

Examining the Obstacles and Fundamental Principles of Adjudication in Iranian and International Law Civil Lawsuits

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Abstract

Given the importance of fair trial, it can be stated that fair trial includes a set of criteria and guarantees that are foreseen in the judicial mechanism to respect the rights of the parties in the adjudication process of all types of lawsuits before a competent, independent, impartial and predictable court. If the adjudication is fair, the rights of the litigants are not violated, because justice is a right and adjudication should not be applied in any other way and be unfair. One of the goals of the judiciary is to ensure justice and resolve disputes, so judges must act in a way that provides a fair trial, and a fair trial requires a series of principles that must be observed during the trial. If these principles are not observed, it causes public distrust of the judiciary and has negative effects. Inclinations, kinship, enmity, and hostility can be mentioned as obstacles to justice. The research results showed that the obstacles to the implementation of the strategic principles of civil procedure in handling civil lawsuits and achieving fair trial are: structural or internal obstacles, cultural and social obstacles, and electronic procedure obstacles.

Key words: *Fundamental principles, obstacles, adjudication, lawsuits, international..*

Introduction

Conflict and disputes have existed in human societies since ancient times, and there have always been methods and solutions for resolving these disputes, which have changed and evolved throughout different eras. In our time,

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disputes have become broader, more diverse, and more complex, and the increase in population and closer connections among people have expanded the scope of conflicts. In order to achieve fair adjudication, in addition to principles, procedural rules and formalities are also necessary. Litigation in Iranian commercial cases and international disputes consists of a set of imperative principles or regulations and procedural rules, the observance of which is mandatory and unavoidable in all proceedings. The principles of adjudication possess general, permanent, abstract, and value-based characteristics, and thus, adjudication formalities are distinct from these principles in terms of origin, nature, basis, and effects. Legal principles result from beliefs, convictions, and represent fundamental values in a human society, and certainly, since many of these principles arise from the nature and essence of humans as a general concept, they are acknowledged and accepted by all and their commonality in multiple legal systems is undeniable.

Undoubtedly, one of the most fundamental sources for legislators in enacting laws and regulations is the strategic principles of adjudication. These principles, which include the most basic legal rules, prevail over all more specific legal provisions. The proper implementation of procedural rules depends on adherence to the principles known as the "strategic principles of adjudication," whose most important and primary

role is to ensure justice in legal proceedings. The strategic principles of adjudication are general procedural principles that the legislator has explicitly provided for, and this distinguishes them from the general legal principles of litigation, which judges infer from the scattered texts of laws. Litigation principles are legal principles whose applicability is not limited to a specific case or subject, and they remain in effect until another principle replaces them. These principles, which include the most fundamental legal rules, govern all more specific legal provisions. As a type of legal principle, the principles of litigation share the same general characteristics, permanence, and abstract nature found in other legal principles. Fundamental principles of litigation, such as the principle of adversarial proceedings, the principle of proper and timely service of documents and hearing dates, the principle of independence and impartiality, the principle of confidentiality, the duty of disclosure, and similar principles, are related to and influenced by public order. Failure to observe fundamental principles of litigation and certain formalities, such as failure to observe the procedures for challenging arbitrators, can lead to doubt and uncertainty in the litigation process and may even result in its annulment. The principles of litigation are distinct from adjudication formalities, as adjudication formalities differ from litigation principles in terms of origin, basis, and effects. In light of the above, what is addressed in this research is the legal consequences of violating the fundamental principles and adjudication formalities of litigation

in commercial disputes in Iran and in international disputes.

Research Background

Ghamami, Majid (2011), in his book titled "Transnational Civil Procedure," states: This book, with a critical introduction and a comparative study, examines the governing principles of civil procedure. In the text, the book addresses reputable legal systems and, as the author puts it, the rules that guarantee and enforce rights, or as he calls them, "realizers of substantive rights." It seeks new paths that legal systems take in pursuit of justice-oriented goals. According to the author, attention to these differences is the strength of his work, distinguishing the general principles governing reputable legal systems. Using this work in the comparative discussion of this thesis adds a transnational dimension to the research.

Razaghi, Kianoush (2009), in an article titled "Procedural Standards in International Documents and the Iranian Judicial System," states: This article seeks to obtain objective standards for assessing fair trial procedures and then examines and investigates these standards in the most important and well-known international documents.

Using this research greatly helps the process of this thesis in understanding the criteria and general principles governing fair trial procedures in the Iranian judicial system and international documents.

Given the ambiguities regarding the principles and procedures of litigation in Iranian commercial disputes and international cases, as well as the

consequences of their violation and related issues—many of which have not been addressed in our legal system—the present research can, to some extent, address the challenges and unclear issues.

Research Methodology

In this study, relevant information will be collected using the library research method, as appropriate to the subject. For this purpose, tools such as note-taking and checklist preparation will be utilized. The aim is to accurately identify available resources in the country, including legal books related to the topic, relevant articles and theses, as well as domestic laws and regulations, and, if necessary, internet sites such as the Comprehensive Portal of Humanities and the NoorMags Islamic Studies Center. After preparing checklists and taking notes from the identified sources, the information will be gathered and, through logical analysis and synthesis, the process of writing the thesis will begin in order to answer the research questions.

The research method in this study is descriptive-analytical. Given the existing research background, information has been extracted from legal resources available in reputable libraries through note-taking, and information is being collected using this method. Since this research is a study in the field of humanities, like other studies and research in this field, this study also describes the current legal status and the opinions and critiques presented regarding the subject of this research and analyzes them. Therefore, the method of data analysis in this research is the descriptive-

inferential method.

Section One: Concepts and Definitions

Part One: The Concept of Principles

According to one French jurist, principles refer to the frameworks and main ideas upon which legal structures are built, and around which legal provisions are organized¹. Others also refer to principles as the legal foundations and norms that underlie all legal rules, and are the result of two elements: social cooperation and the sense of justice².

Part Two: The Concept of Adjudication

Linguistically, the term "adjudication" (dadresi) in Persian is a combination of two words: "dad" and "resi." "Dad" in Persian means justice, fairness, and outcry³, while "resi" conveys the meaning of reaching or attaining⁴. Therefore, "dadresi" means to come to someone's aid in the pursuit of justice.

Part Three: The Concept of Justice

Justice means respecting individuals' rights and giving each person what they deserve. A just person is someone who gives everyone their due share. This concept does not necessarily imply equality. Alternatively, justice can be defined as putting everything in its proper place, while

injustice is putting things where they do not belong⁵.

Part Four: The Concept of Principles of Adjudication

Principles of adjudication are closely connected to the very foundation of justice within the judicial system. According to some, principles of adjudication, by providing very general and broad regulations, set the standards for fair proceedings and represent the general concepts of justice and equity in the resolution of civil and commercial disputes. In modern legal systems, these are known as "fundamental principles."⁶

Part Five: The Concept of Strategic Principles of Adjudication

The strategic principles of adjudication, on one hand, define the reciprocal roles of the parties to the dispute and the judge during civil proceedings, and on the other hand, ensure the proper conduct of the proceedings. The definition of strategic principles depends on the concept given to fundamental rights; if we consider fundamental rights as the true embodiment of a set of moral, political, and philosophical norms that are nourished by the sources of freedom, equality, democracy, and the rule of law, then fundamental principles should also be regarded as those rooted

¹ Boulanger, Jean (1997), General Principles of Law and Positive Law, translated by Alireza Mohammadzadeh Vadaqani, Journal of the Faculty of Law and Political Science, University of Tehran, No. 36, pp. 73 and 90.

² Sadeghi, Mohsen (2005), Legal Principles and Their Status in Positive Law, Tehran, Mizan Publishing, p. 26.

³ Dehkoda, Ali Akbar (2004), Dehkoda Dictionary, Vol. 5, University of Tehran Press, Fourth Edition, New Series, p. 1218.

⁴ Ibid., p. 1471.

⁵ Yazdi, Abdolhamid, 2004, A Look at the Concepts of Equality, Fairness, and Justice from the Perspective of Islamic Ethics and Law, from the book "Human Rights and the Concepts of Equality, Fairness, and Justice," written by Ashouri, Mohammad and others, Faculty of Law and Political Science, University of Tehran Press, First Edition

⁶ Ghamami, Majid, Mohseni, Hassan (2011), Transnational Civil Procedure, Tehran, Enteshar Joint Stock Company, p. 15.

in these fundamental rights. The existence of such principles ensures the continuity and durability of the adjudication process, while their absence leads to the disintegration of the judicial process and its legitimacy⁷.

Part Six: The Concept of Adjudication Formalities

In the dictionary, “formalities” means special customs and rituals in important and official receptions. In our procedural regulations, the term “adjudication formalities” has not been specifically defined, but observing or not observing them has been mentioned in the law. For example, in family disputes, it is stated that the proceedings are conducted without observing adjudication formalities. Or in Article 21 of the Dispute Resolution Council Law, it is stated: “The council’s proceedings are subject to the formalities of the Civil Procedure Code.” Based on the above, adjudication formalities can be defined as follows: Adjudication formalities are regulations that govern the form and manner of filing a lawsuit, the way of presenting evidence, the process of hearing the case, and issuing a judgment.

Part Seven: Criteria for Distinguishing Adjudication Principles from Formalities

By considering the definitions of these two legal terms, it becomes clear that they are fundamentally different in nature. These differences are as follows: Basis: The foundation and necessity of following adjudication formalities arise from legal statutes. Since adjudication

formalities are established by the legislator, the requirement to comply with them, as well as the consequences for non-compliance, are also determined by law. Therefore, it is the law that specifies in which cases adjudication formalities must be observed and in which cases they are not necessary—for example, Articles 120 and 477 and the note to Article 127 of the Civil Procedure Code, which do not require adherence to adjudication formalities. In contrast, the basis for following adjudication principles, as will be discussed, stems from reason, ethics, religion, and the necessities of social life. These principles impose themselves on the legislator, the judge, and the arbitrator.

Part Eight: The Concept of Fair Trial

One of the fundamental issues for the rule of law, justice, and human rights is the concept of a fair trial. Justice is a right and must not be violated; whenever it is, it results in injustice, unfairness, and the disregard of citizens’ rights. Justice is closely linked to the concept of respect for rights. In fact, justice means acting in accordance with the law; therefore, injustice is behavior contrary to the law and a violation of human rights. A fair trial means the prosecution of a person under the law, with respect for citizens’ rights and as a means to promote the rule of law. These rights have been systematized by national and international norms in the form of certain principles.

Section Two: Examining Obstacles and

⁷ Gorji, Ali Akbar (2004), The Basis and Concept of
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Fundamental Rights, Journal of Constitutional Law, No. 21, p. 9.

