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Barriers and Enforcement Guarantees of the Principles of Civil Litigation in Iran and the Judgments of the International Court of Justice

1. Mohammad. Rezaei Mofrad¹ : PhD Student, Department of Private Law, Qom Branch, Islamic Azad University, Qom, Iran
2. Mahmood. Ghayomzadeh²: Professor, Department of Law and Education, Saveh Branch, Islamic Azad University, Saveh, Iran
3. Ebrahim. Delshad Maaref³: Assistant Professor, Department of Private Law, Qom Branch, Islamic Azad University, Qom, Iran

*corresponding author's email: maaref@iau-saveh.ac.ir

ABSTRACT

If a trial is fair, the rights of the parties will not be violated, since justice itself is a right, and no judicial process should be conducted in a way that undermines fairness. One of the main objectives of the judiciary is to ensure justice and to resolve disputes; therefore, judges must act in a manner that guarantees a fair trial. The realization of a fair trial requires adherence to a set of procedural and substantive principles throughout the judicial process. The barriers to implementing the general principles of law include legal, substantive, procedural, cultural, and economic obstacles. If these barriers are not removed, they will distort the path of justice, erode public trust in the judiciary, and produce negative social consequences. The International Court of Justice (ICJ), in accordance with the general principle of *pacta sunt servanda* (good faith in treaty performance) and based on its contentious and advisory jurisdiction, issues two types of decisions: judgments (contentious rulings) and advisory opinions. Moreover, before issuing a final judgment, the Court may, under Article 41 of its Statute, order provisional measures. The present paper examines the barriers to implementing the general principles of civil litigation in Iran, particularly in relation to the execution of the ICJ's decisions—especially provisional measures and advisory opinions—despite their non-binding nature, as well as the mechanisms for rendering such decisions binding and the challenges associated with their enforcement.

Keywords: *barriers, enforcement guarantees, principles, civil litigation, International Court of Justice*

Introduction

The general legal principles of procedure, which the judge derives from the dispersed provisions of laws, are considered legal principles whose applicability is not limited to a particular case or subject and continue to exist until they are replaced by another principle or set of principles (1, 2). These principles, which encompass the most fundamental legal rules, govern all subsidiary legal provisions (3). The general procedural principles, as one category of legal principles, share the same general features of permanence and abstraction that exist in other branches of law (4, 5). Principles such as the adversarial principle, the principle of timely and proper notification of court documents and sessions, the principle of independence and impartiality of the judge, and the principle of confidentiality are inherently linked to public order and influenced by it (6, 7). The violation of these general



procedural principles or related formalities—such as disregarding the procedures for challenging arbitrators—creates doubt and uncertainty in the judicial process and may ultimately lead to annulment of proceedings (8, 9).

Procedural principles differ from procedural formalities, as the latter, in origin, foundation, and effect, are distinct from the former (2). The International Court of Justice (ICJ), as one of the principal organs of the United Nations, exercises two types of jurisdiction: *contentious* and *advisory* (10, 11). Based on these, it issues two types of decisions—*judgments* (contentious rulings) and *advisory opinions*. Moreover, pursuant to Article 41 of its Statute, the Court may issue *provisional measures* prior to rendering its final judgment (12, 13).

Given that (1) the Court's judgments are final and binding (Article 94(1) of the UN Charter and Articles 59 and 60 of the ICJ Statute); (2) the Court's provisional measures were recognized as binding in the *LaGrand* case (Judgment of June 27, 2001); and (3) advisory opinions, by their nature, are not binding on the requesting organ or states, it is crucial to analyze these decisions because they address international legal disputes whose implementation may profoundly affect international peace and security (14, 15). Therefore, it is necessary to examine what enforcement guarantees exist for each of the three types of decisions—judgments, provisional measures, and advisory opinions (16, 17).

Accordingly, this paper, using a descriptive-analytical method, explores certain barriers to the realization of the general procedural principles—particularly theoretical and legal barriers—and their influence on the implementation of justice. Simultaneously, it examines the enforcement guarantees associated with each type of ICJ decision (judgments, provisional measures, and advisory opinions) to identify the obstacles and enforcement mechanisms, and to propose recommendations aimed at effectively achieving these principles in practice (18, 19).

