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Exploration and Construction of the Precedent System with Chinese Characteristics

-- Research on the theoretical basis and practical path

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Abstract: The unique role of the case law system in China's rule of law environment and the space for improvement is studied in this paper. Case law, as the core of the common law system, has shown its strong vitality and adaptability; while China, as a civil law country, has traditionally been dominated by statute law, with the development of judicial practice, the construction of a case law system with Chinese characteristics has become an important issue to enhance judicial efficiency, unify the standard of adjudication. This study aims to balance the Chinese characteristics and international practices, and closely combine theory and practice to provide scientific guidance for the innovation and development of China's jurisprudence system.

Keywords: Chinese characteristics; Jurisprudence; Theoretical foundation; Practice paths

Introduction

The precedent system constantly enriches and develops legal rules through the adjudication of specific cases, demonstrating the vitality and adaptability of the law. As a civil law country with a long history, China's legal system is based on statutory law, but with the rapid development of social economy and the in-depth advancement of judicial reform, the construction of a precedent system with Chinese characteristics has become a key link in enhancing judicial credibility, realizing the uniform application of law, and enhancing the flexibility of legal interpretation.

1. The Theoretical Basis of the Precedent System with Chinese Characteristics

1.1 The legal theoretical basis of the precedent system

1.1.1 Legal certainty and flexibility

Legal certainty, as the cornerstone of the rule of law, requires that the rules of law should be clear and predictable, so that citizens can anticipate the legal consequences of their actions, so as to safeguard individual freedom and social order. Legal certainty is usually expressed in the stability and predictability of rules. From the perspective of formal certainty and substantive certainty, formal certainty emphasizes the clear expression of legal provisions, avoids ambiguity, and ensures that citizens can accurately understand legal provisions.

1.1.2 Legal Interpretation and Legal Development

Legal interpretation, as a bridge between abstract legal norms and concrete social situations, is crucial to the construction of a precedent system with Chinese characteristics. In China, the power to interpret laws is mainly exercised by the Standing Committee of the National People's Congress and the Supreme People's Court, and the accurate understanding and application of laws are ensured through legislative interpretation and judicial interpretation.

Legal development refers to the dynamic process of continuous evolution and improvement of the legal system in response to changes in socio-economic conditions. The precedent system allows courts to make appropriate and innovative interpretations of laws while following the basic principles of law in response to new social issues and challenges through forms such as "publishing guiding cases".

1.2 Precedent factors in the Chinese legal tradition

1.2.1 The use of historical precedents

Documents such as the "Daming Huidian" and the "Supplementary Regulations of the Great Qing". The ancient Chinese legal system was deeply influenced by Confucianism, and formed a legal model characterized by the combination of ritual and law, and the principle of morality and punishment. As early as the Han Dynasty, there was the practice of "deciding the case", that is, when judges handled cases, they

referred to the judgments of similar cases in the past, which marked the beginning of the rudimentary form of case law. During the Ming and Qing dynasties, with the compilation of legal Qing Dynasty”, precedents were systematically sorted out and became an important basis for judicial adjudication, marking the maturity of ancient Chinese case law.

1.2.2 The integration of contemporary rule of law concepts and precedent systems

The abstraction and stability of the law sometimes make it difficult to adapt to the rapidly changing social reality, which has prompted the Chinese legal system to begin to re-examine the value of precedents. In 2007, the Supreme People’s Court launched the “Guiding Cases System”, marking the formal integration of precedent elements with a codified legal system under the framework of the contemporary rule of law. The purpose of the Guiding Cases System is to provide courts at all levels with reference for adjudication and promote uniformity in the application of law and predictability of adjudication results by publishing cases that are typical, novel, and difficult to apply law.

