

On the Judicial Application of Analogical Reasoning

Lingling Chen*

School of Law, Anhui University of Finance & Economics, Bengbu, 233030, China.

* Corresponding Author

Abstract

Analogical reasoning is a legal reasoning method based on similarity, which can remedy legal loopholes in judicial application and meet the current needs of judicial decisions to pursue unity and resolve disputes. However, the application of analogical reasoning involves giving judges too much discretion, which may lead to the erosion of legislative power by judicial power. Moreover, the lack of objective operating standards for analogical reasoning and the uncertainty of its conclusions lead to difficulties in its development in judicial application. In view of this, it is recommended to regulate analogical reasoning in a systematic and procedural manner to promote the standardized application of analogical reasoning; Set up operational standards for analogical reasoning, and stipulate that judges conduct analogical reasoning strictly in accordance with the effectiveness level standards; At the same time, by eliminating the contradiction between cases in judicial practice, establishing a sound case guidance system, and increasing the interpretation and reasoning of judges in judicial documents, we can improve the reliability of the conclusions of analogical reasoning, thereby giving play to the true effectiveness of analogical reasoning.

Keywords

Analogical Reasoning; Judicial Application; Case Guidance System; Same Case and Same Judgment.

1. Introduction

Since the establishment of the Case Guidance System in 2010, as of July 6, 2022, the Supreme People's Court has issued 32 batches of guiding cases, continuously providing new "References" for court decisions[1]. It can be seen that resolved cases have important value in judicial practice, not only providing guidance and reference for the future adjudication of similar cases, but also creating a broader space for the development of analogical reasoning. However, despite the formal implementation and relatively mature operation of the case guidance system in China, there are still many problems in judicial application due to the fact that analogical reasoning itself belongs to the expansion of judges' discretion, the lack of objective operating standards, and the uncertainty of conclusions. This article mainly analyzes these three aspects of issues and proposes corresponding improvement suggestions, with a view to achieving the effective use of analogical reasoning in resolving judicial disputes.

2. The Current Situation of Judicial Application of Analogical Reasoning

Analogical reasoning, also known as "application by analogy", generally refers to a form of reasoning that is handled by referring to similar legal provisions in the absence of explicit legal provisions[2]. In the process of handling judicial cases, analogical reasoning is manifested by comparing whether the facts of the pending case are the same or strongly similar to those of the already resolved case. If they are the same or strongly similar, it can be concluded that the

pending case can be adjudicated using the adjudicative grounds of the already resolved case. This reasoning can be expressed as:

Pending case A has case facts: a, b, c, d, or a1, b1, c1, d1

Resolved case B has case facts: a, b, c, d

B Reason for application of judgment: R

Conclusion: A also applies to the judgment reason R

Using analogical reasoning in judicial application can, on the one hand, fill legal gaps and promote the substantive resolution of legal disputes. On the other hand, it can achieve the pursuit of justice of "similar handling of similar cases" and maintain judicial fairness. Therefore, in judicial practice, legal workers often use analogical reasoning.

2.1. Application of Legal Analogy

The reality of society is complex and constantly changing rapidly, while legal provisions are relatively conservative and slow to change, making it impossible to cover all possible disputes in society[3]. When there are no clear legal provisions as a direct basis for handling disputes, and judges need to make decisions when trying specific cases, the usual method to accurately play the role of legal division and dispute prevention is to apply analogies based on the most similar legal provisions, whose logical basis is analogical reasoning. Although the application of legal analogy can properly handle situations where there are loopholes in the law, after all, analogical reasoning is a process of reasoning from "individual to individual". The conclusions obtained have a certain degree of probability, and may be true rather than necessarily true, which is ultimately difficult to ensure. Therefore, China's criminal law explicitly stipulates that analogical application is prohibited, but it is still widely used in civil and commercial cases[4]. For example, Article 71 of the Civil Code of the People's Republic of China stipulates: "The liquidation procedures and powers of the liquidation team of a legal person shall be in accordance with the provisions of relevant laws; if there are no provisions, the relevant provisions of the applicable company law shall be referred to." Article 72, paragraph 2, states: "The remaining property of a legal person after liquidation shall be dealt with in accordance with the provisions of the articles of association of the legal person or the resolutions of the legal person's authority. If there are other provisions in the law, the provisions thereof shall prevail." These laws provide a legal basis for judges to conduct analogical reasoning in some civil and commercial cases. The main reason is that civil and commercial disputes are distributed in all aspects of social life, and the legislator's scope of foresight is limited, resulting in the lag and limitations of the law. However, judges must make decisions in the face of specific disputes, so they have to apply analogies to supplement and interpret existing written laws.