Barriers to Procedural Principles in Iranian Civil Litigation

1. Barriers to the Principle of the Right to Litigation and Access to a Fair Trial (Legal Barriers)

Legal barriers refer to all obstacles arising from existing laws—whether constitutional or statutory. In other words, the law, which serves as the primary instrument in the hands of judicial authorities from judges to administrators, and as the final arbiter in the adjudication process, can itself impede access to the two fundamental rights of litigation and fair trial (1, 5). Some of these barriers are as follows:

1.1. Existence of Unclear and Non-Definitive Laws

When laws lack precise and explicit rules, they create room for arbitrary and subjective interpretation by judicial officials, leading to inappropriate outcomes (8, 9). A clear example can be found in the principle of the publicity of trials (Article 165 of the Constitution). Due to the lack of a clear definition of “publicity” and ambiguity in its application, judges have been left to determine its scope based on personal judgment, without explicit clarification of what constitutes public order or public morality (6, 20).

1.2. The Need to Reconsider Article 157 of the Constitution

Under Article 157 of the Constitution, the Supreme Leader appoints a just jurist knowledgeable in judicial matters and competent in management for a five-year term as the head of the Judiciary—the highest authority in the judicial branch. Accordingly, the head of the Judiciary personally assumes responsibility for establishing necessary institutions, drafting judicial bills, and managing administrative and personnel affairs related to judges, assuming the former responsibilities of the High Council of the Judiciary (4). Although this structure simplifies decision-making, entrusting extensive powers such as the appointment, dismissal, and transfer of judges to one individual raises legitimate concerns regarding concentration of authority (5). While the head of the Judiciary consults with the Chief

Justice of the Supreme Court and the Prosecutor General on certain appointments and transfers, the ultimate decision rests solely with him, warranting critical reflection (7).

1.3. Unwarranted Expansion of Exceptions to Procedural Principles in Civil Litigation

The principle of procedural formalism does not apply absolutely to all civil cases (1, 2). In some civil disputes, formalism is accompanied by limitations and exceptions enacted to expedite proceedings and prevent undue delays (5). For instance, in cases of unlawful possession, nuisance, and obstruction of rights, the legislator—due to the urgency of these matters—has, under Article 177 of the Civil Procedure Code, waived the formal procedures applied in other cases.

The critical issue is the lack of clear enforcement guarantees when this principle of procedural formalism is violated. The legislator has not expressly addressed the consequences of such violations and has only sporadically referred to enforcement measures in certain provisions (8). Evidently, a single enforcement mechanism cannot apply uniformly to all procedural formalities; hence, each procedural rule must be examined individually (4, 9).

1.4. Ambiguities and Constraints in Procedural Principles of Civil Litigation

Significant legal ambiguities exist concerning the following three issues: the formation of trial sessions, management of hearings, and adjournment of proceedings (5).

1. **Formation of the Trial Session:** A trial session is one in which the conditions for adjudication are met, and the defendant is afforded the opportunity to defend against the plaintiff's claims, considering any amendments permitted under Article 98 of the Civil Procedure Code (8). The law defines the first hearing as contingent upon two conditions: (a) readiness for adjudication, and (b) the defendant's ability to present a defense. Thus, if the case is procedurally ready but the defendant lacks the opportunity to respond, the session cannot be deemed the "first hearing," and the parties' procedural rights apply only in subsequent sessions. However, the legislator has not clearly specified what constitutes readiness for adjudication or the nature of the defendant's right to defense (1, 20). This raises questions such as: what are the criteria for determining readiness and the opportunity for defense? What happens if disagreements arise between judges, litigants, or their attorneys on these issues? What enforcement mechanism applies in such cases?
2. **Management of the Trial Session:** Observance of procedural principles and formalities—such as proper session formation, appropriate management of hearings, the necessity of adjournment, and adherence to adversarial principles—is essential to ensuring justice (8, 9). Excessive adjournments lead to judicial delays, while improper management of hearings undermines the rights of the parties and compromises the validity of rulings (4). Although numerous ambiguities remain regarding the conduct, management, and adjournment of sessions, one established rule is that adjournments must always have a legitimate legal justification; otherwise, they constitute a disciplinary offense for the judge (5, 6).

