

Research on the Applicable Subject of the Principle of Good Faith in Civil Litigation

Yichao Wang

Law School, Beijing Normal University, Beijing 100875, China.

glorialaw@126.com

Abstract

China's Civil Procedure Law has clearly defined honesty and credit as the basic principle for more than six years. The study of the principle of good faith has been studied and analyzed from various angles, but the subject of the application of the principle of good faith has never been conclusive. The fundamental purpose of the principle of good faith in civil procedure law is to adjust the legal relationship in the proceedings, which is the criterion for all litigants to conduct litigation, and ultimately achieve the fairness and efficiency of the trial. In this sense, the binding force of the principle of good faith should be applied to all subjects of litigation that may affect the judgment of the case due to violation of the principle of good faith, including but not limited to the parties, courts, judges, agents, witnesses, translators, etc.

Keywords

Civil litigation; the principle of good faith; Subject of litigation's obligation.

1. General Requirements for the Applicable Subject of the Principle of Good Faith

The principle of good faith in civil substantive law is to make civil activities proceed in an orderly manner and protect the rights of infringement. Therefore, it is not only the daily code of conduct of citizens, but also the basis for judges' judgments. In contrast, the fundamental principle of the procedural law of the principle of good faith is to adjust the legal relationship in the proceedings, become the standard of litigation of litigation participants, and ultimately achieve the fairness and efficiency of the trial. In this sense, the binding force of the principle of good faith should be applied to all parties involved in litigation that may affect the judgment of the case because of the content of the principle of breach of good faith. In civil litigation, the main subjects to be considered are: litigants, courts or judges, other litigants including but not limited to agents, witnesses, inspectors, appraisers, translators, etc.

At present, domestic academic circles have three views on this controversy: The first view is that the principle of good faith applies to all subjects of civil litigation legal relationship, that is, it applies to both courts, parties and other litigants. [1] The second view is that the principle applies only to the parties and not to courts and other litigants. [2] The third view is that the principle applies only to the parties and the court. [3] From the above scholars' point of view, it can be seen that Scholars apply to the principle faith to the parties. The focus of the differences is whether the principle of good faith applies to the courts and other litigants.

2. The Parties to the Applicable Subject of the Principle of Good Faith

In 2012, the amendments to the Chinese Civil Procedure Law incorporated the principle of good faith in civil litigation into the Civil Procedure Code. Article 13, paragraph 1, stipulates that "civil litigation should follow the principle of good faith", and the second paragraph follows the regulations. The parties have the right to dispose of their civil rights and litigation rights within the limits prescribed by law." This second paragraph is the full text of this article before the amendment. Place it in paragraph 2, and the logical relationship with the preceding paragraph should be supplementation, interpretation, and advancement. Of course, judging from the design and layout of the law, although

the principle of good faith does not clearly define the scope of the applicable subject, the legislative focus should be on the regulation of the specific litigation behavior of the parties. [4] According to the legislative interpretation of the National People's Congress Law Committee during the revision of the Civil Procedure Law of 2012, "considering the abuse of litigation rights, such as malicious litigation and procrastination, in the trial practice, the parties should abide by the integrity in litigation activities..." It can be seen that one of the important purposes of adding the principle of good faith in the Civil Procedure Law is to regulate the abuse of the right of action and the right of litigation by the parties to "maintain the order of litigation" and "protect the legitimate rights of the parties and others." [5]

It is generally believed at home and abroad that the principle of good faith should be applied to the parties. There are three reasons: First, civil litigation is the field of realization of civil entity rights. In the civil substantive law, the principle of good faith is honored as the emperor clause. If the litigation is regarded as an extension of the substantive dispute, the settlement of the dispute requires the parties to comply with the principle of good faith in the dispute. The form of settlement should also be the subject of the application of the principle of good faith. Second, the large-scale problems such as false litigation and abuse of litigation rights not only affect the dispute resolution between the parties, but also may cause damage to the interests of the state, society and third parties, and also have a negative impact on judicial credibility. Third, with the transition from debateism to synergism and the evolution of the concept of litigation, the relationship between the two parties and not only the competition or maintenance of rights, but more emphasis on the synergy between each other. This also makes mutual trust between the parties must exist between the parties. If civil litigation is regarded as a kind of business talks to resolve disputes involving legal issues, then the principle of good faith is established in the civil litigation system, which aims to "with the system of providing translation for the parties and the system of sanctions impeding civil litigation. to build an ideal environment for discussion in civil litigation together." [6]