Fundamental Principles of Adjudication in Iranian Law Civil Lawsuits

The law, which is the primary tool in the hands of judicial officials in the country's legal system—from judges to all subordinate staff and the final authority for everyone involved in the litigation process—can itself, in some cases, create obstacles to individuals' access to two fundamental principles: the right to seek justice and the right to a fair trial. Some of these obstacles include:

Part One: The Existence of Certain Non-Definitive and Unclear Laws

If laws do not contain clear and definitive rules, they create grounds for arbitrary and unrealistic interpretations by those who enforce them, which leads to undesirable outcomes. A clear example of this is the principle of public trials (Article 165 of the Constitution), where, due to the lack of a complete definition of "public" and ambiguity regarding its instances, the judge is left to determine the criteria, without any clarification of what constitutes public order or public morality. A review of the minutes from the first Assembly of Experts shows that the legislator emphasized all three characteristics of political and press courts (judicial courts, public hearings, and the presence of a jury). Therefore, by accepting the second logical and legal opinion, it must be said that the constitutional legislator intended to stress this matter, and some reasons for this have also been explained. Thus, with the explicit mention and emphasis in Article 168 of the Constitution, such

trials cannot be held in private; if this happens, it would be a violation of legal standards and Article 168 of the Constitution. Only in the three specific cases mentioned in Article 165 of the Constitution can trials be held privately, and no others.

Part Two: Unjustified Expansion of Exceptions to Adjudication Principles in Civil Lawsuits

The scope of the principle that proceedings must follow formal procedures is not absolute in all cases. In some civil cases, the requirement for formal procedures is accompanied by limitations and exceptions. The legislator, in certain articles of the Civil Procedure Code, has limited the application of this principle with the aim of expediting the process of handling cases and preventing unnecessary delays. For example, in cases of unlawful possession, disturbance, and obstruction of rights, due to their importance and the need for swift resolution, Article 177 of the Civil Procedure Code does not require the usual procedures applied in other cases. It is clear that a single sanction cannot be determined for all procedural requirements in civil proceedings. Therefore, to examine the guarantees for enforcing the principle of adjudication formalities, each procedural requirement must be considered separately.

Part Three: The Existence of Ambiguities and Multiple Restrictions in the Principles of Adjudication in Civil Lawsuits

There are numerous ambiguities and legal gaps observed regarding the following three issues:

- Holding a court session

- Managing the court session
- Postponing or rescheduling the court session

Paragraph One: Formation of the Hearing Session

The formation of the hearing session refers to a session in which the grounds for adjudication have been prepared, and the defendant has the opportunity and possibility to defend against the plaintiff's petition, taking into account any possible amendments made in accordance with Article 98 of the Civil Procedure Code. The above definition considers the first hearing session to be conditional upon two requirements:

- The grounds for adjudication are prepared.
- The defendant has the opportunity to defend.

Therefore, if the grounds for adjudication are prepared but the defendant does not have the opportunity to defend, the session that is held will not be considered the first session. In this case, the rights and obligations of the parties to the dispute will be enforceable at the subsequent session.

Part Four: Lack of Individuals' Awareness of Their Rights in Light of the Principles of Adjudication in Civil Lawsuits

Testimony or witness statement is considered one of the most important means of proving a claim⁸. Its strong foundation as a decisive and reliable piece of evidence in law is supported by verses of the Qur'an. Testimony means informing about a right; in favor of one party and to the detriment of

another. Whether this is a divine right or a human right, such information must be based on knowledge and certainty, not mere conjecture or religious assumption. For this reason, the absence of the aforementioned individuals leads to the loss of evidence and documents, or the failure to uncover the truth. In addition to prolonging the proceedings, in many cases, the witness or witnesses, due to the slow progress of the case, refrain from giving their statements.

Paragraph One: Essential Barriers to the Realization of Strategic Principles of Adjudication in Civil Lawsuits

Although the term "fair trial" is not explicitly stated in Iran's domestic laws and regulations, its various principles and general guarantees-viewed through an Islamic perspective-are enshrined in the Constitution and ordinary laws. The enforcement guarantees for the principles related to fair trial, as stipulated in the Constitution, are specified in ordinary laws⁹. For a trial to be considered fair, political systems must at least provide claimants with institutions and mechanisms that respect the existence of the following three rights:

- The right to access an independent and impartial judge
- The right to defense
- The right to effective enforcement of judgments

In most countries' constitutions, the principles of

⁸ Shams, Abdollah, *Evidence for Proving Claims*, 2013, 8th Edition, Tehran, Darak Publications, p. 135

⁹ Omid, Tahereh, 2016, "Analysis of the Right to a Fair Trial in Pegem Journal of Education and Instruction, ISSN 2146-0655

Light of Human Rights Instruments with Reference to Iranian Law," *Legal Studies Quarterly*, Issue 5, Winter, pp. 23-40

constitutional law are drafted with regard to these rights. Therefore, it must be stated that designing an optimal civil procedure system does not ignore these rights; rather, it aims to clarify "the method of distributing the reciprocal roles of the parties and the judge in the course of civil proceedings." In other words, the scope of the powers and duties of each participant in the proceedings cannot be realized apart from the requirements of a fair trial. This is precisely what necessitates the organization and administration of civil proceedings after the realization of fair trial principles. Thus, it can be stated that "the administration and organization of civil proceedings" is a matter that can only be discussed and pursued after the realization and implementation of the "requirements of a fair trial" as described above. In the Civil Procedure Code of 1939 and the Civil Procedure Law for Public and Revolutionary Courts in Civil Matters of 2000, which replaced the former, multiple references are made to the first hearing, and specific rights, duties, and consequently privileges are foreseen for the plaintiff or defendant¹⁰.

Part Two: Basis of Civil Liability for Virtual Privacy in Domestic Laws and Enactments

In Iranian positive law, although the comprehensive bill for the protection of privacy has not yet been enacted by the legislature, respect for privacy and its legal protection-based on religious teachings, jurisprudential foundations, and the Constitution of the Islamic

Republic has been accepted as a fundamental and general legal principle. Various aspects of privacy and rights related to human personality are protected in Chapter Three of the Constitution of the Islamic Republic of Iran. According to Article 22, the dignity, life, property, rights, residence, and occupation of individuals are inviolable, except in cases sanctioned by law.

1- Theoretical Basis of Civil Liability

The theoretical basis of civil liability refer to the legal reasons that justify the enforcement of civil liability. In other words, they address why and on what basis the person responsible for a harmful act must compensate for the damage caused to another, since, apart from the person who committed the harmful act, others are not responsible for compensating the damage. Only the law considers this person responsible for compensating the loss suffered by others. Legal scholars, in examining this issue and explaining the reason for the liability of the person who caused the harm, have presented various theories. These theories form the basis of civil liability, and accepting or rejecting each of them leads to different legal consequences and implications¹¹.

2- Privacy as a Right

Privacy is a right, and this fundamental right is related to the preservation of human status and other values that human dignity brings. Based on this right, a person or group can live according to their own will and preferences, with minimal

¹⁰ Omid, Tahereh, *ibid.*, pp. 23-40

¹¹ Bariklu, Ali Reza, "Civil Liability," Eighth Edition, Tehran, Pegem Journal of Education and Instruction, ISSN 2146-0655

interference or intrusion by others. Matters such as how an individual dresses and presents themselves, how they think, or their views on their country's politics, and many other examples, all fall within the domain of the right to privacy. Any intrusion into such matters without the consent of the rights holder is considered a violation of privacy.

Section Three: Practical Barriers to Realizing Strategic Principles of Adjudication in Civil Lawsuits

Part One: Structural or Internal Barriers

Due to the reluctance of many judges to conduct public hearings, and consequently, their refusal to do so, this principle is either not implemented at all in many courts or is rarely given attention. Overall, this reflects the judiciary's disregard for one of the important mandatory rules in the field of procedural law. Accordingly, considering that in judicial systems like Iran, the quality of judicial management has a significant impact on the cycle of criminal-judicial policy, another part of the obstacles to realizing the principle of public hearings should be sought in the behavior and performance of judges. The importance of having appropriate courtroom space is such that, in the opinion of some legal scholars, "if there are only two chairs in the courtroom for holding a trial session, this is a kind of mockery of the principle of

public hearings."¹²

Part Two: Cultural and Social Barriers

Cultural and social barriers, which can be examined in various fields, can be largely overcome by creating appropriate cultural foundations and providing public education in this area. On this basis, the fundamental idea of realizing citizens' rights and also empowering citizens to discover the criteria that determine their rights requires educating them. This education should be infused into the spirit of society through mass media, and unless this happens, it cannot be expected that citizens will participate in and insist on observing their own and others' civil rights.

Part Three: Economic Barriers

Resolving disputes through legal channels, whether judicial or arbitral, is essential and a matter of public order. There must be a way for individuals to resolve conflicts so as to prevent private justice and retaliation. Accordingly, practical obstacles should be removed and access to legal authorities must be made possible.

The economy, like ethics and justice, can be considered one of the main pillars in interpreting civil procedure. Every legal rule has an impact on the creation of wealth and social welfare; therefore, legal rules should not reduce wealth or lead to the destruction of resources. Economic analysis of the civil litigation process, based on the costs of bringing a lawsuit, aims to increase the efficiency

¹² Saferling, Christoph J. M, (2001), Towards an international criminal procedure, First published, oxford university press, New York, P 233

and quality of proceedings and to optimize litigation costs logically. Since efficient litigation is a guarantee of civil justice, it is necessary for the process of seeking justice to follow economic logic. Individuals act according to the assumption of economic rationality, and choice is a key principle in economics. Each person acts based on their own value and preference system and inevitably prefers certain matters and resources over others. People make choices, sometimes opting to bring a lawsuit to court, and sometimes, due to high costs and lack of financial ability, forgoing their rights and choosing other options. The cost system plays a significant role in the plaintiff's decision to file a lawsuit, and the costs of litigation-and whether these costs are transferred to the losing party or borne by the parties-often become a central concern for both sides, either for compensating damages or for initiating a lawsuit.

Part Four: Executive Barriers

In some cases, despite the legislator's provisions in the Constitution and ordinary laws, and despite public awareness of such processes (the right to petition and benefit from a fair trial), certain obstacles arise in practice that prevent members of society from accessing these two fundamental principles. Here, we will point out some of these cases.

Although Article 34 of the Constitution of our country explicitly recognizes the right to access competent courts, at a minimum, the essential requirement for a fair trial is the presence of a specialized judge. Unfortunately, in the Dispute

Resolution Councils-which handle a large percentage of cases-this fundamental right is not upheld. In some cases, files are reviewed and verdicts issued by individuals who have not even studied law. In the end, a judge signs off on these decisions without any review, after which the verdict is executed and the case closed. The presence of a judicial staff member after the issuance of a verdict is merely ceremonial, serving only to validate the decisions. As long as the Dispute Resolution Councils continue to operate in this manner, the path to achieving a fair trial in the country remains distant. Due to early retirements or the lack of suitable conditions for judicial work, many competent and experienced judges have left the judiciary. The recruitment of judicial candidates has also not been conducted in accordance with the beneficial 1964 law on the employment of judges and the requirements for internships, which stipulates selection from graduates of reputable law schools. Furthermore, the use of discriminatory methods in the recruitment of judges over the past three decades has led to a decline in the level of legal knowledge within the judiciary. This is a major obstacle to holding fair trials. In Imamiyyah jurisprudence, there is scholarly consensus on the necessity of *ijtihad* (independent reasoning) for judges, and other schools of Islamic law also emphasize this requirement. Of course, there are still groups of competent and knowledgeable judges in the Iranian judiciary, but the presence of a large group of judges who lack sufficient legal knowledge and judicial reasoning has made the

professional duties of lawyers extremely difficult and, naturally, has had adverse consequences for plaintiffs.

