

USALI Perspectives

Decoding the Supreme People's Court's Services and Safeguards Opinions

The court's new focus is applying party policy to judicial work

By [Susan Finder](#)

Published October 31, 2022

Over the past seven years, the Supreme People's Court (SPC) has issued almost 30 documents that contain the phrase “judicial services and safeguards” (司法服务与保障) followed by the title of a new or updated national strategy or major initiative. These documents have received little attention at home or abroad, but they represent what is becoming the SPC's most important function in the Xi Jinping era: translating Chinese Communist Party

policies into guidance for lower-level courts.

Reading them closely illuminates how party policy becomes legal policy, with the possibility of eventually being incorporated into soft law, quasi-law, and even hard law. These SPC documents signal areas of judicial inconsistency to be harmonized. To some extent, they also provide advance notice of what we can expect from

lower-level courts when deciding cases or taking other actions.

The “judicial services and safeguards” documents take the form of judicial opinions (意见) or guiding opinions (“指导意见”), which are considered policy or normative documents. They do not discuss specific cases. These opinions fall into six broad categories, corresponding to major domestic and international strategies of the Xi era: regional integration (including the Greater Bay Area incorporating Hong Kong and Macao), the Belt and Road Initiative (BRI) and foreign-related commercial matters, rural revitalization, intellectual property, the environment, and the economy. Most but not all are publicly available. These documents are written for insiders and employ a combination of court and party jargon. Many matters are implied or require knowledge about how the court and related systems work or interact to fully understand.

Here are a few of the most important things to understand about these “services and safeguards opinions.” First, “opinions” are one type of party and state public document (公文), defined identically in [party Central Committee](#) and [SPC](#) provisions. An opinion must focus on an “important issue” that involves the overall situation, principles, and policies encountered in

the work of the courts, especially emerging issues. It must include a comprehensive and pertinent analysis of the problem and provide practical solutions.

Second, opinions are closely linked to party policy. The SPC’s current judicial reform program lists as one of its leading overall objectives:

Focus on central tasks, serve the overall interests ... promote the deep integration of tasks of the people’s courts into the overall plan of the party and the nation through fulfillment of functions according to the law and resolute reform and innovation, so as to build the people’s court system in serving the overall interests in a sound manner.

It should therefore not be surprising that press releases announcing recent “judicial services and safeguards opinions” use the slogan: “Wherever the party center’s policy decisions are deployed, that’s where judicial services will be.” (党中央的决策部署到哪里, 司法服务就跟进到哪里.) This phrase shows that the SPC, as head of the court system, must do its part to implement the work of the party and state in its area of competence.

Third, these services and safeguards opinions serve as packages of judicial measures in several ways. They

incorporate all three aspects of the work of the courts: party guidance, administrative guidance, and legal policy guidance, both procedural and substantive. They also package related SPC legal policies that may in turn be integrated with broader party and government policies. The opinions embed the SPC's analysis of the possible impact of a specific national strategy or policy on the courts and what each SPC department needs to do to fulfill the courts' obligations under that strategy or policy. In the bureaucratic language of SPC documents, it "coordinates the precise efforts in all areas of the judiciary" (统筹司法各领域精准发力).

This is linked to my fourth point, that services and safeguards opinions are distributed to the lower courts as guidance. The implications are multifaceted and not easily tracked by a search of judgments because Chinese courts rarely cite SPC opinions in their judgments or rulings. One example is a [BRI-related services and safeguards opinion](#) in which the SPC changed its judicial policy towards the enforcement of foreign court judgments and rulings. As was evident from the court's [commentary](#) in its 2021 "typical cases," the Xiamen Maritime Court understood this opinion to allow it to recognize a Singapore court order appointing a judicial administrator. Subsequently,

the SPC issued [quasi-binding guidance](#) to give judges specific standards in such cases. The impact of policy changes on criminal court judges is less visible. It occurs when judges follow the language in services and safeguards opinions to "punish severely" certain crimes.

Fifth, these services and safeguards opinions illustrate the multiple functions of the SPC beyond adjudicating cases and administering the court system. One of these functions, which [I described last year](#), is cooperating with other government institutions. Reading several services and safeguards opinions makes it clear that the SPC's cooperation with other institutions extends widely and includes providing input as well as imposing some restraints on administrative and legislative power. The official phrase for what the court is doing is "coordinating all forces to implement comprehensive policies" (统筹各方力综合施策). For example, the BRI-related services and safeguards opinions show that the SPC works with the Ministry of Foreign Affairs on matters such as negotiating civil and criminal judicial assistance and related treaties and conventions. The [Unified Market Services and Safeguards Opinion](#) mentions cooperation with government departments several times. It also mentions plans for the SPC to cooperate with the Supreme People's

Procuratorate to use administrative public interest litigation cases and judicial recommendations to push market regulatory departments to do a better job.

Another important example appears in the 2020 [Guiding Opinion on the People's Courts Serving and Guaranteeing the Further Opening Up to the Outside World](#), which talks about “promoting the revision of the Arbitration Law” and several other laws. When the Ministry of Justice issued its draft revisions to the Arbitration Law in late July 2021, it [mentioned](#) that it shared an earlier draft with relevant central-level institutions and convened multiple workshops with the SPC and courts at three levels. Hence, it appears that judicial power is being used to influence and restrain the executive and the legislature outside the courtroom rather than inside it.

The SPC’s services and safeguard opinions exemplify the significant

reorientation that is taking place at the top court. As [announced](#) one year ago, the functions of China’s four tiers of courts are being adjusted. The SPC is focusing on a smaller number of more important cases and putting significant energies into “supervising and guiding adjudication work and ensuring the correct and uniform application of law.” In short, its judicial role is shrinking and its policy-making role is expanding.

It is too soon to assess whether the just-concluded 20th National Party Congress will mean any change in SPC direction. From several Chinese articles reporting on how the SPC is studying the congress documents, it appears that the labeling of these documents may be tweaked, but their nature is unlikely to substantially change. We are likely to see more of them, and court watchers will need to learn to decode them to grasp their messages.



Susan Finder is a distinguished scholar in residence at the Peking University School of Transnational Law, member of the international commercial expert committee of the China International Commercial Court of the Supreme People’s Court, and author of the [Supreme People’s Court Monitor](#). Her views should not be attributed to the SPC.

Suggested citation:

Susan Finder, “Decoding the Supreme People’s Court’s Services and Safeguards Opinions,” in *USALI Perspectives*, 3, No. 7, Oct. 31, 2022, <https://usali.org/usali-perspectives-blog/decoding-the-supreme-peoples-courts-services-and-safeguards-opinions>.

The views expressed in *USALI Perspectives* are those of the authors, and do not represent those of USALI or NYU.

This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