The principle of good faith applies to the parties, mainly to regulate the abuse of the right to sue and the right to sue. However, Professor Dong Shaomou analyzes the status quo of China's judiciary and considers that from the perspective of institutional design and resource supply in China's judicial and civil litigation. And the allocation of rights in the structure of the proceedings" is definitely a kind of judicial power, that is, the "power priority" structure of the judge-led litigation process. In this configuration, the rights of the parties are "further vacated and deprived." "The danger." Therefore, we should not impose too many restrictions on the exercise of the rights of the parties (as appropriate, fine-tuning), but should emphasize the protection of their rights. [7] This is a very noteworthy issue in practice.

3. Judges and Courts of the Applicable Subject of the Principle of Good Faith

Regarding the subject of the application of the principle of good faith in procedural law, it is mostly focused on whether it can or should be applied to judges. For the parties with disputes in the substantive legal relationship, there is no doubt about the application of the principle of good faith. However, after entering the proceedings, joining the subject of the judge (or the court), the scope of the subject of the principle of good faith needs to be further clarified.

3.1 Judges of the Applicable Subject of the Principle of Good Faith

The legal system is the superstructure of a country and needs to be rooted in the economic, cultural and social foundation. Simple legal transplantation, if the compatibility of the "new soil" is not considered, will often result in "Unacceptable". Whether the principle of good faith can be applied to judges, we may wish to do a comparative law first, and then combine China's "soil" for analysis.

3.1.1 Differences between the two Major Legal Systems

There is a huge difference in the theoretical doctrines of the two major legal systems as to whether the principle of good faith applies to the judgment of judges. British and American law scholars generally believe that the principle of good faith should be applied to judges (the act of judgment),

that integrity is the quality and condition that judges should have, but there is a difference in the strength of the binding force of judges when the principle is applied. [8] In the continental law, scholars have had fundamental differences on this issue. For example, most scholars in Japan believe that the principle of good faith applies to parties and courts. but the focus is different. One view focuses on the obligation of the parties to cooperate or cooperate with the court's procedures, and the other view focuses on the fact that the court and the judge should also oblige the parties to abide by the principle of good faith in certain specific circumstances. [9] The minority Japanese scholars represented by Mr. Takeshi Shoufu believe that the principle of good faith applies only to the parties. The reason is that Article 2 of the Japanese Civil Procedure Law only stipulates the court's obligation of fair judgment and efficiency litigation. The subject of the principle of good faith is only the party. Moreover, in the civil litigation structure, the court is the main body of power, and should be cautious about the honesty and faithfulness of the ethical color of the subject of power. [10]

3.1.2 Chinese Scholars' Controversy

Chinese scholars have both negative and affirmative views on whether the principle of good faith applies to judges.

Negators believe that the principle of good faith does not apply to courts and judges. The main reasons are as follows: First, a large number of dishonesty in judicial practice occurs in the parties or their litigation agents, and the principle of good faith should apply to the parties or their litigation agents. Second, the statutory duties of the court are much higher than the moral requirements of honesty, and the consequences of fulfilling the statutory duties are also more important than the consequences of deviating from honesty. Third, the basic premise of the operation of civil litigation is the existence of a trustworthy, morally uncontroversial neutral referee. Radiating the principle of good faith to the court and the judge means that the trusted neutral referee does not exist. Fourth, it is difficult to identify and judge the words and deeds of the judge's integrity in judicial practice. [11] Fifth, applying the principle of good faith to the court at the same time actually reduces the status of the court and does not reflect the authority of the court as a judicial organ. The court is a referee who is located above the two parties. It has higher authority than the parties in the legal relationship of litigation. This is also an important prerequisite for the settlement of disputes. If the principle of good faith is applied to both the court and the parties, it is actually placing the two in the same position and cannot reflect the authority of the court. [12] Sixth, although it is necessary to pay attention to the objective existence of the judge's moral decline phenomenon at the local level, the establishment of the judge's moral uncontested hypothesis on the whole level is the basis of the legitimacy of civil litigation.[13]

Affirmation believes that the principle of good faith applies equally to judges. The reasons are as follows: First, the court is not only the subject of the legal relationship of civil litigation, but also the subject of litigation. As a basic criterion throughout the entire civil litigation process, the principle of good faith should also apply to the court. Second, as an enlightenment, The principle of strong guidance, the inclusion of the court in the scope of the norms of good faith principle helps to respond to the society's demands for improving the quality of justice, and has important social or political significance; [14] Third, from the 2012 Civil Procedure Law According to the provisions of Article 13, the legislator did not exclude the court from the applicable subject of the principle of good faith.

