performance” being a basis for a finding of incompetence. Consequently, GC No 18 may not have been a factor in the workers winning. On the other hand, some courts in China may be reluctant to reach a substantive decision if a procedural basis for the judgment is available. Therefore, it is still possible, though less likely, that GC No 18 had some influence in these cases. The more likely inference is that other misconduct of the employer contrary to the formal regulations of the Labour Contract Law beyond the employee’s bottom performance was the basis for the judgment.

The third significant finding was a trend in favour of workers over time. Of the 52 cases decided in the first two years after GC No 18 (2014–2016), 18 cases (34.6 per cent) ruled in favour of the workers consistent with GC No 18. In the next five years (2017–2021), 109 of the 132 cases (82.6 per cent) ruled in favour of workers on the bottom-performance issue. Similarly, although the number of decisions is small, more courts also cited GC No 18 in the second phase. Of the eight cases that cited GC No 18, six cases were in the second phase, compared to just two in the first phase.

The number of decisions in favour of workers on the bottom-performance issue is shown by year in Figure 3.

What is striking about Figure 3 is the dramatic change from 2016 to 2017, the year after the MS was published. Although workers prevailed in 12 out of 18 cases in 2015 (66.7 per cent), only 13 out of 27 cases ruled for workers in 2016 (48.1 per cent). In 2017, workers prevailed in 23 out of 27 cases (85.2 per cent). The proportion is not quite as high in 2018 (17/25 or 68 per cent) and 2019 (18/26 or 69.2 per cent) but then

Figure 3: The Judgments Following or Against GC No 18

increases to 27 out of 30 cases (90 per cent) in 2020 and 20 out of 23 cases (87 per cent) in 2021.

Our fourth finding is that both GC No 18 and the MS have a rather soft-binding effect in practice, as the judges are often able to exert their discretionary power to put aside the question of “bottom performance”. In 61 judgments (33.2 per cent), the judges expressed the view that dismissal due to “bottom performance” is not necessarily illegal as long as the employer has offered a second chance for workers to improve. In five cases, judges ruled that the “bottom performance” could be considered evidence of incompetence but that workers ought to be retained as long as they met the legal criteria for special protection, for example pregnancy.

In sum, although it is difficult to draw any firm conclusions about the impact of GC No 18, the low reference rate does not necessarily mean low recognition of the GC or an absence of influence. Over half of the cases facing the “bottom performance” issue (119/184 or 64.7 per cent) ruled for the worker in line with the principle of GC No 18 even though it was referenced in just a few cases. While 29 of these decisions were based on procedural grounds, 90 of the 184 total cases (48.8 per cent) ruled for workers on substantive grounds consistent with GC No 18. This is more than 10 times higher than the very low reference rate of 4.3 per cent.

It is unclear why judges may be inclined to follow the result of GC No 18 without making any explicit reference to it. These findings here are consistent with other study findings that GCs were not often cited in

formal judgments.⁵² With regard to GC No 18, its implicit influence was confirmed in a judicial interview. One judge stated that “it is important to substantively follow the doctrine of GC rather than simply to cite it”.⁵³

It is also noteworthy that the MS may have been significantly influential. It was cited more often than the GC, and judgments that ruled in favour of the employee also followed the direction of the MS as well as the GC. The rate of rulings in favour of the employee was much higher after the MS was published (82.6 per cent) compared to the rate of rulings for employees in the earlier time period (34.6 per cent).

The high percentage of decisions that follow GC No 18 and the MS after the MS was published may be evidence that the MS is more influential than the GC. This could be explained by the fact that the MS, which states a suggested legal rule (that an employer cannot unilaterally terminate an employee for having the bottom-performance score), is easier to apply than the GC because it does not require an evaluation of the case characteristics. Alternatively, perhaps the MS simply strengthened GC No 18 by showing additional judicial support for its conclusion. It is also possible that GC No 18 was the basis for the decision made at the judicial meeting and is reflected by the MS. Another possibility is that employees and their lawyers, once they are made aware of GC No 18, became more likely to make claims for wrongful termination and that the timing of this knowledge was coincidental with the MS.⁵⁴ Of course, it is also possible that the MS created a similar or even more significant incentive.