3. Adjournment of the Hearing Session: One of the established principles in civil procedure is that adjournment of a hearing session must not occur without a legal justification; rather, it must always be accompanied by a legitimate and lawful reason. Otherwise, it constitutes a disciplinary offense for the presiding judge (5, 8). Unjustified adjournments evidently result in delays in the administration of justice, as Articles 13 and 15 of the *Law on Supervision of Judges' Conduct* classify the unwarranted adjournment of hearings without legal grounds or explanation as a disciplinary offense punishable by sanctions ranging from degree four to seven (4).

In this regard, several disciplinary rulings have been issued concerning improper adjournments. For example, in Judgment No. 3652 (dated January 20, 1945), it was held that:

“Accepting the defendant’s request for an adjournment to prepare defense materials and evidence—when sufficient time had already elapsed between service and the hearing date—constitutes misconduct.” Similarly, Judgment No. 242 (dated January 14, 1997) stated that “unjustified adjournments and unreasonable delays in adjudication constitute a violation of judicial duties.” Furthermore, Judgment No. 214 (dated November 4, 2003) provided that “adjourning a session merely to obtain explanations from the parties, without specifying reasons for the adjournment and despite their presence at the hearing, constitutes misconduct.” These rulings clearly illustrate that adjournment without lawful reason undermines judicial efficiency and procedural integrity (1, 9).

1.5. Explicit Legislative Exceptions to Procedural Principles

The legislator has, in many instances where expedited or extraordinary proceedings are required, explicitly stipulated that such cases shall be handled *without adherence to procedural formalities* (1, 2). For example, cases involving unlawful possession, nuisance, and obstruction of rights are exempted from the ordinary procedural rules. Similarly, cases concerning tenants’ access to utilities (such as water, electricity, or telephone) and objections to decisions of the Urban Land Commission under Article 12 of the Urban Land Law are to be heard urgently and without observing standard formalities.

However, the term “procedural formalities” has not been defined in any statutory provision. Although the Legal Department of the Judiciary has issued multiple advisory opinions, none provide a comprehensive definition or examples of procedural formalities (6, 20). Therefore, procedural formalities are entirely distinct from procedural principles: the court must uphold the *principle of adversariality* and convene hearings for the examination of the plaintiff’s evidence and the defendant’s defense (5, 8).

1.6. Lack of Public Awareness of Procedural Rights in Civil Litigation

Paragraphs 2 and 14 of Article 3 of the Constitution of the Islamic Republic of Iran emphasize two key objectives: (1) raising public awareness through the press and mass media, and (2) ensuring fair judicial security and equality before the law. The failure to implement these constitutional principles effectively has led to widespread public ignorance of legal rights, resulting in the deprivation and loss of legitimate claims and entitlements (4, 7).

1.7. Substantive Barriers to the Realization of Strategic Procedural Principles in Civil Litigation

Substantive barriers refer to legislative deficiencies in constitutional or statutory provisions that impede the realization of strategic procedural principles (1). Although the term “fair trial” is not explicitly mentioned in Iran’s legal texts, its essential components and general guarantees—rooted in Islamic jurisprudence—are reflected in both the Constitution and ordinary laws (5, 9). The enforcement guarantees of these constitutional principles relating to fair trial are delineated in ordinary laws, yet ambiguities persist in their scope and implementation (4).

1.8. Non-Observance of the Right to Privacy

Respect for privacy has become a fundamental legal concern in modern judicial systems (6, 7). Beyond protecting the privacy of litigants, courts must also safeguard the privacy of third parties whose personal information may arise during proceedings (5). Privacy violations may stem from state surveillance, electronic technologies, or private actors.

1.8.1. State-Related Threats

Governments can be among the most significant violators of privacy in cyberspace. Following terrorist incidents—especially after the September 11, 2001 attacks—the U.S. government and subsequently many others prioritized

national security over privacy. This shift led to measures such as mass surveillance of citizens' phone communications, monitoring of foreign leaders, and stricter immigration policies. These practices illustrate how governments, under the pretext of public safety, may undermine individual privacy (14, 19).

1.8.2. Threats from Electronic Devices and Technologies

The growing desire for online connectivity and digital convenience has turned cyberspace into a venue prone to privacy violations. Lack of awareness about safe online behavior, inadequate education, and outdated legal protections have made individuals increasingly vulnerable (3, 12). Consequently, constant online activity heightens the risk of privacy breaches in the cyber domain.