3.1.3 The Point of this Article

Compared to later, in light of China's national conditions, the author agrees with the view that the judge applies the principle of good faith. The main reason is that under the amendment of the debate mode of litigation, the parties should have real obligations and litigation promotion obligations within the scope of the claims of facts and evidence; correspondingly, the judges should bear the facts and evidence evaluation, Legal application, interpretation obligation and litigation promotion obligation. The obligation to explain here is to fully respect the discretion of the parties and to bear the consequences of their actions. Generally speaking, the facts and evidence that the parties have no claims shall not be used as the basis of the referee. In addition, if the referee has fraudulent coercion and other means in the process of litigation settlement and mediation, it violates the principle of good

faith. The act should be changeable or revocable, so that the state of litigation can be restored to the state before the agreement was reached, and the parties may choose to reconcile, mediate or apply for a court decision.

Under the cooperative litigation mode, in order to satisfy the "sociality" of litigation, it is necessary for all parties to cooperate to promote. The judge and the parties shall jointly undertake the collection and certification of the litigation materials. The parties shall bear the real obligation and the obligation to promote the litigation, and the responsibilities of the court shall be: the obligation to explain the case, the obligation to discuss, and the obligation to correct the justice. In essence and practice, the proportion of obligations borne by the court and the parties is quite different, and the obligations of the parties are more transferred to the judges. Accordingly, some of the obligations related to the principle of good faith are also passed on to the judges. And this part of the principle of good faith principle includes both normative obligations and ethical obligations. In addition, the judge's social status also contains certain social responsibilities. Then, combining all the factors, the judge has to bear more responsibility and obligation than the debate mode of litigation under the model of synergistic litigation.

3.2 Court of the Applicable Subject of the Principle of Good Faith

The academic community has not discussed whether the principle of good faith applies to the courts. However, the court is different from the judge in civil litigation. First, the court as a judicial body is essentially a unit rather than a specific act. A variety of acts such as litigation, jurisdiction, and execution are handled by different judges (or non-judges) and are combined into decisions or rulings of the subject of the court. Second, although Chinese judges make judgments in the name of the court, in the event of illegal acts or dishonesty, the direct responsibility is attributed to the judge who made the judgment, and the consequences are different from the main body of the court. Therefore, the principle of good faith should also apply when the court acts as an individual. Of course, in addition to the integrity of the parties and other participants in the litigation, it also includes the integrity of civil litigation between the court and the court, between the court and other units, such as the reasonable division of jurisdiction, the restraint of the judging power, and the justice between the units assistance and so on.

Moreover, in addition to the legal relationship between the judge or the court and the two parties, the collaboration and respect between the court and the court is also worth noting. It is of practical significance to apply the principle of good faith to the courts, especially in the areas of judicial assistance, division of geographical jurisdiction and level jurisdiction, judgment of a court against the judgment of other courts, and so on. Moreover, the judiciary and the referee can follow the honesty and credit, and can also be interpreted as protecting the reliant interests of the litigants, which is beneficial to the benign interaction in the litigation and the judicial credibility.

4. Other Litigants of the Applicable Subject of the Principle of Good Faith

In the course of civil litigation, there will be other litigants who should be the subject of the principle of good faith and worthy of discussion.

4.1 Litigation Agent of the Applicable Subject of the Principle of Good Faith

Agents involved in civil litigation include both legal and litigation agents. The former is responsible for acting as a person without capacity for civil litigation, and directly exercising the right of litigation and representation according to the law. The legal acts and litigations of legal representatives can be regarded as the behavior of the parties themselves. So the legal representative should also follow the principle of good faith as the parties.