Although it is not possible based on this study to determine whether the GC or MS played a greater role than others, the evidence suggests that the relationship between the GC and MS (and perhaps other kinds of “soft law”) may be important and warrants further investigation. The application of the GC is the focus of current literature, which, based on the evidence we see in this study, may understate the influence of the GC in the Chinese legal system. This study also suggests that an exploration of the influence of MS and other “soft law” would be worthwhile.

4. Remarks

This study is consistent with the literature showing a low level of citation of GCs. Through interviews and the study of judicial decisions, this study has found some barriers to citation and application of the GC, such as

⁵² See Feng (n 24 above); Zhang (n 33 above).

⁵³ The interview was conducted in Beijing on 21 December 2022.

⁵⁴ Both GCs and MSs are published in the same channel by the SPC, in the Gazette, the daily newspaper of the Supreme People’s Court, and on its Official Website.

judges' uncertainty about whether the case before them is similar to the GC. However, even without being cited, the GCs may influence lower courts and offer the opportunity to test legal principles without the formality of judicial interpretation. After a period of time, and perhaps with the benefit of additional consideration through other soft law mechanisms like judicial meetings, GCs may facilitate the formation of new statutory rules.

(a) The Path of Case Law without Citations

The essence of referencing GCs is a finding of similarity between the case before the court and a GC. The key is whether the main points of the adjudication in a GC are applicable to the pending case. The principle established by the SPC is as follows: when both the basic facts and application of law of a pending case are similar to those of a GC, the relevant GC should be referenced.⁵⁵ Of course, in terms of legal theory, there is no universal standard for applying GCs. The application involves a broad range of considerations, including logic, rules, policies, balancing of interests, value judgments, statutory law and practice. Based on the common-law experience of using binding precedents, it is generally believed that the comparison technique of referencing precedents consists of three steps: (1) the identification of focal points of the dispute; (2) the analysis of the reasoning for the adjudication; and (3) the decision on whether a certain result of the adjudication should be kept.⁵⁶ When comparing the basic facts and the application of law (of a pending case) with those of GCs, judges in China should broadly consider the adjudication methods, adjudication rules, legal thinking, judicial concepts and the rule of law spirit as applied in the GCs.⁵⁷

Conducting this kind of analysis is rather challenging for judges, even though the case to be decided is similar in some respects. According to a judge who was interviewed, the decision

“of citing the GC in judgment is never indisputable. Either party can always raise objections to question the likeness between the GC and real case. [The applicability of the GC is] unlike the statutes that judges are given [with] sufficient authority to interpret the rule with discretion”.⁵⁸

Indeed, courts may decline to follow GCs because of differences in case types and material facts.⁵⁹ Therefore, even though many judges may

⁵⁵ See n 7 above.

⁵⁶ See Jia (n 5 above).

⁵⁷ Tianze Zhang, “The Benchmark of Similarity in Referring Guiding Case: Internal and External Approval” (2022) 11 *Nanda Law Science* 103.

⁵⁸ Interview conducted in Beijing on 21 March 2020.

⁵⁹ Ziwen Tan and Xin Shen, “How Guiding Case No 24 and Its Hundreds of Subsequent Cases Have Shaped the Chinese Version of the Eggshell-Skull Rule” (2021) 13 *China Law Connect* 58.

tend to apply the principle from the GC, they may be reluctant to make written reference to it.⁶⁰ This allows the judge to avoid criticism based on the applicability, or inapplicability, of the GC. There is well-documented literature indicating that judges who do not cite GCs were affected by various factors such as the relatively few GCs upon which to rely for guidance or that the judge were unaware of a relevant GC because of lack of publicity.⁶¹ Nevertheless, as shown above, this barrier to citation does not necessarily mean that the doctrine from a GC has limited or no effect upon judicial decisions.