1.8.3. Threats from Private Individuals

Privacy intrusions in digital environments often stem from personal motives—such as anger, jealousy, revenge, entertainment, inferiority complex, or disregard for ethical and social values. Perpetrators may cause serious harm to victims' reputation, property, or even life (1, 4).

1.8.4. Hackers

Another group that threatens privacy are hackers and ordinary internet users who, driven by various motives, unlawfully access others' personal data. Some commit these acts for financial or ideological reasons, while others violate privacy for amusement or curiosity (5, 8).

1.8.5. Constitutional Perspective

Unlike the constitutions of some countries that explicitly enshrine the right to privacy, Iran's Constitution contains no single article directly addressing it. However, several provisions implicitly protect related aspects, including private life, physical and informational privacy, and communications confidentiality (6, 7). Influenced by Islamic and Quranic teachings, these constitutional provisions—such as Articles 19, 20, 22, 24, 25, 26, 28, 32, 33, 38, 39, and 40—indirectly uphold the sanctity of private life (4, 20).

1.8.6. Other Laws

Iran's *Computer Crimes Act* includes specific provisions to protect privacy in digital environments, aligning with laws criminalizing unauthorized audio-visual activities (5, 9). However, this Act confines its protection to computer systems, whereas the *Law on Punishment of Unauthorized Audio-Visual Activities* provides broader coverage. Both laws, however, allow limited exceptions—granting judicial authorities the power to inspect and seize electronic data when there is strong suspicion of crime detection or identification of offenders (Article 36 of the *Computer Crimes Act*) (1, 4).

1-9-1. Failure to Observe the Principle of Preserving Human Dignity, Honor, and Reputation

1-9-1-1. Principle of Human Dignity

One of the requirements of the principle of human dignity is the citizen's right to a fair trial. In other words, a fair trial is a process founded upon human dignity, and compliance with its requirements produces conduct grounded in dignity, justice, and equity (5, 6). On this basis, the principle of public hearings—as one manifestation of a fair trial—is not an exception to this general rule; contrary to certain views, it is rooted in human dignity and is designed to protect the individual against the sovereign power of the state (4, 7). Conversely, if human dignity is taken as the foundation of a fair trial, then treating publicity of hearings as antithetical to dignity would deprive it of its place among the core elements of a fair trial—a view unsupported by international instruments and most domestic systems, which accord substantial recognition to open justice (1, 3).

1-9-1-2. Principle of Preserving Personal Honor and Reputation

Grounding human dignity and honor in the individual's right to free choice in determining one's personal destiny establishes a firm moral foundation for this dimension of human life; it leaves no room for denying this right to anyone who takes moral agency and social justice seriously. Put differently, one cannot speak of a responsible, ethical person and of a just social order while simultaneously denying individuals their freedom of choice. The ethical quality of persons and the justice of social systems both hinge on the powerful idea of the right to choose. This individual right—an operational expression of the principle that the human being is an end in himself—plays an exceptional role in the realm of political norms. Its corollary is the prohibition on others deciding for a competent adult, for such decision-making ignores human personhood and treats the individual as a mere instrument. In truth, denying others' freedom of choice is nothing but instrumentalization. A competent adult is responsible only when he decides for himself; his action is ethically praiseworthy or blameworthy only if it has been freely chosen (4, 7).

As noted, one facet of privacy is the bodily or physical privacy of persons. Individuals expect their bodies and physical identities to be free from unauthorized searches, inspections, or other forms of surveillance by others. Article 3 of the Draft Law on Privacy, under Chapter Two entitled "Bodily Privacy," provides: "Human dignity and the freedoms inherent therein are inviolable. No one may be subjected to search or inspection, whether before or after arrest, except in accordance with law." This formulation aligns the protection of bodily integrity with the broader guarantees of dignity and fair trial (5, 6).

1-10-1. Breach of Judicial Impartiality and Lack of Judicial Independence

Judicial independence—and the disregard of recommendations by influential actors, whether official or unofficial—is a cornerstone of adjudication and a guarantor of justice. Justice is realized when judges are chosen from among the most virtuous, knowledgeable, and upright individuals. Such judges can properly discharge their grave responsibility to safeguard the individual and social rights of the public only when they enjoy freedom from interference and remain beyond the reach of manipulative politicians and powerful actors (1, 3).

