

A Study on the Applicability and Perfection of the Principle of Honesty and Trustworthiness in Civil Litigation

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Abstract: The principle of honesty and trustworthiness, as an important idea in the construction of judicial mechanism in china in recent years, is of positive significance to the revision of the fairness of the execution of all kinds of litigation cases in our country, especially with the continuous strengthening of the law popularization and the continuous improvement of the level of citizen's legal system, the problems of fairness in all kinds of civil litigation cases are increasingly prominent.

1. Introduction

As an important basic institution, the judiciary has an important influence on the development of various legal affairs and legal activities in our country. Among them, civil justice is an important basis to protect the basic legal rights and interests of the residents in our country. The principle of honesty and trustworthiness, as an important judicial principle stipulated in the amendment of the new law in 2012, makes this article, which plays an important role in the substantive law, officially began to play its important role in the field of civil justice, but the application of the principle of honesty and trustworthiness in civil litigation and how to further improve the applicable countermeasures are important adjustments of the current civil procedure law.

2. Importance of the Principle of Honesty and Trustworthiness in Civil Action

Because there is a certain lag in the development of the law compared with the society, there may be a situation in the actual development of the civil litigation that the law can not be reasonably judged because of the lack of legislation, which causes damage to the protection of the rights and interests of the weak party in the original and the defendant, so the application of the principle of honesty and trustworthiness in the civil litigation can proceed from the judicial impartiality, effectively make up the deficiency of the existing legal provisions, protect the legitimate rights and interests of both sides of the civil litigation, and give full play to the judicial initiative.

In the actual work of civil litigation, there must be some intersection between the civil procedure law and the substantive law, which ensures the strict observance of the principle of honesty in the judicial process, which can make the civil procedure law actively link up with the substantive law, and effectively alleviate the relationship between the two parties in the mediation of the interests of civil litigation, and promote the effective settlement of the civil action[1].



Figure 1 Basic principles of civil procedure law

3. The Application of the Principle of Honesty and Trustworthiness in Civil Action

Under the influence of the legalization of litigation, the establishment of the principle of honesty and trustworthiness has become a positive symbol of the importance of litigation, so the application of the principle in civil litigation is as follows : (1) through the principle of honesty and trustworthiness to realize the effective complementarity of civil procedure law and substantive law in legal provisions, and to play an effective judicial role in mutual coordination, and to use the principle of honesty and trustworthiness to restrain the moral norms of both sides in civil litigation. (2) With the rapid development of modern society, the types of civil litigation are increasing with the increase of the diversity of life forms, and the complexity of the existing legal provisions determines that there is a significant delay in the provisions of the civil procedure law, resulting in the frequent use of legal loopholes to harm the rights and interests of others. (3) The construction of national moral civilization is the main ideological guidance for the development and construction of a well-off society in China, and the application of the principle of honesty and trustworthiness in civil litigation can enhance the restraint of judicial morality and provide the basis for the realization of social equity[2].

4. The Application of Honesty and Trustworthiness in China's Civil Litigation Legislation

The application of the principle of honesty and trustworthiness in existing laws and regulations is mainly reflected in the following:

4.1. Applicability of the Parties to the Proceedings

In civil judicial proceedings, due to the influence of their own interests, the litigants are considered in their own interests in the litigation link, or there is a situation that adopting improper means to harm the interests of others and influence the judicial justice, so the corresponding laws and regulations should ensure that the litigants actively maintain the judicial impartiality under the condition of moral restraint, but the lack of relevant legal provisions can not be adjusted to the above situation, and the application of the principle of honesty and trustworthiness makes up for this deficiency, which makes the parties have the effective restraint and reduce the occurrence of the influence of judicial justice behavior, and with the continuous development of the society, the bad behavior of various kinds of society, Although the judicial clause can not restrain the moral behavior of citizens in time, it can promote the moral binding force through the application of the principle of honesty and trustworthiness[3].

4.2. Applicability of Judicial Staff

At present, one of the main problems in the judicial mechanism of our country is how to realize the effective restriction of the judicial staff's behavior and ensure that they can correctly exercise their own rights on the basis of reasonable justice, that is, how to make the spontaneous staff get the discretion and apply the discretion correctly at the same time. The application of the principle of

honesty and trustworthiness can make the corresponding provisions to effectively restrain the legal application of the discretion of the judicial staff on the basis of honesty and trustworthiness, which requires that in exercising discretion, the judicial staff can only apply the discretion to ensure the fairness of the judgment and further enhance the judicial impartiality of the state by defining the legal loopholes and limiting the scope of the exercise of power.

