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The Dilemma and Outlet of Legal Interpretation The Choice between Subjective Theory and Objective Theory

Abstract

When legal interpretation is needed in judicial practice, explanations with different meanings are likely to be given for a same legal provision due to the different selections of interpretation standards, which may lead to different judgments. How to choose interpretation standards, essentially, depends mainly on the understanding of the goal of legal interpretation, which is also the essential difference between subjective theory and objective theory in German legal methodology. Based on the theoretical basis of subjective theory and objective theory, this paper will analyze the value points behind the two theories. Simultaneously, this paper aims to make a balance between the two theories through the discussion of practice cases as well as the current judicial status in china. Conclusions can be drawn that substantial fairness and justice should be the ultimate goal in judicial practice, and different standards of legal interpretation should be chosen for various specific conditions.

Key Words legal interpretation subjective theory objective theory
means of interpretation fairness and justice

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- [1] 2006.
- [2] 2010.
- [3] 2001.
- [4] 2013.
- [5] 1998.
- [6] , 1999.
- [7] 2011.
- [8] 2005.
- [9] /
- 2010 6 39-47
- [10] 1998.
- [11] 1994.
- [12] 2011.
- [13] 1997, 4 67
75.
- [14] 2013.