1.3 Reference to the precedent system from the perspective of comparative law

The common law system, also known as the common law system, is characterized by the principle of “following precedent”. In this legal system, precedents are not only the direct basis for judicial decisions, but also constantly enrich and develop legal rules through the interpretation and application of judges. The common law system of precedent emphasizes the authority and binding force of precedents, and the lower courts must follow the precedents of the higher courts unless there are sufficient reasons to overturn the original precedents, a process known as “overturning precedents”. Traditionally, civil law countries have not adopted the principle of stare decisis, believing that legal rules should be clear, stable, enacted by the legislature and expressed through legal texts. However, some civil law countries have also begun to attach importance to the role of precedents, such as France’s “compilation of precedents” and Germany’s “precedent compilation system”, although they do not have formal legal effect, but they have important reference value for judges in practice, and in essence, to a certain extent, they give the corresponding binding force to the precedents from the legal level. While these countries generally do not require judges to be bound by the decisions of higher courts, Supreme Court decisions are usually followed by lower.

2. Analysis of the current practice of the precedent system with Chinese characteristics

2.1 The role of precedents in China’s current legal system

2.1.1 The role and limitations of the Supreme People’s Court’s Guiding Cases

The Guiding Cases of the Supreme People’s Court play a vital role in guiding China’s judicial practice: The constructive application of precedents in China aims to unify the application of law, that is, to unify the understanding and application of law by courts and judges through the use of “quasi-institutional” precedents such as the Case Guidance System, the system of using reference precedents, and the publication of precedents. It also has certain limitations: the limited number and insufficient coverage. Compared with the huge caseload and complex and diverse legal issues, the number of Guiding Cases currently released is relatively limited, and it is difficult to comprehensively cover all legal fields and adjudication problems, which affects their general guiding role.

2.1.2 The use of precedents in local judicial practice

In judicial practice, local courts at all levels, in addition to referring to the guiding cases issued by the Supreme People’s Court, have also actively built their own case databases and systems for publishing typical cases to guide judicial adjudication in their respective regions. However, judging from the actual situation of local judicial practice, the application of Guiding Cases is still in the stage of spontaneous application, and a relatively orderly mechanism for its application has not yet been formed. The institutionalized use of precedents is only a partial and shallow attempt to construct the phenomenon of spontaneous use of precedents.

2.2 Problems and challenges in practice

2.2.1 Transparency and accessibility of precedents

Even if there are published precedents, access to them is relatively limited, mainly relying on official websites and professional legal databases, and these resources often require payment or have a high professional threshold, and the acquisition cost is high for the general public and some legal practitioners. The government and the judiciary should cooperate to develop more free or low-cost tools for accessing precedents, and strengthen cooperation with universities, libraries and other institutions to broaden access to precedent materials.

2.2.2 The issue of the authority and uniformity of precedents

Compared with the principle of following precedent in the common law system, although China’s Guiding Cases have a certain guiding role, their legal effect is at a low level and lacks sufficient coercive force, resulting in the fact that in some cases, lower courts may selectively apply or ignore precedents, affecting their authority. In response to this situation, the legal status of Guiding Cases in judicial adjudication should be clarified through legislation or judicial interpretations, and the level of their effectiveness should be appropriately raised to ensure that they are respected and followed by lower courts, and the authority of precedents should be enhanced.

3. The path of constructing a precedent system with Chinese characteristics

3.1 Improve mechanisms and processes for the release of precedents

The primary task of establishing a precedent system is to establish or designate a special agency to be responsible for the screening, review, and publication of precedents, and to clarify the scope of its responsibilities. At the same time, the standards and procedures for the issuance of precedents should be clarified, including the collection, preliminary selection, review, final review and announcement of cases, so as to ensure that each step has rules to follow.

3.2 Strengthen the collation, compilation, and disclosure of precedents

Attention should be paid to the construction of a hierarchical classification system, scientifically grading and classifying precedents, distinguishing between guiding cases and reference cases, as well as cases in different legal fields, so as to facilitate retrieval and application. Establish a unified coding and indexing system to improve the organization and searchability of precedents. And use big data and artificial intelligence technology to build an intelligent precedent database to realize the automatic classification of precedents, intelligent recommendation and other functions.

4. Conclusion

The exploration and construction of the precedent system with Chinese characteristics is not only an important milestone in the modernization of China's rule of law, but also the inheritance and innovation of the essence of traditional legal culture. Through an in-depth analysis of the theoretical basis of the precedent system, this study clarifies that it has irreplaceable value in improving the uniformity of law application, enhancing the predictability of judicial adjudication, promoting the dynamic development of law, and enhancing public trust in the judiciary.

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