1-11-1. Ambiguities and Weaknesses in the Right to Counsel

The necessity of defense counsel for the accused in criminal (and, by analogy, protective roles in civil) proceedings arises from the inherent imbalance between the defendant and the prosecutor: without counsel, the defendant stands alone against an adversary fully versed in legal principles and equipped with institutional resources. In such circumstances, the presence of an attorney, freely retained, is essential to mount an effective defense (8, 9).

1-12-1. Implementation Barriers

Because many judges are reluctant to conduct public hearings—and thus avoid implementing this principle—open justice is either not carried out in many courts or is only rarely observed. This overall practice indicates insufficient institutional attention to a key mandatory rule of procedure. In systems like Iran's, where the quality of judicial management significantly affects the criminal-justice and judicial policy cycle, part of the obstacles to open hearings must be sought in judicial behavior and performance (4, 5).

1-13-1. Cultural and Social Barriers

Cultural and social obstacles, which can be examined across various domains, are to a significant extent remediable through appropriate cultural groundwork and public education. Some authors identify two essential elements for holding public hearings: public awareness of such hearings and permission to attend them. On this basis, public ignorance of legal rights—including the principle of open hearings—and insufficient understanding of its high purpose and impact constitute major barriers to transparency in adjudication. Therefore, at all executive

levels, necessary conditions must be provided, including facilities and equipment, and adequate training for administrative authorities and the public regarding the necessity of holding open sessions. In practice, however, the lack of capacity, infrastructure, and training often means that not only is public or media attendance impossible in many hearings, but even access to judgments is fraught with difficulty (1, 5).

Enforcement Guarantees and Challenges Relating to ICJ Decisions

2. Enforcement of Advisory Opinions

By their nature, advisory opinions are not binding. Neither the Charter and Statute of the International Court of Justice nor its Rules of Court attribute binding force to advisory opinions; in ordinary practice, the advice of one organ to another is not per se compulsory, as that would contradict the very concept and rationale of consultation (10, 11). States, therefore, assume no legal obligation to comply with the ICJ's answer to a legal question posed in advisory form; rather, the opinion articulates a clear view on a legal issue (3, 21).

There is, however, no obstacle to interested states or the requesting organizations declaring in advance that they will abide by the Court's advisory opinion. The Court itself has stated—in its Advisory Opinion of March 30, 1950 on *Competence of the General Assembly for the Admission of a State*, and in the 1926 *South West Africa* advisory opinions—that advisory opinions are consultative in character and therefore possess no binding force (13, 14). While some have perceived, for example in the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal* (1954), that certain aspects of the Court's determinations might operate with binding effect, treating advisory opinions as legally compulsory would contradict the Charter and the Statute (18, 22).

That said, specific constituent instruments of competent organizations authorized to seek advisory opinions sometimes provide that an ICJ advisory opinion shall be decisive for the relevant organs or parties. For instance, instruments concerning the Privileges and Immunities of the United Nations (communicated by the General Assembly on February 3, 1947) contemplated the conclusive effect of an advisory opinion for the parties to the dispute (11, 17). In practice, because requests for advisory opinions are typically voluntary and consensual, the requesting organs or states often comply with the Court's reasoning and implement its conclusions in due course (12, 15).

2-1. The Role of the Security Council in Ensuring Compliance with the ICJ's Provisional Measures

The role of the United Nations Security Council in ensuring the enforcement of the International Court of Justice's (ICJ) provisional measures can be conceived in two ways. First, the Council may act under Article 94(2) of the UN Charter to facilitate compliance with a provisional order. Second, given its awareness of the provisional measures and its primary responsibility for maintaining international peace and security, the Council may independently adopt a resolution requiring implementation of the measures. Although such a resolution would be issued independently, it would incorporate the actions specified in the ICJ's provisional order, as these are often necessary to preserve peace and security (14, 17).

A key question arises: may a state in whose favor the provisional measure has been issued invoke Article 94(2) and refer the matter to the Security Council? Jurists differ on this point. The Council's practice, however, demonstrates a tendency to act in alignment with the ICJ's provisional orders rather than in contradiction to them. Thus, the Council's role can take two forms: (1) issuing a resolution consistent with the Court's provisional measures to facilitate their enforcement, or (2) adopting a resolution—given its peacekeeping responsibilities—where a case

may be simultaneously before both the ICJ and the Council, either supporting or opposing the ICJ's order. Both forms are analyzed below (10, 15).