2.2. Application of Case Analogy

The application of analogical reasoning aims to achieve the pursuit of fairness and equality in the same handling of the same case or similar handling of similar cases. The application of case analogy means that in judicial trials, when there are no directly applicable legal provisions for a judge to handle a specific case, or when there are legal provisions that are too abstract and vague to apply, the judge can use the determined case or guiding case as a reference for analogical reasoning. If the pending case is the same as or has obvious similarities with the reference case, the decision rules of the determined case are applied to the pending case, To achieve substantive resolution of disputes[5]. Its logical basis is also analogical reasoning. Case analogical reasoning not only embodies the principle of "simultaneous judgment in the same case", but also embodies the principle of "following precedents" in the trial of cases. The principle of "following precedents" mainly exists in countries of the Anglo-American legal system, while China is a written law country with statutory law as its main legal source.

Previously, judges could not use determined cases as the basis for adjudicating cases in judicial trials. However, in 2010, the Supreme People's Court established a case guidance system and stipulated that "should refer to" guiding cases in trials, which in fact also made cases a reference basis for courts to handle disputes. In fact, it has always been common for judges to refer to previous cases in China's judicial work. There are both cases reported by the higher court or even the Supreme Court that are similar to the pending cases, as well as similar cases handled by our court (including the judge himself). In addition, the latter situation is usually the majority. Because the experience and tacit knowledge of previous cases have been formed in the minds of judges, it is natural for judges to think of using analogical reasoning to produce the same processing conclusions when they encounter similar pending cases.

3. Problems in the Judicial Application of Analogical Reasoning

At present, China does not have specific, complete, and relatively formal provisions for the application of analogical reasoning, and the existing relevant provisions are also relatively principled and abstract, leading to the situation where legal workers apply analogical reasoning with different treatments in the same case. In general, there are indeed problems with analogical reasoning in China's judicial application, mainly reflected in the following three aspects.

3.1. Analogical Reasoning Can Give Judges too much Discretion

In common law countries, judges can interpret and create laws based on precedents. However, China is a civil law country. In order to accurately identify the facts of the case and correctly apply the law, judges are required to judge the case mainly based on statutory law, which determines that China's application of analogical reasoning is not as skilled and complete as those of common law countries. In essence, analogical reasoning in judicial application relies on the subjective judgment of the user. The standard of judgment is to accurately identify whether there are legal fact points similar to the reference case in the pending case, which clearly gives the judge excessive discretion[6]. Giving judges the necessary discretion can remedy legal loopholes and overcome the lag and limitations of the law. However, it can also be seen that in the judicial dilemma of "too many cases and too few people", judges have a large number of cases in hand, and in the face of time performance assessment, they have little energy to fully consider the cases, let alone compare a large number of similar cases and make accurate inferences. Moreover, the legal theorists have always advocated that judges should "strictly handle cases in accordance with the law", that is, as long as the legislation is sufficiently perfect, judges should be satisfied with mechanically implementing the legislation, without and should not exert subjective initiative. However, this premise must satisfy the comprehensive, specific, and definitive nature of the legislation itself, but this is impossible. In addition, judges must adjudicate in the face of cases, so analogical reasoning has room for application. However, the problem is that analogical reasoning inevitably involves expanding the discretion of judges. When there are no explicit provisions in the law, excessive discretion of judges may lead to judicial power eroding legislative power. After the reform and opening up, it is due to the existence of judicial lawmaking, leading to serious judicial corruption. China has abolished the analogy system in the criminal law. In this difficult situation, how to handle the relationship between excessive discretion of judges and legislative power, It is also an important issue to be urgently solved in the application of analogical reasoning.

3.2. Analogical Reasoning Lacks Objective Operating Standards

Similarity is the rationality of the application of analogical reasoning and the authoritative basis for the conclusion of analogical reasoning. However, two laws or cases used for analogy in the application of law do not have exactly the same provisions or facts, and there may be some