Part Five: Obstacles to the Principle of Adversarial Proceedings and Observance of Defense Rights

The obstacles to these two fundamental principles are divided into two categories:

- a) Permanent obstacles
- b) Temporary obstacles

Permanent obstacles are those that permanently deprive the parties in a case of the right to adversarial proceedings and defense rights. Some of these obstacles include:

- Electronic Litigation
- Lack of access to a defense attorney
- Legal obstacles

1. Electronic Litigation:

Electronic litigation refers to the use of electronic systems and conducting activities in a manner other than the traditional method. However, it is not a different type of substantive review, but rather a different judicial capacity in which courts use modern tools in their judicial proceedings. In Iran, this only includes certain actions such as notification of hearing dates, the manner and timing of parties' presence in courts and prosecutor's offices, notification of decisions, and similar actions. However, even this method of litigation faces problems and challenges, such as misuse of electronic notification according to Note 1 of Article 13 of the Electronic Notification

Regulations. This can lead to individuals (such as the accused, convicted, witnesses, guarantors, etc.) refusing to receive or view notifications. That is, individuals who are familiar with the electronic system can misuse this method of notification, for example, by keeping their mobile phones turned off or not opening text messages, among other tactics- especially in cases where actual notification to the person is necessary, such as in the seizure of collateral during the enforcement of judgments.

2. Lack of Access to a Defense Attorney:

One of the main guaranties against the violation of human rights at various stages of legal proceedings is the right to have access to a defense attorney. This right is explicitly stated in numerous international documents and regulations as well as in domestic laws. Article 35 of the Constitution, for example, emphasizes the necessity of having the right to an attorney in all courts.

3. Legal Barriers:

Although Iran's Civil Procedure Code is derived from the French Civil Procedure Code, unlike the French law, it does not contain explicit legal provisions regarding the principle of adversarial proceedings and the right to defense. However, these principles can be found scattered in articles 57 and 67 to 83 of the Iranian code.

Part Six: Barriers to the Principle of Public Hearings

- a) Theoretical barriers
- b) Legal barriers
- c) Practical barriers

a) Theoretical Obstacles

The term "theoretical obstacles" refers to those defects that, according to some legal scholars, are inconsistent with the principles of a fair trial. These include:

To a large extent, it disrupts the order and calm of the proceedings. The tranquility and silence prevailing in the courtroom significantly contribute to the implementation of a fair trial, and the presence of unrelated individuals in the hearing undermines this. It leads to judgments by the uninformed public regarding the subject matter. Individuals attending public hearings may form prejudgments about the outcome, and if the court's decision does not align with their views, it can lead to questioning the judiciary. It results in the disclosure of the secrets of those being judged, especially if the accused are acquitted. It imposes costs on the judiciary. Providing facilities and equipment such as audiovisual tools, chairs, tables, and other necessities for unrelated persons attending the trial creates expenses for the judicial system. In some cases, the presence of individuals causes the parties to the dispute to become emotionally charged, which is incompatible with a fair trial.

b) Legal Barriers

Deficiencies that exist within the law itself regarding the principle of public hearings, such as the lack of comprehensiveness and clarity in the term "public" and ambiguity or deficiency in the constitutional definition of public hearings:

1. Lack of a Comprehensive and Complete Definition of Public Hearings in the Law:

Although both the Constitution (Article 165) and ordinary laws (Note to Article 352 of the Criminal Procedure Code, enacted in 2013) consider the free presence of individuals as the criterion for public hearings, in practice, other requirements are also necessary-such as the public announcement of the final verdict. The law does not provide a thorough and all-encompassing definition of what constitutes a public hearing.

2. **Broad Scope of Exceptions in the Terms "Contrary to Public Decency" and "Public Order":** In legal theory, it is said that an excessive number of exceptions undermines the rule. The scope of exceptions under the terms "contrary to public decency" and "public order" is so extensive that it often surpasses the rule itself, allowing for significant restriction of public hearings.
3. **Ambiguity in the Terms "Contrary to Public Decency" and "Public Order":** The legislator has not provided any definition or clear criteria for these two terms, resulting in practical problems during implementation. The lack of precise definitions leads to inconsistent and sometimes arbitrary application of exceptions to public hearings.
4. **Lack of Enforcement Guarantees for the Principle of Public Hearings:** The legislator, in both constitutional and ordinary laws, has not addressed what happens if, intentionally or unintentionally, court sessions are not held publicly. There is no clear consequence

for the issued verdicts in such cases, nor is it specified whether the parties to the case can object to the verdict on this basis.

c) Practical (executive) obstacles

These refer to obstacles that arise at the stage of implementing the principle. The legislator, in Article 156 of the Constitution, has made the judge of the court the criterion for determining whether the principle of public hearings is to be implemented or not. This can lead to judges invoking this discretion in an insincere or unjustified manner, and thus become a serious obstacle to the implementation of this principle. Furthermore, if due to bias, the judge fails to recognize the need for a public hearing, neither the court's issued verdict can be challenged on this ground, nor can the judge be subjected to disciplinary or judicial action.

Part Seven: Challenges of Violating Fair Trial Requirements and Restricting the Defendant's Rights of Defense

Paragraph One: Consolidation of Prosecution and Investigation Powers in a Single Authority

According to the principle of separation of the various stages of criminal proceedings, in order to guarantee and protect individual rights and freedoms, prevent judicial despotism, observe the principle of impartiality, and achieve fair trials, each of these stages has been entrusted to independent judicial authorities. One of the most important results of the principle of separation of the different stages of proceedings is that a judge cannot play two roles in a single case.

The prosecutor is responsible for initiating public prosecution and is the authority for prosecution, while the investigating judge is the authority for investigation. Therefore, given the independence of judicial authorities, their activities must be completely separate from each other, and they must have the necessary and sufficient independence in making decisions. The danger of combining the powers of prosecution and investigation in a single authority is so significant that Cambacérès, a jurist before the French Revolution, said: "It sends a shiver down the spine of citizens when the tasks of investigation and prosecution are concentrated in the hands of a single person" (Ashouri, 2001, 2, 16). The prosecutor is the authority for prosecution, not for investigation, and the investigating judge is responsible for investigation and, in this capacity, is obliged to conduct comprehensive investigations with complete impartiality and to gather evidence both for and against the accused. Our Code of Criminal Procedure also emphasizes this point and states that the investigating judge must collect evidence with full impartiality.

Paragraph Two: Absence of a Referral Judge

Another issue that leads to the violation of fair trial requirements-including the principle of equality of arms and the principle of impartiality-is the referral of cases to investigating judges and assistant prosecutors by the prosecutor. This responsibility is also assigned to the referral assistant prosecutor. In practice, the prosecutor selects one of the assistant prosecutors through an internal order as the

referral assistant, who then refers cases to the investigation and prosecution branches. Regardless of the fact that, in practice, the referral assistant is usually chosen from among the less experienced assistant prosecutors and refers cases to an investigating judge with more experience and seniority, the main issue is that the referral of cases is carried out by the prosecution authority. The prosecutor is the prosecuting authority, and the decision as to which investigating judge a case should be referred to must be made by a judge independent of the prosecutor to ensure the principle of impartiality is upheld. In many countries, such as Germany in 1975 and Italy in 1988, as well as in the Rome Statute (adopted in 1998, which is the founding document of the International Criminal Court), the position of investigating judge has been eliminated. This was done because the investigating judge, being less experienced and less senior than the prosecutor, could not avoid being influenced by the prosecutor in their decisions as much as necessary. In a country like France, the institution of the investigating judge has been retained, but the authority to detain suspects has been removed from them. If the investigating judge wishes to detain someone, they must present their reasons to an impartial judge, who, after hearing the statements of the prosecutor, the accused, and their defense attorney-that is, after an adversarial review-decides whether or not to detain the accused (Ashouri, 2007, p. 80).

Paragraph Three: Issuance of a Detention Order

by the Prosecutor

A temporary detention order or precautionary arrest is the most severe action against a person's liberty during preliminary investigations. Nowadays, due to the conflict of such orders with the principle of presumption of innocence and the protection of individual dignity, legislators have generally agreed that this harsh but effective remedy should only be used in exceptional circumstances. For a person to be detained, there must be a reasonable suspicion of the commission of a crime and a risk of flight. This means that the concern about the commission of a crime must be justified, and the measure taken in each case must be proportionate. In evaluating cases, all circumstances of each file, and especially the character of the individual, must be considered. For example, whether the person has a history of committing such crimes, and whether it is likely that, if released, the person would commit another crime. The issuance of a temporary detention order by the prosecutor is a result of the prosecutor's authority to conduct investigations. According to paragraph (f) of Article 3 of the Law Amending the Law on the Establishment of Public and Revolutionary Courts (2002), in crimes that do not fall under the jurisdiction of the Provincial Criminal Court, the prosecutor has all the duties and powers of an investigating judge, and on this basis, can issue orders for temporary detention, securing bail, and changing bail conditions. If the investigating judge independently issues a temporary detention order, he or she is obliged to send the case to the

prosecutor for review within 24 hours. In case of disagreement, the prosecutor's opinion prevails, and the prosecutor's approval is required to lift the temporary detention order. Furthermore, if the prosecutor requests detention and the investigating judge disagrees, the matter will be resolved in the relevant public or revolutionary court, as appropriate.

Paragraph Four: Lack of Complete Independence of the Investigating Judge from the Prosecutor

Considering the principle of independence of judicial authorities, the prosecutor is responsible for prosecution and the investigating judge is responsible for investigation. In principle, the prosecutor should not interfere with the actions and decisions of the investigating judge. However, since the prosecutor is one of the parties to the public case, he has the right to object to the actions and decisions of the investigating judge if he deems them illegal, just like any other party to the case. Nevertheless, the investigating judge must be an impartial judge, completely independent from the prosecutor and the courts. However, our legislator has deviated from this principle, and according to paragraph (h) of Article 3 of the Law Amending the Law on the Establishment of Public and Revolutionary Courts (2002), it has been stipulated that the prosecutor has the right to supervise and give necessary instructions in matters referred to the investigating judge. This is contrary to the independence of the investigating judge in seeking the truth. On the other hand, it is stipulated that if

the prosecutor finds the investigations of the investigating judge incomplete, he can request their completion, even if the investigating judge considers his investigations complete. In line with making the proceedings adversarial, the prosecutor's request for further investigation from the investigating judge is the prosecutor's right, but the investigating judge should not be obligated to conduct such investigations. Accordingly, in some countries, if the prosecutor makes a request to the investigating judge, the investigating judge can accept or reject the request, but in case of rejection, he must issue a reasoned order.