2-2. Security Council Resolutions Consistent with the ICJ's Provisional Measures

Under Article 94(2) of the Charter, when the ICJ renders a judgment and the losing party fails to comply, the prevailing state may refer the matter to the Security Council. The Council may then recommend or decide upon measures to give effect to the judgment (3, 17). The extension of this provision to provisional measures, however, remains contentious.

Some legal scholars argue that since provisional measures are binding, Article 94(2) must also apply to them—thus making the Security Council the guarantor of enforcement (13, 22). Others contend that the term “judgments” in Article 94(2) refers exclusively to final decisions of the Court and not to provisional measures, which serve a distinct procedural function (18, 21). According to this view, a distinction must be made between the binding nature of provisional measures and their enforcement mechanism. While provisional orders may be considered “decisions” within the meaning of Article 94(1)—which obliges UN members to comply with ICJ decisions—they do not qualify as “judgments” under Article 94(2) that could trigger Security Council enforcement.

Despite this debate, what matters most is the interpretive approach of the ICJ and the Security Council, since the question concerns provisions of the Charter and the Court's Statute that connect these two organs. The ICJ, in its jurisprudence, has never expressly stated whether Article 94(2) applies to provisional measures (12, 16).

2-3. Security Council Resolutions Contrary to the ICJ's Provisional Measures

The relationship between the Security Council and provisional measures outside the scope of Article 94(2) involves analyzing whether the Council's independent actions can affect or contradict the ICJ's orders (10, 14). As Article 41(2) of the ICJ Statute stipulates, the Court must notify the Security Council and UN members of any provisional measures it prescribes. This notification underscores that such measures may implicate issues of international peace and security, areas primarily entrusted to the Security Council (15, 17).

A case may simultaneously be under consideration by both organs—the ICJ addressing its legal aspects and the Security Council handling its political dimensions. In such circumstances, one party may request provisional measures from the ICJ, while the other petitions the Council for a resolution. Alternatively, after the ICJ issues a provisional order recommending specific protective actions, non-compliance by one party could threaten peace and security, prompting the Council to intervene under its Chapter VII powers, independently of Article 94 (3, 22).

2-4. The Relationship between the Security Council and the ICJ in the Context of Provisional Measures

Where a provisional order's non-compliance constitutes or threatens a breach of peace, the Security Council may invoke Article 39 of the Charter and adopt measures under Articles 41 and 42 to enforce the Court's order (2, 14). This effectively provides an enforcement mechanism for provisional measures through the Council without relying on Article 94. Moreover, under Article 40, the Council may, before acting under Articles 41 or 42, call upon the parties to implement temporary measures.

Accordingly, when the ICJ has already prescribed provisional measures, the Council may endorse identical actions under Article 40 of the Charter, incorporating them into a binding resolution adopted under Chapter VII. In this way, the Security Council may transform the ICJ's provisional measures into mandatory obligations for the parties (16, 19).

2-5. Concurrency of Jurisdiction between the ICJ and the Security Council

When the jurisdictions of the ICJ and the Security Council overlap, complex legal questions arise—particularly when the Council seeks to adopt a resolution inconsistent with the ICJ's provisional measures or one that prevents the Court from acting. Four issues are noteworthy:

1. Whether the ICJ can still issue a provisional order when the Council has adopted, or intends to adopt, a resolution that contradicts the requested measures.
2. Whether the ICJ, when examining a request for provisional measures, may review or invalidate a Security Council resolution.
3. Which prevails when the Council acts under Chapter VII after the ICJ has issued provisional measures: the binding resolution or the Court's order.
4. Whether the ICJ can reflect obligations contained in a provisional order within its final judgment if that order is superseded by a Council resolution (18, 22).

The *Lockerbie* case illustrates this tension. Unlike earlier cases such as the *Oil Platforms* and *Hostages in Tehran* disputes—where one party approached both the ICJ and the Security Council—here, different parties resorted to different organs: the United Kingdom and the United States brought the matter to the Security Council under Article 35(1) of the Charter, while Libya referred the dispute to the ICJ under Article 36(1) of its Statute (13, 15).