Whether the litigation agent (mainly a lawyer) should become the applicable subject of the principle of good faith is controversial. The negative view is that the litigation agent only has special actions related to litigation, such as the abuse of agency by the agent and the perjury of the witness. These acts are not the principle of good faith, but the corresponding obligations, such as abuse of proxy violation. The agency contract is handled by default. [15] But the act of breach of contract is itself a

violation of the principle of good faith. The positive view is that lawyers should abide by the principle of good faith (at least with real obligations). For example, in the United States, Germany, and Taiwan, China generally believes that the principle of good faith should be applied to lawyers. Chinese scholars also advocate the application of the principle of good faith to litigants.

In addition, in the field of criminal law, China added a false lawsuit to the criminal law in 2015, but the description of the article is vague, and there is no direct provision for the main elements of the crime. In 2018, China identified the act of prosecuting agent as a false civil lawsuit as a crime of false litigation and was convicted as an accomplice. That is to say, at least in the field of criminal law, in this crime, the litigation agent is no different from the party who initiated the false litigation. False litigation is a typical violation of the principle of good faith in civil litigation. If there is no requirement for the agent in the civil litigation, the agent is not bound by the principle of good faith, and the criminal law directly determines that the criminal punishment is unreasonable.

In summary, agents should be bound by the principle of good faith in civil litigation.

4.2 Witness of the Applicable Subject of the Principle of Good Faith

Witness testimony is an important piece of evidence. According to the relevant provisions of the Chinese Civil Procedure Law and the Evidence Law, in addition to justifiable reasons, witnesses must appear in court to make the testimony evidence of the outcome of the case, otherwise it cannot be the basis for the final decision. And the fee is paid first by the party providing the witness, and so on. In practice, the testimony of witnesses applied by one party in the trial is most beneficial to the party. In a sense, the witness has become a witness of one party, not a "witness of fact." At the same time, witness perjury is also an important reason for the proliferation of false litigation. In the judicial interpretation of the supreme People's Court and the supreme People's Procuratorate crimes concerning false litigation, witnesses deliberately make false testimony in false litigation in civil litigation, which constitutes a false litigation crime. According to the analysis of the similar situation of the agent in the previous article, the witness is of course the applicable subject of the principle of good faith.

Of course, there are also opponents who think civil litigation is a legal negotiation activity, from this perspective that only the parties and judges are the applicable subjects of legal principles, witnesses and executors are not negotiators at all, but at most they are "factual reporters and litigation assistants". Retreat 10,000 steps, if must talk about the principle of good faith, only when the civil litigation expressly imposes obligations on it and empowers it to fully perform its obligations, it will involve such subjects in the course of their behavior (only The exercise of rights and the opportunity to perform obligations) the issue of compliance with the principle of good faith. [16] This view separates the witness's obligations separately, essentially indirectly applying the principle of good faith.

4.3 Investigators, Appraisers, Translators, and People with Specialized Knowledge, Etc. of Applicable Subject of the Principle of Good Faith

In the course of the proceedings, in addition to the subjects already discussed in the previous section, there are generally other participants involved in the proceedings, such as inquests, appraisals, translators, etc. Under this premise, whether other litigants are the normative objects of the principle of good faith? Chinese scholars also have negative and affirmative views on this:

Affirmative believes that other litigants should also be subject to the principle of good faith in civil litigation. For example, the appraiser must not make an appraisal conclusion that is inconsistent with the facts. The reasons are as follows: First, Article 13 of the Civil Procedure Law stipulates that "civil litigation should follow the principle of good faith". From the perspective of text interpretation, there is no specific restriction on the applicable subject of the principle of good faith. Therefore, in theory, all civil litigation The subject of legal relations, including courts, parties and other litigants, should apply the principle of good faith. Secondly, the operation of the civil litigation system is a process in which the "three carriages" of the courts, parties and litigants work together. Under this premise, if the court and the parties are included in the norms of the principle of good faith, it is inevitable that the other litigants are excluded from the norms of the principle of good faith, and other litigants are

included in the principle of good faith. The scope of the adjustment of the subject does not prevent the proceedings from proceeding promptly and fairly. [17]

Negators believe that the principle of good faith does not apply to other litigants. The reason is: translators have the duty to translate faithfully, the appraiser has the obligation to testify in court. The identification act itself is not a litigation act, and the objective appraisal obligation is not a fiduciary duty. The appraiser has the obligation to testify in court, and the law has special provisions, and it is not a duty of good faith. The translator has a truthful obligation to translate, and since the translation itself is not a litigation, the obligation should not be construed as a fiduciary duty.[18]

This paper believes that the principle of good faith applies to other litigants. Before the introduction of the civil procedure law by the principle of good faith, other litigants are obliged to implement the litigation in good faith and in good faith during the litigation process. For example, the translation should be translated in a true and complete manner. These obligations are manifestations of honesty and credit.