Paragraph Five: Failure of the Prosecutor to Prove the Claim in the Public Court Session

The proceedings in court are public, oral, and adversarial, meaning the prosecutor, as one of the main parties to the public lawsuit and based on the principle of "the burden of proof is on the claimant," must prove their claim orally and adversarially in court. However, as is common in many countries, this requirement for the prosecutor to prove the claim in a public court session is often not observed. Instead, after reading the indictment-which is issued by agreement between the prosecutor and the investigating judge based on the indictment order-the accused is told: "If you do not accept your charge, bring evidence to the contrary." Prosecutors often suffice by merely presenting their claim, and the accused and their lawyer are compelled to disprove the evidence that was collected during the preliminary investigation phase by the investigating judge and prosecutor,

often in the absence of the accused. Therefore, the defense rights of the accused, human rights standards, and the principle of equality of arms require that the prosecutor be present in court and prove their claim.

Paragraph Six: Non-Adversarial Nature of Preliminary Investigations

The non-adversarial nature of preliminary investigations means that there is no confrontation between the claimant and the accused or their lawyers to present evidence and argue, as occurs during court proceedings. In this stage, equality between the claimant and the accused is not observed, and the accused is not informed of the evidence presented against them in order to challenge or dispute it, or to request a specific investigation. This is contrary to the principle of equality of arms, which is a requirement of a fair trial, and it restricts the defendant's right to defense. Nowadays, in line with making proceedings more adversarial, special emphasis is placed on the presence of a defense lawyer during the preliminary investigation stage. There are also several provisions in substantive law that have moderated the non-adversarial nature of preliminary investigations, such as the accused's right to request a specific investigation or to request the hearing of witnesses or the opinion of an expert. However, by imposing strict conditions on the involvement of defense lawyers during the preliminary investigation stage, the legislature has restricted the defendant's right to defense and, in a way, has directed the

proceedings toward an unfair decision.

Section Four: Examining Obstacles and Fundamental Principles of Adjudication in International Law Civil Lawsuits

Principles, as the foundation of legal structures, represent a diverse set of values and rules governing a legal system that, despite their variety, share common and uniform characteristics. In every legal system, there are general principles that reflect the values and standards prevailing within that system. Legislators, inspired by these values and desirable ideals, enact rules that are the legacy of past generations and the result of centuries of development. Thus, legal principles and, in the context of adjudication, fundamental principles with their unique features such as continuity over time, generality, and flexibility, are extracted and inferred.

1. Continuity

In a general view, legal principles are considered to embody the spirit of the law, legal rules, or the collective opinions of jurists (Boulanger, 1997: 74), and their permanence and stability are seen as logical for preserving the values and norms these principles aim to uphold. According to some jurists, the continuity and persistence of legal principles and rules are qualities that provide stability and security to the law (Vergès, 2015: 206). Georges Ripert believes: "Human governance and management require a set of stable and solid rules and principles" (Vergès, 2015: 207); this characteristic causes the principles of criminal

procedure to also appear as firm and robust foundations that prevent the deviation of the judicial process from the pursuit of justice (Moazen-Zadegan, 2000: 27). Therefore, recognizing the stability of principles alongside their evolution and development is important as it constitutes the features that ensure the continuity and persistence of principles over time.

1.1. Stability of Principles

From the perspective of some legal scholars (Vergès, 2015: 210), the stability of principles is understood as "the capacity of a rule to withstand and endure through legal reforms." This means that principles "are not confined to a specific period and, as long as they are not repealed by a substitute principle, remain valid. Lawmakers, when enacting laws, and judges, when issuing judgments and interpreting the law, cannot disregard them" (Sadeghi, 2003: 34). Some principles remain constant over time, with their degree of stability and persistence depending on legal support, the extent of social acceptance, or their ultimate purpose. "If the purpose of a principle is strongly valued within society, that legal rule becomes enduring" (Vergès, 2015: 211). Although general legal principles may appear eternal, "in reality, they are not immutable and change along with paradigm shifts in human societies" (Jafari-Tabar, 2014: 203).

1.2. Transformation and Evolution of Principles

The stability and permanence of principles do not mean that they are incapable of change. The transformation and evolution that encompass the

body of legal rules also affect principles. These changes and developments, which take place within legal contexts, aim to adapt principles to legal needs and requirements. Although legal rules and principles possess a certain stability that allows them to resist changes in legal systems, these principles do change over time and, like many social phenomena, are born, live, and eventually disappear. During this period, many legal rules and principles are strengthened, weakened, or transformed. While we may accept that the stability of a principle is a prerequisite for its continuity and survival, the endurance of a principle and the continuation of this persistence require the transformation and adaptation of that principle to the elements of social life and its flexibility in practice.

2. Generality

The fundamental principles of criminal procedure, despite their diversity, reflect the general concepts of justice in the resolution of disputes (Ghamami, 2017: 23). Legal principles, as the rules governing social life, must be devoid of individual characteristics, and what is important is "that the legal rule, when established, should not be restricted to a specific individual or persons, and its content should not be exhausted by a single application" (Hojjati, 2006: 101). Therefore, a legal principle, by its very nature, is general and cannot be limited to a specific case. Achieving the goal of establishing and restoring order in society is only possible through specific legal guarantees for adherence to adjudication principles. The

mandatory and general nature of these principles ensures that people do not perceive their establishment as a matter of personal interest, but interpret them as serving the protection of public interests and social values. The generality of law and the rules and principles derived from it "not only guarantees their fairness, but is also a requirement of lawful governments and a safeguard against tyranny" (Katouzian, 2012: 533). Therefore, the generality of principles must be considered both in their formulation and in their implementation.

2.1. From the Perspective of Formulating Principles

If we accept that procedural principles are fundamental foundations that, in every legal system, prevail over procedural regulations and that legal provisions are derived from these principles, we must inevitably acknowledge that their general and universal nature, as well as the existence of enforcement guarantees, are inseparable elements in the emergence and formulation of a legal principle or rule. Without these two characteristics, procedural principles lose their content and meaning and forfeit their executive power. For this reason, it is essential that the generality of principles and their enforceability be examined as fundamental characteristics of foundational principles.

2.2. From the Perspective of Implementing Principles

Every legal principle emerges within the context of social developments and, in order to sustain and

continue its existence, must on the one hand gain social acceptance and value, and on the other hand, compliance with it must be mandatory in order to achieve its ultimate goal, which is the establishment of order in society. It is evident that the acceptance of a legal principle or rule-especially when citizens are involved in litigation and the pursuit of rights-by society and its acceptance can guarantee respect for its binding nature and compliance with it. This respect, despite the existence of enforcement guarantees for a principle, is sometimes not easily achieved due to a lack of acceptance. Therefore, their social value and obligatory nature are worthy of examination.

3. Flexibility

Another common feature of the fundamental principles of adjudication can be considered their flexibility. Principles, as a diverse set of values and rules governing a legal system, while maintaining stability and certainty, must also possess the capacity for flexibility to adapt to legal needs and necessities as they evolve and develop, and to be effectively implemented within society. Although some jurists have interpreted the acceptance of this feature for principles as tantamount to accepting the lack of certainty and stability in those principles (Wolff, 2011: 552), this view stems from a misunderstanding of the nature of flexibility and its effects from the perspective of the vitality of principles and the diversification of their functions in various legal domains, especially in the criminal procedure process.

3.1. The Nature of Flexibility

Christian Wolff defines the flexibility of legal rules and principles in four distinct dimensions (Wolff, 2011: 552). At first glance, flexibility is recognized as an "inherent characteristic of legal principles and rules." This concept of flexibility can create tension between this characteristic of principles and the certainty of legal rules and principles, and may suggest that the lack of certainty in principles emerges as a necessary effect of their flexibility. Some jurists consider this interpretation an obstacle to the pursuit of justice by legal principles and rules, and, more generally, by law itself, and regard this characteristic as an enemy of the necessity and merit of principles. Proponents of the certainty of principles and the rejection of their flexibility believe that the principle of equality before the law can only be truly applied and enforced in criminal proceedings if all individuals in identical and equal circumstances are not subjected to unequal treatment, and that this cannot be achieved except through the certainty and definitiveness of principles (Manson, 1992: 397).

3.2. Effects of Flexibility

Flexibility in legal principles, rules, and their resulting obligations-both in civil law systems (written law) and common law-is considered a mechanism for achieving just decisions. Judicial practice in both legal systems strives to adapt legal rules and principles during litigation by offering judicial interpretations that align with prevailing social beliefs, values, and their evolution. Therefore, restricting judicial practice to merely

following past decisions and denying the interpretability of legal principles and rules not only endangers the survival and continuity of fundamental principles but also challenges their effectiveness and functionality in meeting social needs (Turcotte, 2019: 191). "Law, just as it originates from society, is also a means of reforming it and has an inseparable relationship with justice. Law is the science of the rules of social life, and like life itself, it cannot be without purpose or aim. So how can its function be limited to confirming the status quo and deeming the evaluation and purpose of its rules futile?" (Katouzian, 2012: 298). If we consider law as a collection of mandatory principles and rules that emerge from the public conscience at any given time-and if we regard the primary source of law as public conscience, and the basis of legal rules and principles as society's need for their governance over social relations (Jafari Langroudi, 2011: 55)-then there would be no fundamental difference between statute and judicial precedent. All are external manifestations of public conscience, seeking to establish order and coherence in the social relations of legal subjects. This same public conscience, which is the foundation of legal rules and principles, requires that when faced with legal issues and matters, the effectiveness of these rules and principles be demonstrated in practice, and that the law acquires the necessary flexibility to harmonize with the realities of the external world.

Conclusion

The obstacles to implementing the strategic principles of adjudication in civil lawsuits in

addressing civil claims and achieving fair trials include: structural or internal barriers, cultural and social barriers, and obstacles related to electronic litigation. Strategic or fundamental principles of procedure, which are neither explicitly stated in the Constitution nor in ordinary law, are nonetheless essential for both civil and non-civil proceedings. However, these principles face numerous obstacles that prevent their effective implementation in Iran's judicial system. A review of scholarly works and articles on this topic, as well as the author's own practical experience in the judiciary, reveals multiple factors and barriers to these foundational principles. Some of these are specific to certain principles, while others are common to all. Specific obstacles include economic barriers, cultural barriers, underdeveloped infrastructure for electronic litigation, lack of access to legal counsel, failure to observe grounds for recusal of judges, lack of administrative and financial independence of the judiciary, among others. Common barriers across all principles include legal and executive obstacles. In reality, these and other potential barriers have resulted in the fundamental principles of procedure not being effectively implemented in our judicial system. Achieving a fair and equitable system of justice-which is the aspiration of Iran's judiciary and judicial systems worldwide-will only be possible when these barriers are fully removed and greater attention is paid to the authority of the principles currently in practice. Given the importance of fair trials, it can be stated that a fair

trial encompasses a set of standards and guarantees designed to protect the rights of parties in the litigation process before a competent, independent, impartial, and predictable court. If the trial is fair, the rights of the parties will not be violated, because justice is a right and should not be administered in an unfair manner. One of the judiciary's goals is to provide justice and resolve disputes; therefore, judges must act in a way that ensures a fair trial. The requirements of a fair trial are a series of principles that must be observed throughout the proceedings. Failure to observe these principles leads to public distrust in the judiciary and has negative consequences. Among the obstacles to justice are personal biases, kinship relations, enmity, and hostility.