The ICJ encountered no jurisdictional obstacle to hearing the case but faced difficulty regarding provisional measures, as Libya's request directly conflicted with Security Council resolutions on the same matter. The Court ultimately gave precedence to the Council's resolution, reasoning that Libya's claim derived from the Montreal Convention, whose Articles 7 and 8(3) permitted Libya to prosecute its nationals domestically rather than extradite them. Nevertheless, the ICJ concluded that Security Council resolutions under Chapter VII prevail over inconsistent treaty-based claims (3, 14).

This reasoning suggests that a Security Council resolution may preclude the ICJ from prescribing provisional measures. Yet, questions remain: if the ICJ itself had independently prescribed measures consistent with Libya's request under the Montreal Convention, would the Charter's obligations still take precedence? Are states equally bound to comply with ICJ decisions made under the Charter as they are with Security Council resolutions? If so, what enforcement mechanism would ensure compliance?

In such scenarios, when the ICJ deliberates on provisional measures, it confronts two possibilities: it may determine that the Council's resolution exceeds its authority, or it may accept the Council's competence but still face conflict between the resolution's content and the Court's intended measures (2, 12).

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Accordingly, when the ICJ has already prescribed provisional measures, the Council may endorse identical actions under Article 40 of the Charter, incorporating them into a binding resolution adopted under Chapter VII. In

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4. Whether the ICJ can reflect obligations contained in a provisional order within its final judgment if that order is superseded by a Council resolution (18, 22).

The *Lockerbie* case illustrates this tension. Unlike earlier cases such as the *Oil Platforms* and *Hostages in Tehran* disputes—where one party approached both the ICJ and the Security Council—here, different parties resorted to different organs: the United Kingdom and the United States brought the matter to the Security Council under Article 35(1) of the Charter, while Libya referred the dispute to the ICJ under Article 36(1) of its Statute (13, 15).

The ICJ encountered no jurisdictional obstacle to hearing the case but faced difficulty regarding provisional measures, as Libya's request directly conflicted with Security Council resolutions on the same matter. The Court ultimately gave precedence to the Council's resolution, reasoning that Libya's claim derived from the Montreal Convention, whose Articles 7 and 8(3) permitted Libya to prosecute its nationals domestically rather than extradite them. Nevertheless, the ICJ concluded that Security Council resolutions under Chapter VII prevail over inconsistent treaty-based claims (3, 14).

This reasoning suggests that a Security Council resolution may preclude the ICJ from prescribing provisional measures. Yet, questions remain: if the ICJ itself had independently prescribed measures consistent with Libya's request under the Montreal Convention, would the Charter's obligations still take precedence? Are states equally bound to comply with ICJ decisions made under the Charter as they are with Security Council resolutions? If so, what enforcement mechanism would ensure compliance?

In such scenarios, when the ICJ deliberates on provisional measures, it confronts two possibilities: it may determine that the Council's resolution exceeds its authority, or it may accept the Council's competence but still face conflict between the resolution's content and the Court's intended measures (2, 12).

2-5-6. Relationship between Provisional Measures and Security Council Resolutions Adopted Ultra Vires

The Charter of the United Nations contains no provision authorizing one organ to review or annul actions taken by another organ that exceed its legal powers (3, 14). Therefore, if the Security Council were to adopt a resolution contrary to international law or beyond the limits of its authority, the Charter offers no explicit mechanism for challenging or invalidating such a resolution (13, 22).

Some scholars argue that member states retain the right to protest against an ultra vires resolution. Others contend that the International Court of Justice (ICJ) can play a corrective role in such circumstances (15, 18). Specifically, if the ICJ—while adjudicating a case—finds it necessary to examine a Security Council resolution and

determines that its content exceeds the Council's authority, that judicial finding provides legal and moral support for states wishing to contest the resolution (2, 16).

However, this issue remains unsettled in both doctrine and practice. In the context of provisional measures, if the Security Council adopts a resolution that prevents the ICJ from issuing such measures, and the Court subsequently concludes that the resolution was adopted in violation of international law, then—under the Charter and the ICJ Statute—no legal obstacle remains to the Court's exercise of its authority (17, 19).