4.3. Practicality of Other Litigant Participants

The principle of honesty and trustworthiness not only has obvious restrictive effect on both parties and judicial staff, but also has clear applicability to other litigant participants such as witnesses and lawyers.

5. The Application of the Principle of Honesty and Trustworthiness in Civil Litigation

5.1. Lack of Sound Application Mechanism of the Principle of Honesty and Trustworthiness

Although the application of the principle of honesty and trustworthiness in the civil procedure law to some extent has the effect of restricting the morality of the litigants, judicial staff and other litigant participants, it is not enough to give full play to its greater function, but also to create a perfect application mechanism of the principle of honesty and trustworthiness under the existing legal system to further exert the effect of the principle of honesty and trustworthiness.

5.2. Limitations of Scope of Application

The application of the principle of honesty and trustworthiness in the civil procedure law is more about the moral restraint of both parties and other litigants, and there are still obvious limitations in the application of the principle in the civil procedure, so it is necessary to expand the scope of application of the principle to further realize the judicial impartiality[4].

5.3. Limitation of Application

The application effect of the principle of honesty and trustworthiness in civil litigation is limited mainly because when there are clear legal loopholes, the judicial staff can not exercise discretion correctly, and the judgment tendency of different civil litigation in local law is not uniform, and the lack of uniform standard of fair judgment leads to the limitation of the application effect of the principle of honesty and trustworthiness in civil litigation.

5.4. Lack of Principle in Violation of Relevant Punishment Mechanisms

The principle of honesty and trustworthiness is applied, although it has a better effect on the judicial impartiality of civil litigation, but it has a more obvious warning effect in practical application, and lacks the effect of moral restraint of effective behavior, and the appearance of this phenomenon shows that it is caused by the lack of relevant punishment mechanism, which leads to the failure of litigants, judicial staff and other litigants to attach importance to the principle of honesty and trustworthiness, which greatly reduces the judicial deterrence.



Figure 2 Lack of principle in violation of relevant punishment mechanisms

6. The Perfect Application of the Principle of Honesty and Trustworthiness in Civil Litigation

6.1. Establishment of Integrity Evaluation Mechanism

A perfect law needs to play a role on the basis of a perfect legal system, and the principle of honesty and trustworthiness in civil litigation refers to the effective promotion of fairness in the execution of civil litigation on the basis of the original civil procedure law.

The establishment of integrity evaluation mechanism requires local judicial organs to actively establish integrity files to ensure that both parties and other litigant participants can be effectively constrained by the principle of honesty and trustworthiness on the basis of integrity files. Judicial officers who have committed bad acts in the course of litigation shall, after classifying their good faith files as dishonest persons, inform them of their criticism and punishment, and those who have acted seriously or have assumed corresponding legal liability, so as to further enhance the judicial impartiality[5].

6.2. Actively Expand the Application of the Principle of Honesty and Trustworthiness

To expand the scope of application of the principle of honesty and trustworthiness, it is necessary to include all kinds of judicial staff in the scope of application of the principle of honesty and trustworthiness on the basis of further enhancing the binding effect of the principle of honesty and trustworthiness on both sides of litigation and other litigant participants, especially for judicial staff with discretion, to expand the application of the principle of honesty and trustworthiness, so that the scope of the exercise of discretion can be clearly defined, so that their discretion can be used legally on the basis of fairness and justice, and the fairness of civil litigation judgment.

6.3. Establishing Strict Principles That Violate Relevant Punishment Mechanisms

The establishment of the relevant punishment mechanism in violation of the strict principle is to make active use of all kinds of strict punishment mechanisms through the establishment of the relevant legal provisions mechanism to realize the effective promotion of the deterrence of the principle of honesty and trustworthiness.



Figure 3 Establishing a strict principle that violates the relevant punishment mechanism

7. Conclusion

The principle of honesty and trustworthiness, as a characteristic cross field between substantive law and civil procedure law, is of positive significance to the complement of judicial system construction and the perfection of judicial impartiality in our country. However, the application of honesty and trustworthiness in civil procedure is limited because of the influence of various factors.

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