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disputes have become broader, more diverse, and more complex, and the increase in population and closer connections among people have expanded the scope of conflicts. In order to achieve fair adjudication, in addition to principles, procedural rules and formalities are also necessary. Litigation in Iranian commercial cases and international disputes consists of a set of imperative principles or regulations and procedural rules, the observance of which is mandatory and unavoidable in all proceedings.

The principles of adjudication possess general, permanent, abstract, and value-based characteristics, and thus, adjudication formalities are distinct from these principles in terms of origin, nature, basis, and effects. Legal principles result from beliefs, convictions, and represent fundamental values in a human society, and certainly, since many of these principles arise from the nature and essence of humans as a general concept, they are acknowledged and accepted by all and their commonality in multiple legal systems is undeniable.

Undoubtedly, one of the most fundamental sources for legislators in enacting laws and regulations is the strategic principles of adjudication. These principles, which include the most basic legal rules, prevail over all more specific legal provisions. The proper implementation of procedural rules depends on adherence to the principles known as the "strategic principles of adjudication," whose most important and primary role is to ensure justice in legal proceedings. The strategic principles of adjudication are general procedural principles that the legislator has explicitly provided for, and this distinguishes them from the general legal principles of litigation, which judges infer from the scattered texts of laws. Litigation principles are legal principles whose applicability is not limited to a specific case or subject, and they remain in effect until another principle replaces them. These principles, which include the most fundamental legal rules, govern all more specific legal provisions. As a type of legal

principle, the principles of litigation share the same general characteristics, permanence, and abstract nature found in other legal principles. Fundamental principles of litigation, such as the principle of adversarial proceedings, the principle of proper and timely service of documents and hearing dates, the principle of independence and impartiality, the principle of confidentiality, the duty of disclosure, and similar principles, are related to and influenced by public order. Failure to observe fundamental principles of litigation and certain formalities, such as failure to observe the procedures for challenging arbitrators, can lead to doubt and uncertainty in the litigation process and may even result in its annulment. The principles of litigation are distinct from adjudication formalities, as adjudication formalities differ from litigation principles in terms of origin, basis, and effects. In light of the above, what is addressed in this research is the legal consequences of violating the fundamental principles and adjudication formalities of litigation in commercial disputes in Iran and in international disputes.

Research Background

Ghamami, Majid (2011), in his book titled "Transnational Civil Procedure," states: This book, with a critical introduction and a comparative study, examines the governing principles of civil procedure. In the text, the book addresses reputable legal systems and, as the author puts it, the rules that guarantee and enforce rights, or as he calls them, "realizers of

substantive rights." It seeks new paths that legal systems take in pursuit of justice-oriented goals. According to the author, attention to these differences is the strength of his work, distinguishing the general principles governing reputable legal systems. Using this work in the comparative discussion of this thesis adds a transnational dimension to the research.

Razaghi, Kianoush (2009), in an article titled "Procedural Standards in International Documents and the Iranian Judicial System," states: This article seeks to obtain objective standards for assessing fair trial procedures and then examines and investigates these standards in the most important and well-known international documents.

Using this research greatly helps the process of this thesis in understanding the criteria and general principles governing fair trial procedures in the Iranian judicial system and international documents.

Given the ambiguities regarding the principles and procedures of litigation in Iranian commercial disputes and international cases, as well as the consequences of their violation and related issues—many of which have not been addressed in our legal system—the present research can, to some extent, address the challenges and unclear issues.

Research Methodology

In this study, relevant information will be collected using the library research method, as appropriate to the subject. For this purpose, tools such as note-

taking and checklist preparation will be utilized. The aim is to accurately identify available resources in the country, including legal books related to the topic, relevant articles and theses, as well as domestic laws and regulations, and, if necessary, internet sites such as the Comprehensive Portal of Humanities and the NoorMags Islamic Studies Center. After preparing checklists and taking notes from the identified sources, the information will be gathered and, through logical analysis and synthesis, the process of writing the thesis will begin in order to answer the research questions.

The research method in this study is descriptive-analytical. Given the existing research background, information has been extracted from legal resources available in reputable libraries through note-taking, and information is being collected using this method. Since this research is a study in the field of humanities, like other studies and research in this field, this study also describes the current legal status and the opinions and critiques presented regarding the subject of this research and analyzes them. Therefore, the method of data analysis in this research is the descriptive-inferential method.

Section One: Concepts and Definitions

Part One: The Concept of Principles

According to one French jurist, principles refer to the frameworks and main ideas upon which legal structures are built, and around which legal provisions are organized¹³. Others also refer to principles as the legal foundations and norms that underlie all legal rules, and are the result of two elements: social cooperation and the sense of justice¹⁴.

Part Two: The Concept of Adjudication

Linguistically, the term "adjudication" (dadresi) in Persian is a combination of two words: "dad" and "resi." "Dad" in Persian means justice, fairness, and outcry¹⁵, while "resi" conveys the meaning of reaching or attaining¹⁶. Therefore, "dadresi" means to come to someone's aid in the pursuit of justice.

Part Three: The Concept of Justice

Justice means respecting individuals' rights and giving each person what they deserve. A just person is someone who gives everyone their due share. This concept does not necessarily imply equality. Alternatively, justice can be defined as putting everything in its proper place, while injustice is putting things where they do not belong¹⁷.

¹³ Boulanger, Jean (1997), *General Principles of Law and Positive Law*, translated by Alireza Mohammadzadeh Vadaqani, Journal of the Faculty of Law and Political Science, University of Tehran, No. 36, pp. 73 and 90.

¹⁴ Sadeghi, Mohsen (2005), *Legal Principles and Their Status in Positive Law*, Tehran, Mizan Publishing, p. 26.

¹⁵ Dehkhoda, Ali Akbar (2004), *Dehkhoda Dictionary*, Vol. 5, University of Tehran Press, Fourth Edition, New Series, p. 1218.

¹⁶ Ibid., p. 1471.

¹⁷ Yazdi, Abdolhamid, 2004, *A Look at the Concepts of Equality, Fairness, and Justice from the Perspective of Islamic Ethics and Law*, from the book "Human Rights and the Concepts of Equality, Fairness, and Justice," written by Ashouri, Mohammad and others, Faculty of Law and Political Science, University of

Part Four: The Concept of Principles of Adjudication

Principles of adjudication are closely connected to the very foundation of justice within the judicial system. According to some, principles of adjudication, by providing very general and broad regulations, set the standards for fair proceedings and represent the general concepts of justice and equity in the resolution of civil and commercial disputes. In modern legal systems, these are known as “fundamental principles.”¹⁸

Part Five: The Concept of Strategic Principles of Adjudication

The strategic principles of adjudication, on one hand, define the reciprocal roles of the parties to the dispute and the judge during civil proceedings, and on the other hand, ensure the proper conduct of the proceedings. The definition of strategic principles depends on the concept given to fundamental rights; if we consider fundamental rights as the true embodiment of a set of moral, political, and philosophical norms that are nourished by the sources of freedom, equality, democracy, and the rule of law, then fundamental principles should also be regarded as those rooted in these fundamental rights. The existence of such principles ensures the continuity and durability of the adjudication process, while their absence leads to the disintegration of the judicial process and its

legitimacy¹⁹.

Part Six: The Concept of Adjudication Formalities

In the dictionary, “formalities” means special customs and rituals in important and official receptions. In our procedural regulations, the term “adjudication formalities” has not been specifically defined, but observing or not observing them has been mentioned in the law. For example, in family disputes, it is stated that the proceedings are conducted without observing adjudication formalities. Or in Article 21 of the Dispute Resolution Council Law, it is stated: “The council’s proceedings are subject to the formalities of the Civil Procedure Code.” Based on the above, adjudication formalities can be defined as follows: Adjudication formalities are regulations that govern the form and manner of filing a lawsuit, the way of presenting evidence, the process of hearing the case, and issuing a judgment.

Part Seven: Criteria for Distinguishing Adjudication Principles from Formalities

By considering the definitions of these two legal terms, it becomes clear that they are fundamentally different in nature. These differences are as follows: Basis: The foundation and necessity of following adjudication formalities arise from legal statutes. Since adjudication formalities are established by the legislator, the requirement to comply with them, as well as the consequences for non-compliance, are also

Tehran Press, First Edition

¹⁸ Ghamami, Majid, Mohseni, Hassan (2011), Transnational Civil Procedure, Tehran, Enteshar Joint Stock Company, p. 15.

Pegem Journal of Education and Instruction, ISSN 2146-0655

¹⁹ Gorji, Ali Akbar (2004), The Basis and Concept of Fundamental Rights, Journal of Constitutional Law, No. 21, p. 9.

determined by law. Therefore, it is the law that specifies in which cases adjudication formalities must be observed and in which cases they are not necessary—for example, Articles 120 and 477 and the note to Article 127 of the Civil Procedure Code, which do not require adherence to adjudication formalities. In contrast, the basis for following adjudication principles, as will be discussed, stems from reason, ethics, religion, and the necessities of social life. These principles impose themselves on the legislator, the judge, and the arbitrator.

Part Eight: The Concept of Fair Trial

One of the fundamental issues for the rule of law, justice, and human rights is the concept of a fair trial. Justice is a right and must not be violated; whenever it is, it results in injustice, unfairness, and the disregard of citizens' rights. Justice is closely linked to the concept of respect for rights. In fact, justice means acting in accordance with the law; therefore, injustice is behavior contrary to the law and a violation of human rights. A fair trial means the prosecution of a person under the law, with respect for citizens' rights and as a means to promote the rule of law. These rights have been systematized by national and international norms in the form of certain principles.

Section Two: Examining Obstacles and Fundamental Principles of Adjudication in Iranian Law Civil Lawsuits

The law, which is the primary tool in the hands of judicial officials in the country's legal system—from judges to all subordinate staff and the final authority for everyone involved in the litigation process—can itself, in some cases, create obstacles to individuals' access to two fundamental principles: the right to seek justice and the right to a fair trial. Some of these obstacles include:

Part One: The Existence of Certain Non-Definitive and Unclear Laws

If laws do not contain clear and definitive rules, they create grounds for arbitrary and unrealistic interpretations by those who enforce them, which leads to undesirable outcomes. A clear example of this is the principle of public trials (Article 165 of the Constitution), where, due to the lack of a complete definition of "public" and ambiguity regarding its instances, the judge is left to determine the criteria, without any clarification of what constitutes public order or public morality. A review of the minutes from the first Assembly of Experts shows that the legislator emphasized all three characteristics of political and press courts (judicial courts, public hearings, and the presence of a jury). Therefore, by accepting the second logical and legal opinion, it must be said that the constitutional legislator intended to stress this matter, and some reasons for this have also been explained. Thus, with the explicit mention and emphasis in Article 168 of the Constitution, such trials cannot be held in private; if this happens, it would be a violation of legal standards and Article

168 of the Constitution. Only in the three specific cases mentioned in Article 165 of the Constitution can trials be held privately, and no others.