(b) GC versus MS

The MS does not have the same barriers to citation as does the GC. It does not require an assessment of the similarity of the cases, their focal points or their reasoning. Instead, the MS provides something that is more like a statutory rule or judicial interpretation. Here, the MS straightforwardly articulates the illegality of dismissal based on “the bottom performance”.⁶² This is much easier to apply; the judge simply has to determine whether the employer unilaterally terminated the employment because the employee received the bottom-performance ranking.

That the MS is easier to apply than GC No 18 is supported by our findings. The MS was cited more often than the GC, even though the time period for citation was three years shorter and even though the MS is not recognised as legal authority and judges are under no legal obligation to refer them. The MS was cited in 16 subsequent decisions compared to just eight citations of GC No 18. Looking just at judicial citations, the MS was cited six times by judges compared to just two judicial citations of GC No 18. In addition, the ease of application could also be one reason that more decisions were decided in favour of the workers after the MS was published.

(c) The Path towards Legal Reform

GCs and various kinds of soft law such as Meeting Summaries may play a role in paving the way for legislative reform. The GC offers an experiment on a particular point of law that may influence future legal progress.

⁶⁰ See Li Xiang, “From Rare References to Regular References” (2016) 5 *Studies in Law and Business* 96.

⁶¹ Lin Zi, “Dilemma and Solution of Unification of Applying Guiding Cases” (2017) 1 *Law Science* 143.

⁶² See n 44 above.

Most of the literature has suggested that GCs could fill the hole left by the imperfection of statutory law, especially where the regulations are vague or implicit on certain matters. The dismissal rule is an example. Employers are only permitted to terminate employment contracts based on a “fair reason”. It is very difficult to define what constitutes a “fair reason”. This standard can be developed with examples from GCs or with greater specification in soft law such as Meeting Summaries. Indeed, GC No 18 provided an example of an unfair reason: bottom performance alone. But it also allows judges flexibility to try out the principle behind the GC, and some variations on it, if they are persuaded that the principle should apply. This is evident with GC No 18, where many decisions follow the principle by ruling for employees, sometimes on procedural grounds, even though they do not cite the case.

The GC also helps to gradually build a common recognition of the legal principle with which the case is associated. For example, as stated by an HR manager of a foreign-invested company, “we learned from the GC No 18 that the company cannot use ‘bottom performance’ as the excuse to dismiss workers, so we have changed our KPI system”.⁶³ Similarly, one white-collar staff member reported that “the dismissal based on bottom performance is illegal as defined by some sort of guiding cases”, even though that staff member did not know the specifics of GC No 18.⁶⁴

If the GC becomes well recognised, it may influence the development of rules for further implementation. The low citation rate of the GC does not necessarily mean that the judges have ignored the binding power of the GC. The actual compliance rate with the principle of GC shows the true intention of judges. Moreover, the acceptance of GC No 18 may have influenced the MS to adopt a similar rule. After two years of experience with GC No 18, where 18 decisions followed it and 34 did not, the judges may have been convinced that the rule was correct and reinforced it with an MS. With time and the support of the MS, an even larger proportion of cases were decided consistently with the principle articulated in GC No 18 and the MS.

Ultimately, GC No 18 and the related MS could eventually influence the development of a judicial interpretation or a statutory rule. Something similar happened with another GC. In 2006, the Gazette of Supreme Court published the model Case of *Feng Yumei v Nanjing Xinyu Real Estate Company*, which allowed a contract violator to terminate the contract.⁶⁵ In 2019, the rule of the GC was incorporated into art 48 of

⁶³ Interview conducted in Beijing on 1 July 2020.

⁶⁴ Interview conducted in Beijing on 12 January 2020.