differences between the two to some extent. In the case of differences, it is determined that the two have similarities, thereby making decisions on the handling of similar cases, which greatly tests the professional quality of legal personnel. Therefore, the foundation and core of the application of analogical reasoning lies in determining that two things are similar and that similarities are relevant, and in judicial practice, it manifests itself as being able to legally and impartially adjudicate specific cases[7]. Similarity should be understood in the analogical reasoning of laws or cases as having both the same facts and different facts between the comparison objects. Analogical reasoning requires measuring and making trade-offs between these same facts and different facts, which also involves measuring and judging relevance and importance. If the similar facts of two cases are highly correlated with the conclusions to be verified, the conclusions to be verified are extremely important. The more relevant similar attributes, the higher the reliability of the conclusions derived, and vice versa. Moreover, in practice, analogical reasoning generally draws conclusions only by comparing similar aspects between two objects, ignoring that analogical reasoning is a "special to special" process that requires integrating multiple information and analyzing a large amount of data as a prerequisite. This is based only on "similarity" as a logical basis, blindly pursuing similarity psychologically while ignoring key differences between the objects of comparison, which may greatly weaken the not-so-strong similarity between the two and become the reason why analogical reasoning cannot be conducted between them[8]. It can be seen that analogical reasoning in the application of law is not a question of "either this or that" choice, but rather a question of "more or less" degree. It does not have a clear and fixed boundary, and is mainly related to the thinking mode of the legal person. In this sense, analogical reasoning itself cannot provide deterministic analogical rules, and case analogies in judicial practice still depend on specific situations, which naturally cannot provide an operable objective standard[9].

3.3. The Conclusion of Analogical Reasoning is Uncertain

The most important function of applying analogical reasoning is to promote similar or strongly similar cases to obtain similar processing results, thereby realizing the deterministic value of law and maintaining judicial fairness [10]. However, in judicial practice, the prerequisite for the application of analogical reasoning is similarity. It is unreasonable to conclude that the other attribute of two laws or cases is also the same or similar based solely on the existence of certain similarities or similarities between them, without considering whether such similarities or similarities are based on coincidence or necessity[11]. Therefore, analogical reasoning cannot always achieve the deterministic purpose of law, and instead may lead to an entirely opposite conclusion. The important root lies in the fact that the analysis and determination of precedents depend on the personal thinking and experience of judges, and different judges have different standards of value judgment. For the same case or dispute, they may make different or even completely opposite processing results. It can be said that the application of analogical reasoning in judicial practice has great subjective initiative, The judge's understanding of the legislative intent and evaluation of the substantive content of the dispute to be resolved play a decisive role in the outcome of the case. Based on this, analogical reasoning is not so much a logical method as a value judgment method, and its conclusions only have a certain degree of probability and appropriateness, rather than being absolutely correct and reliable[12]. Therefore, applying analogical reasoning to handling judicial disputes does not guarantee that pending cases will inevitably be applied when the outcome of the precedent ruling is appropriate. The degree of reliability of the conclusions of pending cases depends on the degree of de facto correlation between the similar and presumptive attributes determined by analogy between the pending case and the precedent. Moreover, analogical reasoning excessively relies on the value judgment of judges, and judges' different values may lead to different choices of cases for analogy, which may also lead to inconsistent results in the handling of cases.

4. Suggestions for Perfecting the Judicial Application of Analogical Reasoning

Although there are certain problems in the application of analogical reasoning in our judicial practice, it does not violate our legal system in general, but rather plays a complementary and auxiliary role in the case of loopholes in statutory law. Therefore, our country should attach importance to the application of analogical reasoning and establish a mature and complete analogical reasoning system.

4.1. Promote the Legalization and Proceduralization of Analogical Reasoning

As mentioned earlier, due to the complexity and variability of the real society and the requirement for the stability and credibility of the law, legal provisions inevitably have hysteresis and limitations, and it is impossible to comprehensively, accurately, and clearly cover all aspects of social life. In this case, it is necessary to give judges the necessary discretion to enable them to conduct analogical reasoning within a certain limit to achieve the same judgment in the same case and maintain judicial unity. First of all, although analogical reasoning is important in judicial application, especially when judges adjudicate cases, it is absolutely not allowed to apply analogical reasoning indefinitely. It is necessary to establish a limit and situation in which judges can apply analogical reasoning, that is, it should be explicitly stipulated that analogical reasoning can only be applied in cases where there is a lack of legislation or unclear meaning, as well as serious "different judgments in the same case". Secondly, attention should be paid to establishing rules and regulations applicable to analogical reasoning, legalizing analogical reasoning, and setting up corresponding procedures to make it more convenient and standardized for legal workers to use it. Although analogical reasoning gives judges greater discretion when adjudicating cases, it should also be understood that this autonomy must be carried out on the basis of complying with legal principles and social rules, and maintaining judicial fairness [13]. In current judicial practice in China, certain rules, certain fields, and certain regions allow the application of analogical reasoning, but there are no clear and specific provisions for its application. It is more like a default habit of legal workers, making the application of analogical reasoning more chaotic and blind. Therefore, it is extremely necessary to regulate the system and procedures of analogical reasoning, such as setting specific provisions such as limiting the use of situations, establishing principles to be followed, and so on, so that legal persons, especially judges, have the basis for deciding cases when there are no explicit provisions in the law. Therefore, when adjudicating a specific case, it must be stipulated that the judge should first seek legal norms or similar legal norms that can be applied to the pending case, and apply the legal consequences explicitly stipulated in the norms to the fact. In the absence of explicit provisions in the law, the judge should seek to guide the application of analogical reasoning in the case or similar case, and when applying analogical reasoning, the judge's discretion is not arbitrary, It should also be within the allowable range of laws or systems.

