

Analysis of the application of legal principles when the application of legal rules is not applicable

Zongyu Li

School of Humanity and Law, University of Science and Technology Beijing, Beijing, 100083, China
E-mail:13911371527@163.com

Keywords: Legal principles; Legal rules, Application conflict

Abstract: When conflicts of law and legal rules are chosen, what criteria should be chosen is an unavoidable issue in our judicial practice. From the perspective of the general theory of law, this paper analyzes the relationship between legal rules and legal principles in China, and puts forward the standards and recommended measures for judicial application.

1. Introduction

Legal principles and legal rules are the core concepts of law. Legal rules consist of assumptions, conditions and behavioral consequences, with clear orientation and applicable standards. The legal rules are refined from the legal concept and the legal spirit to determine the standards that are directional to the law. The social phenomena adjusted by the law vary widely. Because of the lag and stability characteristics of the law, there are often social phenomena that cannot be adjusted by the rules of the law. At this time, it is necessary to adjust according to the legal rules, because China is a statute country, and this phenomenon is still relatively rare in our country's judicial practice. This paper mainly discusses the applicable conditions and applicable methods of legal principles when legal rules are difficult to apply accurately.

2. The relationship between legal principles and legal rules

2.1 The meaning and characteristics of legal and legal principles

From the point of view of law making, the legal principle is a red line, which represents the spirit of the law and can ensure the harmony within the legal system. The principle of law is based on its interpretation of the uncertainty and ambiguity of social phenomena. It is generally defined as the principle and norm of the comprehensiveness and stability that can be used as the basis or origin of the rules. The legal principle is an indeterminate norm. The content is macroscopically abstract. There is no strict logic system. It has a wide range of application scope and applicable uncertainty characteristics. Therefore, the application of legal rules has priority when judges decide. Legal rules refer to a norm of order, permission and prohibition of people's actions or activities that are formulated or recognized by the state. There are usually two uses of legal norms. One is the broad legal norm, the alleged law, the other is the narrow legal norm, and the legal rules that refer to the legally strict logical structure.

The differences between legal principles and legal rules mainly exist in the following aspects. First of all, the legal principle is at the upper level in the legal system, and the legal principle is the second level. Second, the legal principles cover a wide range, and the legal rules are relatively narrow. Third, the legal principles are relatively stable, while the legal rules have certain social development. Finally, the application of legal principles is rather vague, and the application of legal rules is relatively certain.

2.2 The existence and significance of legal principles

The legal principle is the value declaration of the law, and it is the basis or starting point for the legal professional to carry out legal interpretation and legal reasoning. It can make up for the loopholes in the statute law and correct the mistakes of the law, which is conducive to the

realization of the fairness of the case. In a certain sense, legal principles have become a tool for judges to solve difficult cases and persuade parties and the public. Judging from its existence, legal principles generally exist in the basis of statutes, jurisprudence, constitutional law or inference, and the legal value of what should be.

Judging from the sources of legal principles, first, the legal principles are rooted in social life, and the core content of the entire law is the behavioral norms that regulate people's mutual relations in social life, and it is the reflection of things. Second, the legal principle is not limited to the expressness of the existing law. Its authority stems from the legitimacy of the content and is a requirement of fairness, justice or morality. Third, the legal principle is the axiom of law, through which a series of legal rules can be deduced and become the logical starting point of other legal elements. Fourth, the principle of law is the principle embedded in the rule of law, which directly comes from the logical deduction of legal provisions, legal spirit or legal will. Fifth, from an ethical point of view, legal principles are usually the minimum or highly ethical requirements for maintaining social existence, and they contain certain ethical demands. Sixth, the legal principle is abstracted from a wide range of social realities and social relationships. It has strong stability and universality, and its coverage and scope of application are very broad.

3. Cases where legal principles cannot be applied

Legal rules are characterized by specificity and operability. In general, legal rules are preferred. However, in some special cases, the application of legal rules can lead to unfair judgments, making it difficult to achieve judicial purposes. In real life, it is inevitable that the application of legal rules will result in a deviation from the main purpose, which must be corrected by legal principles. In theory and practice, when solving the contradiction between legal principles and legal principles, we must first study and analyze the legal principles, which will generally be achieved by regularizing legal principles and principled legal rules. In general, the conditions to which a principle applies are the principle of appropriateness, the principle of necessity, and the principle of proportionality in the narrow sense. As long as the legal principles are studied, the referee who combines the cases can be applied correctly.

Legal principles are not always applicable and must be subject to certain restrictions. First, the principle of application can only be considered when there are no specific legal rules. In other words, the legal principle can only be applied when there is a gap in the law. Second, legal principles can only be used in order to achieve case justice. Because if the judge applies too many legal decisions, it will inevitably lead to the expansion of discretion. Third, if there is no stronger reason, the legal principle cannot be directly applied. This article supplements the above two restrictions, and the purpose is to apply the legal principle cautiously.

The impact of legal principles on the case in judicial practice is diverse. First, as the basis for legal interpretation and reasoning, in each case, the legal principle constitutes the authoritative starting point of legal reasoning, and also ensures the consistency of the reasoning results with the legal purpose. The second is to correct the basis of the mistakes of the law. The purpose of applying the legal principles is to guarantee the realization of the case justice and to maintain harmony between the law and social development. The third is to make up the basis of legal loopholes. Whether it is judging the type of case or conducting legal interpretation, it is inseparable from the application of legal principles. In principle, there are more principles applied in the field of private law. In the field of criminal law, it is generally not allowed to apply legal principles to correct rules or make up for loopholes.