⁶⁵ *Feng Yumei v Nanjing Xinyu Real Estate Co*, Nanjing Intermediate Level Court (2004), No 470 (regarding the termination of sales contracts for shops), in the Gazette of Supreme Court in 2006.

the No 9 Civil and Commercial Trial Meeting Summary. In 2020, the newly enacted Civil Code adopted an approach similar to the GC.⁶⁶ For the bottom performance of employees, GC No 18 and the MS have both declared that such performance is not enough to prove incompetence and justification for termination. Perhaps in the future the SPC will address this issue with an interpretation, or perhaps the labour statute will be amended.

There have been several times that an MS has been transferred into formal law, but with minor revision. For instance, art 1(2) of No 8 MS established that the divorced parent ought to ensure the healthy growth of the child while exercising the right to visit.⁶⁷ Article 1086 of Civil Code reemphasised the requirement of protecting the health of the child and further introduced the rule of suspension of visiting rights when there is detriment to the physical and mental health of the child.⁶⁸ Similar examples can also be found in art 3(6) and (7) regarding tort liability, which have been integrated into arts 1181 and 1167, respectively.

The GC also could be reversed by the MS if such an experiment did not go well. For instance, GC No 9 was issued with a third group of GCs in 2015. It sets out the rule that the small shareholders should be held jointly liable during the liquidation process when they are “negligent in performing obligations”, regardless of any excuses. However, the Meeting Summaries of the National Courts’ Civil and Commercial Trial Work Conference in 2019 (also called No 9 Civil MS) provide several circumstances in which those shareholders would be exempt from joint liability. If a shareholder presents evidence that he has taken positive measures to perform his liquidation obligations, or a minority shareholder provides evidence that he is not a member of the company’s board of directors or board of supervision and has neither appointed any person

⁶⁶ See art 580 (2).

⁶⁷ Article 1(2) states:

“Where, after divorce, a parent who does not directly raise a minor child puts forward a claim of visiting a minor child, the significance of appropriately exercising the right to visit for the healthy growth and personality shaping of minor children shall be explained to both parties, and parties shall be guaranteed to lawfully exercise the right to visit according to the minor children’s age, intelligence and cognitive level, under the premise of in favour of minor children’s growth and respecting their wishes”.

⁶⁸ Article 1086 states:

“After divorce, the father or the mother who does not have custody of his or her child shall have the right to visit the child, while the other party shall have the duty to provide assistance. The parents shall reach an agreement about how and when to exercise the visitation right. If they fail to reach an agreement, the people’s court shall make a judgment. Where the father or the mother visits his or her child to the detriment of the physical and mental health of the child, the people’s court shall suspend the visit according to the law. After the cause of suspension disappears, the visit shall be resumed”.

as such a member nor participated in the operation and management of the company, the shareholder may not be jointly and severally liable for the debts of the company on the grounds of “neglecting in performing obligations”.⁶⁹

The SPC may also modify the scope or applicability of a GC or an MS. In 2020, for example, the SPC announced as follows:

“[F]or the purpose of ensuring the uniform and correct application of laws of the state, in accordance with the provisions of the Civil Code of the People’s Republic of China and other relevant laws as well as trial practices, the Judicial Committee of the Supreme People’s Court has decided upon deliberation that No 9 and No 20 Guiding Cases are no longer applied *mutatis mutandis*; however, the judgments of the guiding cases and the judgments made with reference to the guiding cases shall remain valid”.⁷⁰

Regardless of the ultimate applicability of a GC, it works as an experiment for legislative development. The GC interacts with other forms of written rules, including soft law as well as more formal regulations and laws. In future research, the role of GCs in adjudication and their experimental role in legislative development deserve further study.

⁶⁹ See arts II(14) and (15) of Notice by the Supreme People’s Court of Issuing the Minutes of the National Courts’ Civil and Commercial Trial Work Conference.

⁷⁰ See art II of Notice by the Supreme People’s Court of Ceasing to Refer to Certain Guiding Cases.