4.2. Standardize the Operation Standard of Analogical Reasoning

The key to the accurate application of analogical reasoning lies in the judgment of similarities and differences, which actually involves the empirical issues of judges. Moreover, analogical reasoning involves the integration and selection of multiple information, and must follow a hierarchical operational standard with effectiveness. First, analogical reasoning relies on the judge's judgment on the relevance and importance of comparable constituent factors in a case, eliminating the impact of unrelated similar factors, and accurately selecting comparable factors [14]. To compare the similar factors of two cases and measure whether two cases belong to the same or strongly similar cases, it is necessary to use the legal knowledge, professional skills, and personal experience of judges to make judgments. When the legal provisions are relatively

vague and abstract, or when there are no legal provisions for difficult and complex cases, it is even more necessary for judges to exert their professional qualities. Therefore, judges should cultivate their awareness of case discrimination and classification in daily case handling, and establish an exit mechanism for judges who cannot adapt to their posts. Secondly, it is stipulated that judges should strictly follow the effectiveness level criteria for analogical reasoning. When judging the similarity of a case, a judge must follow the basic principles and intentions of legislation, not the basic principles and intentions of a narrow law or a certain law, but the legal principles and intentions embodied in the whole law. First of all, when applying analogical reasoning, we should follow the principled provisions contained in the legal order. These provisions are sometimes embodied in similar explicit provisions of multiple departmental laws, and sometimes implicit in the corresponding context, requiring summary and refinement. For example, the principle that "superior law is superior to inferior law", which means that the law with higher rank should be applied first in the application of law, is the principled provision contained in the legal order, and must be followed in analogical reasoning. Secondly, when applying analogical reasoning, the principle of consistency presented in the legal system should be followed. For example, legal norms located in the same value system must follow uniform principles to avoid contradictions between the internal and external systems. For example, the principle of equivalent exchange in civil law must be considered by judges when adjudicating civil legal cases.

4.3. Enhance the Credibility of Analogical Reasoning Conclusions

One of the major reasons for the difficulties in the development of analogical reasoning in judicial application is that the conclusions of analogical reasoning are uncertain and unreliable, and the results of judicial decisions should be clear. Therefore, in order to mature and improve the application of analogical reasoning in China, attention must be paid to enhancing the credibility of the results of analogical reasoning. First of all, the phenomenon of contradictory cases in judicial practice should be eliminated. As mentioned earlier, in the absence of explicit provisions in the law, judges can make judgments based on similar cases or guide case analogical reasoning. However, in China's judicial practice, many cases have different judgment results, and there are a large number of conflicting and contradictory situations. In this case, it is definitely not suitable to apply analogical reasoning, otherwise it will lead to the result of arbitrary judgment by judges. Therefore, the Supreme People's Court needs to increase its workload, regularly and timely clean up contradictory and conflicting cases, or clarify relevant regulations by issuing judicial interpretations, issuing guiding cases, and other methods to eliminate conflicts and provide a suitable judicial environment for analogical reasoning. Secondly, establish a sound case guidance system. The case guidance system can greatly improve the reliability of judges' application of analogical reasoning conclusions. At the same time, it stipulates that judges should refer to guiding cases to achieve the same judgment in the same case, which appropriately regulates judges' discretion. However, the Supreme People's Court should choose the most practical and effective case release, otherwise it will have the opposite effect. Moreover, with the rapid development and change of social life, guiding cases can also lag behind and be inappropriate. Therefore, the Supreme People's Court should establish a complete exit mechanism for invalid cases, and establish a timely supplementary mechanism for the latest cases. Thirdly, the application of analogical reasoning should increase the judge's interpretation reasoning in the judicial documents. Due to the fact that analogical reasoning is a "special to special" reasoning process and the conclusions are full of uncertainty, judges must exercise sufficient caution and care in applying analogical reasoning, comparing a large number of related similar factors, and enhancing the reliability of the conclusions. The most important thing is to apply analogical reasoning to draw a verdict. When writing the reasons for the verdict, a judge must fully explain his or her analogical process and conclusions. If both parties involved in the case are involved, it is necessary to explain both the

reasons for the plaintiff's analogy to be established or not established, and also the reasons for the defendant's analogy to be established or not established, without bias, so that the similarity and differences between the pending case and the resolved case can be equally weighed[15], enhance the certainty and reliability of analogical reasoning results, and maintain judicial fairness.