Part Two: Unjustified Expansion of Exceptions to Adjudication Principles in Civil Lawsuits

The scope of the principle that proceedings must follow formal procedures is not absolute in all cases. In some civil cases, the requirement for formal procedures is accompanied by limitations and exceptions. The legislator, in certain articles of the Civil Procedure Code, has limited the application of this principle with the aim of expediting the process of handling cases and preventing unnecessary delays. For example, in cases of unlawful possession, disturbance, and obstruction of rights, due to their importance and the need for swift resolution, Article 177 of the Civil Procedure Code does not require the usual procedures applied in other cases. It is clear that a single sanction cannot be determined for all procedural requirements in civil proceedings. Therefore, to examine the guarantees for enforcing the principle of adjudication formalities, each procedural requirement must be considered separately.

Part Three: The Existence of Ambiguities and Multiple Restrictions in the Principles of Adjudication in Civil Lawsuits

There are numerous ambiguities and legal gaps observed regarding the following three issues:

- Holding a court session
- Managing the court session
- Postponing or rescheduling the court session

Paragraph One: Formation of the Hearing Session

The formation of the hearing session refers to a session in which the grounds for adjudication have been prepared, and the defendant has the opportunity and possibility to defend against the plaintiff's petition, taking into account any possible amendments made in accordance with Article 98 of the Civil Procedure Code. The above definition considers the first hearing session to be conditional upon two requirements:

- The grounds for adjudication are prepared.
- The defendant has the opportunity to defend.

Therefore, if the grounds for adjudication are prepared but the defendant does not have the opportunity to defend, the session that is held will not be considered the first session. In this case, the rights and obligations of the parties to the dispute will be enforceable at the subsequent session.

Part Four: Lack of Individuals' Awareness of Their Rights in Light of the Principles of Adjudication in Civil Lawsuits

Testimony or witness statement is considered one of the most important means of proving a claim²⁰. Its strong foundation as a decisive and reliable piece of evidence in law is supported by verses of the Qur'an. Testimony means informing about a

²⁰ Shams, Abdollah, Evidence for Proving Claims, 2013, 8th Edition, Tehran, Darak Publications, p. 135
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right; in favor of one party and to the detriment of another. Whether this is a divine right or a human right, such information must be based on knowledge and certainty, not mere conjecture or religious assumption. For this reason, the absence of the aforementioned individuals leads to the loss of evidence and documents, or the failure to uncover the truth. In addition to prolonging the proceedings, in many cases, the witness or witnesses, due to the slow progress of the case, refrain from giving their statements.

Paragraph One: Essential Barriers to the Realization of Strategic Principles of Adjudication in Civil Lawsuits

Although the term "fair trial" is not explicitly stated in Iran's domestic laws and regulations, its various principles and general guarantees-viewed through an Islamic perspective-are enshrined in the Constitution and ordinary laws. The enforcement guarantees for the principles related to fair trial, as stipulated in the Constitution, are specified in ordinary laws²¹. For a trial to be considered fair, political systems must at least provide claimants with institutions and mechanisms that respect the existence of the following three rights:

- The right to access an independent and impartial judge
- The right to defense
- The right to effective enforcement of

judgments

In most countries' constitutions, the principles of constitutional law are drafted with regard to these rights. Therefore, it must be stated that designing an optimal civil procedure system does not ignore these rights; rather, it aims to clarify "the method of distributing the reciprocal roles of the parties and the judge in the course of civil proceedings." In other words, the scope of the powers and duties of each participant in the proceedings cannot be realized apart from the requirements of a fair trial. This is precisely what necessitates the organization and administration of civil proceedings after the realization of fair trial principles. Thus, it can be stated that "the administration and organization of civil proceedings" is a matter that can only be discussed and pursued after the realization and implementation of the "requirements of a fair trial" as described above. In the Civil Procedure Code of 1939 and the Civil Procedure Law for Public and Revolutionary Courts in Civil Matters of 2000, which replaced the former, multiple references are made to the first hearing, and specific rights, duties, and consequently privileges are foreseen for the plaintiff or defendant²².

Part Two: Basis of Civil Liability for Virtual Privacy in Domestic Laws and Enactments

In Iranian positive law, although the comprehensive bill for the protection of privacy has not yet been enacted by the legislature,

²¹ Omidi, Tahereh, 2016, "Analysis of the Right to a Fair Trial in Light of Human Rights Instruments with Reference to Iranian
Pegem Journal of Education and Instruction, ISSN 2146-0655

Law," Legal Studies Quarterly, Issue 5, Winter, pp. 23-40
²² Omidi, Tahereh, *ibid.*, pp. 23-40

respect for privacy and its legal protection-based on religious teachings, jurisprudential foundations, and the Constitution of the Islamic Republic has been accepted as a fundamental and general legal principle. Various aspects of privacy and rights related to human personality are protected in Chapter Three of the Constitution of the Islamic Republic of Iran. According to Article 22, the dignity, life, property, rights, residence, and occupation of individuals are inviolable, except in cases sanctioned by law.

1- Theoretical Basis of Civil Liability

The theoretical basis of civil liability refer to the legal reasons that justify the enforcement of civil liability. In other words, they address why and on what basis the person responsible for a harmful act must compensate for the damage caused to another, since, apart from the person who committed the harmful act, others are not responsible for compensating the damage. Only the law considers this person responsible for compensating the loss suffered by others. Legal scholars, in examining this issue and explaining the reason for the liability of the person who caused the harm, have presented various theories. These theories form the basis of civil liability, and accepting or rejecting each of them leads to different legal consequences and implications²³.

2- Privacy as a Right

Privacy is a right, and this fundamental right is

related to the preservation of human status and other values that human dignity brings. Based on this right, a person or group can live according to their own will and preferences, with minimal interference or intrusion by others. Matters such as how an individual dresses and presents themselves, how they think, or their views on their country's politics, and many other examples, all fall within the domain of the right to privacy. Any intrusion into such matters without the consent of the rights holder is considered a violation of privacy.

Section Three: Practical Barriers to Realizing Strategic Principles of Adjudication in Civil Lawsuits

Part One: Structural or Internal Barriers

Due to the reluctance of many judges to conduct public hearings, and consequently, their refusal to do so, this principle is either not implemented at all in many courts or is rarely given attention. Overall, this reflects the judiciary's disregard for one of the important mandatory rules in the field of procedural law. Accordingly, considering that in judicial systems like Iran, the quality of judicial management has a significant impact on the cycle of criminal-judicial policy, another part of the obstacles to realizing the principle of public hearings should be sought in the behavior and performance of judges. The importance of having appropriate courtroom space is such that, in the

²³ Bariklu, Ali Reza, "Civil Liability," Eighth Edition, Tehran, Pegem Journal of Education and Instruction, ISSN 2146-0655

opinion of some legal scholars, "if there are only two chairs in the courtroom for holding a trial session, this is a kind of mockery of the principle of public hearings."²⁴

Part Two: Cultural and Social Barriers

Cultural and social barriers, which can be examined in various fields, can be largely overcome by creating appropriate cultural foundations and providing public education in this area. On this basis, the fundamental idea of realizing citizens' rights and also empowering citizens to discover the criteria that determine their rights requires educating them. This education should be infused into the spirit of society through mass media, and unless this happens, it cannot be expected that citizens will participate in and insist on observing their own and others' civil rights.

Part Three: Economic Barriers

Resolving disputes through legal channels, whether judicial or arbitral, is essential and a matter of public order. There must be a way for individuals to resolve conflicts so as to prevent private justice and retaliation. Accordingly, practical obstacles should be removed and access to legal authorities must be made possible.

The economy, like ethics and justice, can be considered one of the main pillars in interpreting civil procedure. Every legal rule has an impact on the creation of wealth and social welfare;

therefore, legal rules should not reduce wealth or lead to the destruction of resources. Economic analysis of the civil litigation process, based on the costs of bringing a lawsuit, aims to increase the efficiency and quality of proceedings and to optimize litigation costs logically. Since efficient litigation is a guarantee of civil justice, it is necessary for the process of seeking justice to follow economic logic. Individuals act according to the assumption of economic rationality, and choice is a key principle in economics. Each person acts based on their own value and preference system and inevitably prefers certain matters and resources over others. People make choices, sometimes opting to bring a lawsuit to court, and sometimes, due to high costs and lack of financial ability, forgoing their rights and choosing other options. The cost system plays a significant role in the plaintiff's decision to file a lawsuit, and the costs of litigation-and whether these costs are transferred to the losing party or borne by the parties-often become a central concern for both sides, either for compensating damages or for initiating a lawsuit.

Part Four: Executive Barriers

In some cases, despite the legislator's provisions in the Constitution and ordinary laws, and despite public awareness of such processes (the right to petition and benefit from a fair trial), certain obstacles arise in practice that prevent members

²⁴ Saferling, Christoph J. M, (2001), Towards an international criminal procedure, First published, oxford university press, New York, P 233

of society from accessing these two fundamental principles. Here, we will point out some of these cases.

Although Article 34 of the Constitution of our country explicitly recognizes the right to access competent courts, at a minimum, the essential requirement for a fair trial is the presence of a specialized judge. Unfortunately, in the Dispute Resolution Councils-which handle a large percentage of cases-this fundamental right is not upheld. In some cases, files are reviewed and verdicts issued by individuals who have not even studied law. In the end, a judge signs off on these decisions without any review, after which the verdict is executed and the case closed. The presence of a judicial staff member after the issuance of a verdict is merely ceremonial, serving only to validate the decisions. As long as the Dispute Resolution Councils continue to operate in this manner, the path to achieving a fair trial in the country remains distant. Due to early retirements or the lack of suitable conditions for judicial work, many competent and experienced judges have left the judiciary. The recruitment of judicial candidates has also not been conducted in accordance with the beneficial 1964 law on the employment of judges and the requirements for internships, which stipulates selection from graduates of reputable law schools. Furthermore, the use of discriminatory methods in the recruitment of judges over the past three decades has led to a decline in the level of legal knowledge within the judiciary. This is a major

obstacle to holding fair trials. In Imamiyyah jurisprudence, there is scholarly consensus on the necessity of *ijtihad* (independent reasoning) for judges, and other schools of Islamic law also emphasize this requirement. Of course, there are still groups of competent and knowledgeable judges in the Iranian judiciary, but the presence of a large group of judges who lack sufficient legal knowledge and judicial reasoning has made the professional duties of lawyers extremely difficult and, naturally, has had adverse consequences for plaintiffs.