4. Specific application of legal principles

Indirect application of legal principles. The indirect application of the principle of law is that when a judge decides a case, the case has both rules that can be clearly applied, and legal principles that can enhance the legitimacy of the rules or enhance their persuasiveness, and have no other principles that conflict with the principle. presence. Applicable legal principles must be based on

objective criteria when conducting value judgments, and can be applied on the basis of full rationality. Applicable legal principles must meet certain conditions. If the legal rules can solve the case and the application of the rules does not lead to obvious injustices, then there is no need to apply the legal principles. When legal rules are absent or unfair, the principles need to be applied. The applicable preconditions of legal rules can be divided into four categories. The first category is caused by the vagueness and abstraction of the legal rules. The second category is when the application of legal rules leads to obvious injustices. The third category is that the law does not provide for regulations. When there are loopholes; the fourth category is that both legal principles and legal rules can be applied, but there are irreconcilable contradictions between the rules. To put it simply, there are two main situations in which legal principles can be applied. One is when there are loopholes in the law, and the other is when the application of the rules leads to injustice.

The legal principles are directly applicable. Legal rules have their inherent stability and certainty. With the continuous development of society, legal rules are due to their inherent stability and lag, when applicable legal rules have a negative impact on our country and society. Legal principles should play their part. The application of the legal principle must also meet the following conditions. First, it is forbidden to escape from the general clause. When the legal rules and legal principles can be applied at the same time, and the conclusions reached are the same, the rules should be applied first in the choice of the referee norms. The second is to strictly limit the applicable principles and break through the statute law. The legal rules are a way for the national legislature to embody the legal order that has gradually formed in the legislative activities. Therefore, the stability of legal rules is actually a requirement of the state's legislative power, and it is also an important measure for the state to ensure legal stability and political stability. In general, when the applicable legal principles are inconsistent with the results of the applicable legal rules, the judge cannot abandon the real law at will by subjective judgment. Third, it is necessary to ensure the stability and consistency of application when applying legal principles. It is necessary to ensure the certainty and uniformity of the applicable principles of judges by establishing a reasonable type of method. The fourth is to strictly limit the infiltration of moral principles. The legal principle is a value criterion or norm that provides the source and guidance for legal rules, and is the decisive rule at all stages of the law. Although the moral principle reflects the fundamental requirements of social economic relations and class interests in the most concentrated way, because the moral principles are relatively broad, in the process of applying the law, the infiltration of moral principles should be strictly restricted to prevent moral judgment from replacing legal judgment.

5. Suggested measures to improve the application of legal principles

To carry out the necessary complete proof. In the use of legal principles, the following conditions should be met: First, the case has been "exhausted rules", in line with the applicable principles, and should explain the value judgment and norms of the referee on the wood case.

Establish a model for the application of typed legal principles. It is necessary to classify, compare and summarize the applicable principle cases at home and abroad, and fully demonstrate the type of buttons, which is in line with the criteria of repeated applicability. In this way, we can make us have the application of legal principles.

Strengthen the summary of judicial practice experience. It is necessary to strengthen the analysis of the legal principles and the applicable conditions of legal rules, and repeatedly summarize similar keystrokes in judicial practice, establish a use method similar to case law, and guide the application of conflicts between legal principles and legal rules.

6. Conclusion

Legal principles and legal rules are two ways to adjust social behavior, but both have applicable conditions. Through the above analysis, we can think that the application of legal principles should meet the requirements of exhausting legal rules, and it is in the spirit of the judiciary to fully and effectively demonstrate the necessity of applying the rules of law. Therefore, in theoretical research

and judicial practice, it is necessary to strengthen the experience summary and explore a set of applicable legal principles that are in line with China's judicial practice.

References

- [1] Olayanju O. Analysis of the legal and policy framework applicable to Combat Vesico Vaginal Fistula in Nigeria and systemic challenges to their implementation[J]. Commonwealth Law Bulletin, 2017:1-19.
- [2] JonesDay. Ohio Legal Ethics Law Under the Rules of Professional Conduct [J]. 2017.
- [3] Kandala N B, Komba P N. Analysis of International and Regional Legal Regime Applicable to FGM Victims [M]// Female Genital Mutilation around The World:. 2018.
- [4] Hugginsmanley A C, Algina J, Zhou S. Models for Semiordeed Data to Address Not Applicable Responses in Scale Measurement[J]. Structural Equation Modeling A Multidisciplinary Journal, 2017:1-14.
- [5] Bjørnstad A L, Ulleberg P. Is established knowledge about cross-cultural differences in individualism–collectivism not applicable to the military? A multi-method study of cross-cultural differences in behavior.[J]. Military Psychology, 2017, 29(6):477-490.
- [6] Gekht A . Shared but Differentiated Responsibility: Integration of International Obligations in Fight against Trafficking in Human Beings[J]. Denver Journal of International Law and Policy, 2008, 37.
- [7] Bucken-Knapp G , Karlsson Schaffer J , Persson Str?Mb?Ck K . Security, Equality, and the Clash of Ideas: Sweden\'s Evolving Anti-Trafficking Policy[J]. Human Rights Review, 2012, 13(2):167-185.
- [8] Ampofo A A , Beokubetts J , Njambi W N , et al. Women’s and Gender Studies in English-Speaking Sub-Saharan Africa[J]. Gender & Society, 2004, 18(6):685-714.