5. Conclusion

Analogical reasoning is an important form of legal reasoning, which has irreplaceable advantages in China's judicial application - ensuring the realization of the justice concept of "the same case being treated the same" and maximizing the realization of case justice; It can remedy the inevitable and ubiquitous legal loopholes and reconcile the contradiction between the stability of legal order and justice. Although analogical reasoning lacks the probability of deterministic conclusions and is not as "reliable" as deductive reasoning, it is closer to the real world. Today, when syllogistic deductive reasoning is in short supply, we cannot ignore the existence of analogical reasoning. More importantly, analogical reasoning is the best way to balance the three values of law: stability, purposiveness, and justice. Nowadays, the attitudes of legal circles around the world towards the application of analogical reasoning in the legal field are converging-gradually accepting analogical reasoning with a broader and open attitude. The facts of relevant judicial practice also prove that if the application standards and operating procedures of analogical reasoning can be incorporated into the institutionalized track, thereby restricting the scope and extent of judges' discretion, it will be of great significance to the construction of the rule of law; At the same time, if the judge conducts analogical reasoning strictly in accordance with the standards of effectiveness levels, and increases the interpretation reasoning in the judicial documents, and then eliminates the contradictory phenomena of cases in judicial practice through institutional procedures and establishes a sound case guidance system, it will greatly improve the reliability of the conclusions of analogical reasoning and ensure that analogical reasoning plays a real effect. In short, if analogical reasoning can be given institutional and methodological safeguards, thereby enhancing the acceptability of its operational results, and preventing the breeding of willfulness, the space for its application in the legal field will be wider.

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References

- [1] Information on <https://www.court.gov.cn/zixun-xiangqing-364701.html>
- [2] Zhang Wenxian: Jurisprudence(Higher Education Press, China 2018), p.1-429.
- [3] Liu Fengjing: The Justification and Application of the "Quasi-x" Type Legal Concept, Journal of East China University of Political Science and Law, Vol.24 (2021) No.5, p.81-92.
- [4] Wu Liangjun: The Application and Guarantee of Analogical Reasoning in Difficult Criminal Cases—A methodological perspective, Hebei Law Science, Vol.36 (2018) No.4, p.83-96.
- [5] Meng Xianglei, Xu Ping: On the Application of Analogical Reasoning in the Case Guidance System, Journal of Law Application, (2015) No.8, p.94-99.
- [6] Lei Binshuo: Reflection on and Reference of the Application of Case Distinguishing, Journal of East China University of Political Science and Law, Vol.23 (2020) No.2, p.178-192.
- [7] Zhang Qi: The Expression and Application of Case judgment rules, Modern Law Science, Vol.42 (2020) No.5, p.35-49.

- [8] Jin Li, Zhao Jiahua: The Applicability of Argument by Analogy in Law from Walton's Plausible Reasoning Theory, *Science Economy Society*, Vol.39(2021) No.4, p.69-77.
- [9] Ding Xiaodong: Legal Dogmatism under the Perspective of People's Will——The Usage and Misuse of Legal Method, *Political Science and Law*, (2019) No.7, p.66-78.
- [10] Martin P. Golding: *Legal Reasoning*(Alfred A Knopf Inc, America 1984),p.1-303.
- [11] Bao Yunzhu: A Brief Talk on Analogy Reasoning in the Application of Law, *Journal of Jiangxi Vocational and Technical College of Electricity*, Vol.34 (2021) No.7, p.162-164.
- [12] Shen Yizhou: An Analysis of the Substantive Validity of Analogical Reasoning in Litigation——Based on Research on Guiding Cases and Similar Case Retrieval Mechanisms, *The World of Public Relations*, (2021) No.20, p.199-200.
- [13] Xu Kexin, Hu Juxing, Zou Xing: On proper exercise of judge's discretion, *Journal of the Party School of CPC Nanchang Municipal Committee*, Vol.17 (2019) No.4, p.62-65.
- [14] Yang Zhiwen: The "Guiding Function" of Non-guiding Cases and Development of Guiding Case System, *Tsinghua Law Review*, Vol.15(2021) No.4, p.40-56.
- [15] Zhang Chen, Yao Shuju: On the Application of Analogical Reasoning——A Case Study of the Illegal Absorption of Public Deposits by Yang Weiguo and Others, *People's Procuratorial Semimonthly*, (2021) No.1, p.73-74.