Part Five: Obstacles to the Principle of Adversarial Proceedings and Observance of Defense Rights

The obstacles to these two fundamental principles are divided into two categories:

- c) Permanent obstacles
- d) Temporary obstacles

Permanent obstacles are those that permanently deprive the parties in a case of the right to adversarial proceedings and defense rights. Some of these obstacles include:

- Electronic Litigation
- Lack of access to a defense attorney
- Legal obstacles

4. Electronic Litigation:

Electronic litigation refers to the use of electronic systems and conducting activities in a manner other than the traditional method. However, it is not a different type of substantive review, but

rather a different judicial capacity in which courts use modern tools in their judicial proceedings. In Iran, this only includes certain actions such as notification of hearing dates, the manner and timing of parties' presence in courts and prosecutor's offices, notification of decisions, and similar actions. However, even this method of litigation faces problems and challenges, such as misuse of electronic notification according to Note 1 of Article 13 of the Electronic Notification Regulations. This can lead to individuals (such as the accused, convicted, witnesses, guarantors, etc.) refusing to receive or view notifications. That is, individuals who are familiar with the electronic system can misuse this method of notification, for example, by keeping their mobile phones turned off or not opening text messages, among other tactics-especially in cases where actual notification to the person is necessary, such as in the seizure of collateral during the enforcement of judgments.

5. Lack of Access to a Defense Attorney:

One of the main guaranties against the violation of human rights at various stages of legal proceedings is the right to have access to a defense attorney. This right is explicitly stated in numerous international documents and regulations as well as in domestic laws. Article 35 of the Constitution, for example, emphasizes the necessity of having the right to an attorney in all courts.

6. Legal Barriers:

Although Iran's Civil Procedure Code is derived from the French Civil Procedure Code, unlike the French law, it does not contain explicit legal provisions regarding the principle of adversarial proceedings and the right to defense. However, these principles can be found scattered in articles 57 and 67 to 83 of the Iranian code.

Part Six: Barriers to the Principle of Public Hearings

- d) Theoretical barriers
- e) Legal barriers
- f) Practical barriers

d) Theoretical Obstacles

The term "theoretical obstacles" refers to those defects that, according to some legal scholars, are inconsistent with the principles of a fair trial. These include:

To a large extent, it disrupts the order and calm of the proceedings. The tranquility and silence prevailing in the courtroom significantly contribute to the implementation of a fair trial, and the presence of unrelated individuals in the hearing undermines this. It leads to judgments by the uninformed public regarding the subject matter. Individuals attending public hearings may form prejudgments about the outcome, and if the court's decision does not align with their views, it can lead to questioning the judiciary. It results in the disclosure of the secrets of those being judged, especially if the accused are acquitted. It imposes costs on the judiciary. Providing facilities and equipment such as audiovisual tools, chairs,

tables, and other necessities for unrelated persons attending the trial creates expenses for the judicial system. In some cases, the presence of individuals causes the parties to the dispute to become emotionally charged, which is incompatible with a fair trial.

e) Legal Barriers

Deficiencies that exist within the law itself regarding the principle of public hearings, such as the lack of comprehensiveness and clarity in the term "public" and ambiguity or deficiency in the constitutional definition of public hearings:

5. Lack of a Comprehensive and Complete Definition of Public Hearings in the Law: Although both the Constitution (Article 165) and ordinary laws (Note to Article 352 of the Criminal Procedure Code, enacted in 2013) consider the free presence of individuals as the criterion for public hearings, in practice, other requirements are also necessary-such as the public announcement of the final verdict. The law does not provide a thorough and all-encompassing definition of what constitutes a public hearing.
6. Broad Scope of Exceptions in the Terms "Contrary to Public Decency" and "Public Order": In legal theory, it is said that an excessive number of exceptions undermines the rule. The scope of exceptions under the terms "contrary to public decency" and "public order" is so

extensive that it often surpasses the rule itself, allowing for significant restriction of public hearings.

7. Ambiguity in the Terms "Contrary to Public Decency" and "Public Order": The legislator has not provided any definition or clear criteria for these two terms, resulting in practical problems during implementation. The lack of precise definitions leads to inconsistent and sometimes arbitrary application of exceptions to public hearings.
8. Lack of Enforcement Guarantees for the Principle of Public Hearings: The legislator, in both constitutional and ordinary laws, has not addressed what happens if, intentionally or unintentionally, court sessions are not held publicly. There is no clear consequence for the issued verdicts in such cases, nor is it specified whether the parties to the case can object to the verdict on this basis.

f) Practical (executive) obstacles

These refer to obstacles that arise at the stage of implementing the principle. The legislator, in Article 156 of the Constitution, has made the judge of the court the criterion for determining whether the principle of public hearings is to be implemented or not. This can lead to judges invoking this discretion in an insincere or unjustified manner, and thus become a serious obstacle to the implementation of this principle. Furthermore, if due to bias, the judge fails to

recognize the need for a public hearing, neither the court's issued verdict can be challenged on this ground, nor can the judge be subjected to disciplinary or judicial action.

Part Seven: Challenges of Violating Fair Trial Requirements and Restricting the Defendant's Rights of Defense

Paragraph One: Consolidation of Prosecution and Investigation Powers in a Single Authority

According to the principle of separation of the various stages of criminal proceedings, in order to guarantee and protect individual rights and freedoms, prevent judicial despotism, observe the principle of impartiality, and achieve fair trials, each of these stages has been entrusted to independent judicial authorities. One of the most important results of the principle of separation of the different stages of proceedings is that a judge cannot play two roles in a single case.

The prosecutor is responsible for initiating public prosecution and is the authority for prosecution, while the investigating judge is the authority for investigation. Therefore, given the independence of judicial authorities, their activities must be completely separate from each other, and they must have the necessary and sufficient independence in making decisions. The danger of combining the powers of prosecution and investigation in a single authority is so significant that Cambacérès, a jurist before the French Revolution, said: "It sends a shiver down the spine of citizens when the tasks of investigation

and prosecution are concentrated in the hands of a single person" (Ashouri, 2001, 2, 16). The prosecutor is the authority for prosecution, not for investigation, and the investigating judge is responsible for investigation and, in this capacity, is obliged to conduct comprehensive investigations with complete impartiality and to gather evidence both for and against the accused. Our Code of Criminal Procedure also emphasizes this point and states that the investigating judge must collect evidence with full impartiality.

Paragraph Two: Absence of a Referral Judge

Another issue that leads to the violation of fair trial requirements-including the principle of equality of arms and the principle of impartiality-is the referral of cases to investigating judges and assistant prosecutors by the prosecutor. This responsibility is also assigned to the referral assistant prosecutor. In practice, the prosecutor selects one of the assistant prosecutors through an internal order as the referral assistant, who then refers cases to the investigation and prosecution branches. Regardless of the fact that, in practice, the referral assistant is usually chosen from among the less experienced assistant prosecutors and refers cases to an investigating judge with more experience and seniority, the main issue is that the referral of cases is carried out by the prosecution authority. The prosecutor is the prosecuting authority, and the decision as to which investigating judge a case should be referred to must be made by a judge independent of the prosecutor to ensure the principle of impartiality is

upheld. In many countries, such as Germany in 1975 and Italy in 1988, as well as in the Rome Statute (adopted in 1998, which is the founding document of the International Criminal Court), the position of investigating judge has been eliminated. This was done because the investigating judge, being less experienced and less senior than the prosecutor, could not avoid being influenced by the prosecutor in their decisions as much as necessary. In a country like France, the institution of the investigating judge has been retained, but the authority to detain suspects has been removed from them. If the investigating judge wishes to detain someone, they must present their reasons to an impartial judge, who, after hearing the statements of the prosecutor, the accused, and their defense attorney—that is, after an adversarial review—decides whether or not to detain the accused (Ashouri, 2007, p. 80).

Paragraph Three: Issuance of a Detention Order by the Prosecutor

A temporary detention order or precautionary arrest is the most severe action against a person's liberty during preliminary investigations. Nowadays, due to the conflict of such orders with the principle of presumption of innocence and the protection of individual dignity, legislators have generally agreed that this harsh but effective remedy should only be used in exceptional circumstances. For a person to be detained, there must be a reasonable suspicion of the commission of a crime and a risk of flight. This

means that the concern about the commission of a crime must be justified, and the measure taken in each case must be proportionate. In evaluating cases, all circumstances of each file, and especially the character of the individual, must be considered. For example, whether the person has a history of committing such crimes, and whether it is likely that, if released, the person would commit another crime. The issuance of a temporary detention order by the prosecutor is a result of the prosecutor's authority to conduct investigations. According to paragraph (f) of Article 3 of the Law Amending the Law on the Establishment of Public and Revolutionary Courts (2002), in crimes that do not fall under the jurisdiction of the Provincial Criminal Court, the prosecutor has all the duties and powers of an investigating judge, and on this basis, can issue orders for temporary detention, securing bail, and changing bail conditions. If the investigating judge independently issues a temporary detention order, he or she is obliged to send the case to the prosecutor for review within 24 hours. In case of disagreement, the prosecutor's opinion prevails, and the prosecutor's approval is required to lift the temporary detention order. Furthermore, if the prosecutor requests detention and the investigating judge disagrees, the matter will be resolved in the relevant public or revolutionary court, as appropriate.

Paragraph Four: Lack of Complete Independence of the Investigating Judge from the Prosecutor

Considering the principle of independence of

judicial authorities, the prosecutor is responsible for prosecution and the investigating judge is responsible for investigation. In principle, the prosecutor should not interfere with the actions and decisions of the investigating judge. However, since the prosecutor is one of the parties to the public case, he has the right to object to the actions and decisions of the investigating judge if he deems them illegal, just like any other party to the case. Nevertheless, the investigating judge must be an impartial judge, completely independent from the prosecutor and the courts. However, our legislator has deviated from this principle, and according to paragraph (h) of Article 3 of the Law Amending the Law on the Establishment of Public and Revolutionary Courts (2002), it has been stipulated that the prosecutor has the right to supervise and give necessary instructions in matters referred to the investigating judge. This is contrary to the independence of the investigating judge in seeking the truth. On the other hand, it is stipulated that if the prosecutor finds the investigations of the investigating judge incomplete, he can request their completion, even if the investigating judge considers his investigations complete. In line with making the proceedings adversarial, the prosecutor's request for further investigation from the investigating judge is the prosecutor's right, but the investigating judge should not be obligated to conduct such investigations. Accordingly, in some countries, if the prosecutor makes a request to

the investigating judge, the investigating judge can accept or reject the request, but in case of rejection, he must issue a reasoned order.