5. In conclusion

The fundamental purpose of the principle of good faith in civil procedure law is to adjust all legal relationships that may arise in the proceedings, so all litigants should abide by the civil litigation. Whether it is the provisions of the law or the actions of all litigants, the final point is the fairness and efficiency of the trial. In this sense, the principle of good faith in China's civil litigation should regulate all litigants who may influence the judgment of the case because of the violation of the principle of good faith, including but not limited to parties, courts, judges, lawyers, witnesses, etc. and others who may be involved in the program.

References

- [1] See Wang Qi: Judicial Application of the principle of good faith in Civil Litigation, in China Legal Science, (2014) No. 4; Zhang Weiping: The principle of good faith in Civil Litigation, in Northwest University of Political Science and Lawf, (2012)No.6; Xiong Yuemin, Wu Zeyong: Inquiry into the Principle of Honesty in Civil Litigation, in Hebei Law Science, (2002)No. 4.
- [2] See Weng Xiaobin: Regularization of the Principles of Good Faith in Civil Litigation, in Tsinghua University Law Journal, (2014) No. 2.
- [3] See Wang Yaxin: China's New Civil Procedure Law and the principle of good faith - Based on the Japanese Civil Litigation Legislation and Judicial Practice, in Journal of Comparative Law, (2012) No. 5.
- [4] See Zhang Weiping: The principle of good faith in Civil Litigation, in Northwest University of Political Science and Lawf, (2012) No. 6.
- [5] See the Civil Law Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress: Interpretation of the Provisions for the Revision of the Civil Procedure Law of 2012, China Legal Publishing House, (2012), p. 1, p. 15.
- [6] Duan Housheng: The Principle of Integrity in Civil Litigation from the Perspective of Negotiation, in the Twelfth Series of Civil Procedure Law Research, Xiamen University Press, (2014), p. 29.
- [7] See Dong Shaomou: Applicability of the principle of good faith in Civil Litigation, in the "Twelfth Series of Civil Procedure Law Research", Xiamen University Press, (2014), 1st edition, p. 19.
- [8] Jonathan Soeharno : he Integrity of the Judge: a philosophical inquiry . Ashgate Publishing Limited, 2009.
- [9] Wang Yaxin: China's New Civil Procedure Law and the principle of good faith - Based on the Japanese Civil Litigation Legislation and Judicial Practice, in Journal of Comparative Law, (2012) No. 5.
- [10] See [Japan] Takeshita Takeshi: The Principles of Litigation and Honesty and Credit, in [Japanese] Chambers: Civil Law Law on Case Law Exercises, World Thought Society, (1975) p. 146.

-
- Quoted from Zhang Weiping: Principles of Honesty and Credit in Civil Litigation, in Legal Science (Journal of Northwest University of Political Science and Law), (2012) No. 6.
- [11]Wang Qi: The Judicial Application of the principle of good faith in Civil Litigation, in China Legal Science,(2014) No. 4.
- [12]See Weng Xiaobin: Regularization of the Principles of Good Faith in Civil Litigation, in Tsinghua University Law Journal, (2014) No. 2.
- [13]Han Bo: The illusion or illusion: the principle of good faith in the civil procedure law, contained in the Jinan Journal (Philosophy and Social Sciences Edition, (2014) No. 3.
- [14]Zhang Weiping: The principle of good faith in Civil Litigation, in Northwest University of Political Science and Lawf,(2012) No. 6.
- [15]See Zhang Weiping: The principle of good faith in Civil Litigation, in Northwest University of Political Science and Lawf, (2012) No. 6.
- [16]See Duan Houshang: The principle of good faith in Civil Litigation from the Perspective of Negotiation, in the Twelfth Series of Civil Procedure Law Research, Xiamen University Press, (2014), 1st edition, p. 30.
- [17]Tao Ting: The Jurisprudential Basis of the principle of good faith in Civil Litigation and Its Scope of Application, in Hebei Law Science, (2014) No. 10.
- [18]Weng Xiaobin: Regularization of the Principle of Integrity in Civil Litigation, in Tsinghua University Law Journal, (2014) No. 2.