Paragraph Five: Failure of the Prosecutor to Prove the Claim in the Public Court Session

The proceedings in court are public, oral, and adversarial, meaning the prosecutor, as one of the main parties to the public lawsuit and based on the principle of "the burden of proof is on the claimant," must prove their claim orally and adversarially in court. However, as is common in many countries, this requirement for the prosecutor to prove the claim in a public court session is often not observed. Instead, after reading the indictment-which is issued by agreement between the prosecutor and the investigating judge based on the indictment order-the accused is told: "If you do not accept your charge, bring evidence to the contrary." Prosecutors often suffice by merely presenting their claim, and the accused and their lawyer are compelled to disprove the evidence that was collected during the preliminary investigation phase by the investigating judge and prosecutor, often in the absence of the accused. Therefore, the defense rights of the accused, human rights standards, and the principle of equality of arms require that the prosecutor be present in court and prove their claim.

Paragraph Six: Non-Adversarial Nature of Preliminary Investigations

The non-adversarial nature of preliminary

investigations means that there is no confrontation between the claimant and the accused or their lawyers to present evidence and argue, as occurs during court proceedings. In this stage, equality between the claimant and the accused is not observed, and the accused is not informed of the evidence presented against them in order to challenge or dispute it, or to request a specific investigation. This is contrary to the principle of equality of arms, which is a requirement of a fair trial, and it restricts the defendant's right to defense. Nowadays, in line with making proceedings more adversarial, special emphasis is placed on the presence of a defense lawyer during the preliminary investigation stage. There are also several provisions in substantive law that have moderated the non-adversarial nature of preliminary investigations, such as the accused's right to request a specific investigation or to request the hearing of witnesses or the opinion of an expert. However, by imposing strict conditions on the involvement of defense lawyers during the preliminary investigation stage, the legislature has restricted the defendant's right to defense and, in a way, has directed the proceedings toward an unfair decision.

Section Four: Examining Obstacles and Fundamental Principles of Adjudication in International Law Civil Lawsuits

Principles, as the foundation of legal structures, represent a diverse set of values and rules

governing a legal system that, despite their variety, share common and uniform characteristics. In every legal system, there are general principles that reflect the values and standards prevailing within that system. Legislators, inspired by these values and desirable ideals, enact rules that are the legacy of past generations and the result of centuries of development. Thus, legal principles and, in the context of adjudication, fundamental principles with their unique features such as continuity over time, generality, and flexibility, are extracted and inferred.

4. Continuity

In a general view, legal principles are considered to embody the spirit of the law, legal rules, or the collective opinions of jurists (Boulanger, 1997: 74), and their permanence and stability are seen as logical for preserving the values and norms these principles aim to uphold. According to some jurists, the continuity and persistence of legal principles and rules are qualities that provide stability and security to the law (Vergès, 2015: 206). Georges Ripert believes: "Human governance and management require a set of stable and solid rules and principles" (Vergès, 2015: 207); this characteristic causes the principles of criminal procedure to also appear as firm and robust foundations that prevent the deviation of the judicial process from the pursuit of justice (Moazen-Zadegan, 2000: 27). Therefore, recognizing the stability of principles alongside their evolution and development is important as it constitutes the features that ensure the continuity

and persistence of principles over time.

4.1. Stability of Principles

From the perspective of some legal scholars (Vergès, 2015: 210), the stability of principles is understood as "the capacity of a rule to withstand and endure through legal reforms." This means that principles "are not confined to a specific period and, as long as they are not repealed by a substitute principle, remain valid. Lawmakers, when enacting laws, and judges, when issuing judgments and interpreting the law, cannot disregard them" (Sadeghi, 2003: 34). Some principles remain constant over time, with their degree of stability and persistence depending on legal support, the extent of social acceptance, or their ultimate purpose. "If the purpose of a principle is strongly valued within society, that legal rule becomes enduring" (Vergès, 2015: 211). Although general legal principles may appear eternal, "in reality, they are not immutable and change along with paradigm shifts in human societies" (Jafari-Tabar, 2014: 203).

4.2. Transformation and Evolution of Principles

The stability and permanence of principles do not mean that they are incapable of change. The transformation and evolution that encompass the body of legal rules also affect principles. These changes and developments, which take place within legal contexts, aim to adapt principles to legal needs and requirements. Although legal rules and principles possess a

certain stability that allows them to resist changes in legal systems, these principles do change over time and, like many social phenomena, are born, live, and eventually disappear. During this period, many legal rules and principles are strengthened, weakened, or transformed. While we may accept that the stability of a principle is a prerequisite for its continuity and survival, the endurance of a principle and the continuation of this persistence require the transformation and adaptation of that principle to the elements of social life and its flexibility in practice.

5. Generality

The fundamental principles of criminal procedure, despite their diversity, reflect the general concepts of justice in the resolution of disputes (Ghamami, 2017: 23). Legal principles, as the rules governing social life, must be devoid of individual characteristics, and what is important is "that the legal rule, when established, should not be restricted to a specific individual or persons, and its content should not be exhausted by a single application" (Hojjati, 2006: 101). Therefore, a legal principle, by its very nature, is general and cannot be limited to a specific case. Achieving the goal of establishing and restoring order in society is only possible through specific legal guarantees for adherence to adjudication principles. The mandatory and general nature of these principles ensures that people do not perceive their establishment as a matter of personal interest, but interpret them as serving the protection of public interests and social values. The generality of law

and the rules and principles derived from it "not only guarantees their fairness, but is also a requirement of lawful governments and a safeguard against tyranny" (Katouzian, 2012: 533). Therefore, the generality of principles must be considered both in their formulation and in their implementation.

5.1. From the Perspective of Formulating Principles

If we accept that procedural principles are fundamental foundations that, in every legal system, prevail over procedural regulations and that legal provisions are derived from these principles, we must inevitably acknowledge that their general and universal nature, as well as the existence of enforcement guarantees, are inseparable elements in the emergence and formulation of a legal principle or rule. Without these two characteristics, procedural principles lose their content and meaning and forfeit their executive power. For this reason, it is essential that the generality of principles and their enforceability be examined as fundamental characteristics of foundational principles.

5.2. From the Perspective of Implementing Principles

Every legal principle emerges within the context of social developments and, in order to sustain and continue its existence, must on the one hand gain social acceptance and value, and on the other hand, compliance with it must be mandatory in order to achieve its ultimate goal,

which is the establishment of order in society. It is evident that the acceptance of a legal principle or rule-especially when citizens are involved in litigation and the pursuit of rights-by society and its acceptance can guarantee respect for its binding nature and compliance with it. This respect, despite the existence of enforcement guarantees for a principle, is sometimes not easily achieved due to a lack of acceptance. Therefore, their social value and obligatory nature are worthy of examination.

6. Flexibility

Another common feature of the fundamental principles of adjudication can be considered their flexibility. Principles, as a diverse set of values and rules governing a legal system, while maintaining stability and certainty, must also possess the capacity for flexibility to adapt to legal needs and necessities as they evolve and develop, and to be effectively implemented within society. Although some jurists have interpreted the acceptance of this feature for principles as tantamount to accepting the lack of certainty and stability in those principles (Wolff, 2011: 552), this view stems from a misunderstanding of the nature of flexibility and its effects from the perspective of the vitality of principles and the diversification of their functions in various legal domains, especially in the criminal procedure process.

6.1. The Nature of Flexibility

Christian Wolff defines the flexibility of legal rules and principles in four distinct dimensions (Wolff,

2011: 552). At first glance, flexibility is recognized as an "inherent characteristic of legal principles and rules." This concept of flexibility can create tension between this characteristic of principles and the certainty of legal rules and principles, and may suggest that the lack of certainty in principles emerges as a necessary effect of their flexibility. Some jurists consider this interpretation an obstacle to the pursuit of justice by legal principles and rules, and, more generally, by law itself, and regard this characteristic as an enemy of the necessity and merit of principles. Proponents of the certainty of principles and the rejection of their flexibility believe that the principle of equality before the law can only be truly applied and enforced in criminal proceedings if all individuals in identical and equal circumstances are not subjected to unequal treatment, and that this cannot be achieved except through the certainty and definitiveness of principles (Manson, 1992: 397).

6.2. Effects of Flexibility

Flexibility in legal principles, rules, and their resulting obligations-both in civil law systems (written law) and common law-is considered a mechanism for achieving just decisions. Judicial practice in both legal systems strives to adapt legal rules and principles during litigation by offering judicial interpretations that align with prevailing social beliefs, values, and their evolution. Therefore, restricting judicial practice to merely following past decisions and denying the interpretability of legal principles and rules

not only endangers the survival and continuity of fundamental principles but also challenges their effectiveness and functionality in meeting social needs (Turcotte, 2019: 191). "Law, just as it originates from society, is also a means of reforming it and has an inseparable relationship with justice. Law is the science of the rules of social life, and like life itself, it cannot be without purpose or aim. So how can its function be limited to confirming the status quo and deeming the evaluation and purpose of its rules futile?" (Katouzian, 2012: 298). If we consider law as a collection of mandatory principles and rules that emerge from the public conscience at any given time-and if we regard the primary source of law as public conscience, and the basis of legal rules and principles as society's need for their governance over social relations (Jafari Langroudi, 2011: 55)-then there would be no fundamental difference between statute and judicial precedent. All are external manifestations of public conscience, seeking to establish order and coherence in the social relations of legal subjects. This same public conscience, which is the foundation of legal rules and principles, requires that when faced with legal issues and matters, the effectiveness of these rules and principles be demonstrated in practice, and that the law acquires the necessary flexibility to harmonize with the realities of the external world.

Conclusion

The obstacles to implementing the strategic principles of adjudication in civil lawsuits in addressing civil claims and achieving fair trials

include: structural or internal barriers, cultural and social barriers, and obstacles related to electronic litigation. Strategic or fundamental principles of procedure, which are neither explicitly stated in the Constitution nor in ordinary law, are nonetheless essential for both civil and non-civil proceedings. However, these principles face numerous obstacles that prevent their effective implementation in Iran's judicial system. A review of scholarly works and articles on this topic, as well as the author's own practical experience in the judiciary, reveals multiple factors and barriers to these foundational principles. Some of these are specific to certain principles, while others are common to all. Specific obstacles include economic barriers, cultural barriers, underdeveloped infrastructure for electronic litigation, lack of access to legal counsel, failure to observe grounds for recusal of judges, lack of administrative and financial independence of the judiciary, among others. Common barriers across all principles include legal and executive obstacles. In reality, these and other potential barriers have resulted in the fundamental principles of procedure not being effectively implemented in our judicial system. Achieving a fair and equitable system of justice-which is the aspiration of Iran's judiciary and judicial systems worldwide-will only be possible when these barriers are fully removed and greater attention is paid to the authority of the principles currently in practice. Given the importance of fair trials, it can be stated that a fair

trial encompasses a set of standards and guarantees designed to protect the rights of parties in the litigation process before a competent, independent, impartial, and predictable court. If the trial is fair, the rights of the parties will not be violated, because justice is a right and should not be administered in an unfair manner. One of the judiciary's goals is to provide justice and resolve disputes; therefore, judges must act in a way that ensures a fair trial. The requirements of a fair trial are a series of principles that must be observed throughout the proceedings. Failure to observe these principles leads to public distrust in the judiciary and has negative consequences. Among the obstacles to justice are personal biases, kinship relations, enmity, and hostility.

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