The ICJ is not obliged to verify, before prescribing provisional measures, whether the Security Council's conduct poses any legal restriction. Once the Court issues provisional measures, they become binding on the parties, and thus take precedence over any rights purportedly conferred by an unlawful Security Council resolution (12, 22). Although the ICJ's finding of the invalidity of a Security Council resolution does not formally bind the Council itself, it is nevertheless binding upon the parties to the dispute, by virtue of their obligations under the UN Charter and the Statute of the Court (10, 21).

Consequently, the resolution would have no legal effect between the parties concerned, and neither party may claim exemption from compliance with the ICJ's order on the grounds that the Court lacks the power to annul a Security Council resolution (3, 14). The conclusion, therefore, is that in such circumstances, the ICJ retains jurisdiction to issue provisional measures, and those measures are binding upon the parties. Nevertheless, recourse to the Security Council for enforcement would not be possible, as this scenario inherently reflects institutional tension between the Court and the Council—a situation that, though rare, underscores the delicate balance between the judicial and political functions of the United Nations system (15, 17).

Conclusion

The general legal principles of procedure, though neither explicitly stated in the Constitution nor in ordinary legislation, are indispensable to the administration of both civil and non-civil justice. Nevertheless, their implementation in Iran's judicial system faces numerous obstacles that hinder the realization of these foundational principles. A review of scholarly works and legal studies indicates that several barriers—some specific to certain principles and others common across all—impede their effective enforcement. The specific obstacles include economic constraints, cultural barriers, lack of development in electronic litigation infrastructure, limited access to legal counsel, disregard for rules on judicial disqualification, and the absence of administrative and financial independence within the judiciary. Common barriers shared across all principles include legal and procedural impediments.

In reality, these and other existing obstacles have resulted in the limited application of essential procedural principles in the Iranian judicial framework. The establishment of a fair and impartial judicial system—an aspiration of Iran's judiciary and of judicial systems worldwide—will only be achieved when these barriers are fully removed and greater attention is given to strengthening the principles already in force. A fair trial encompasses a set of standards and guarantees designed to safeguard the rights of both parties in judicial proceedings conducted before a competent, independent, impartial, and predictable court.

When a trial is fair, the rights of litigants are preserved because justice itself is a right, and judicial proceedings should never be conducted in an unjust manner. One of the judiciary's primary purposes is to ensure justice and resolve disputes; therefore, judges must act in ways that guarantee fair adjudication. Achieving a fair trial requires adherence to a series of procedural principles throughout the process; neglecting these principles erodes public

trust in the judiciary and produces adverse social effects. Among the barriers to justice are personal biases, kinship ties, and enmity or hostility that can compromise impartial judgment.

The International Court of Justice's (ICJ) contentious judgments—particularly those arising from cases submitted under an agreement—are generally implemented. When a losing party disregards an ICJ judgment, several mechanisms exist to ensure compliance, all grounded in the principle of *pacta sunt servanda* (agreements must be kept), which represents one of the fundamental principles of law. Once states voluntarily accept the Court's jurisdiction, they assume binding obligations upon the issuance of its judgment. These obligations take two forms: commitments concerning future actions and commitments to redress violations previously committed by the respondent state. Failure to honor such commitments constitutes a breach of obligation, resulting in the state's international responsibility.

To enforce an ICJ judgment, the prevailing state may resort to several avenues. These include referring the matter to the Security Council under Article 94(2) of the UN Charter—wherein, if the respondent is a permanent member, it cannot veto recommendations but may do so concerning coercive measures under Articles 41 and 42. Other enforcement pathways include recourse to the General Assembly, the incorporation of compliance clauses in treaties and agreements, and, ultimately, unilateral measures by the prevailing state.

The ICJ's provisional measures were deemed binding in the *LaGrand* case. Accordingly, to ensure their implementation, the Court itself can play an essential role by including reference to the provisional order within its final judgment, serving as a deterrent against violation. If a state disregards such an order, it must compensate the injured party for any damages in accordance with the final ruling.

Although advisory opinions of the ICJ are non-binding, various mechanisms can indirectly ensure their observance. These include reliance on treaty provisions and the statutes of international organizations, interpretative practices under the UN Charter, application of procedural rules in contentious cases, and the operation of customary international law. An examination of past advisory opinions shows that most fall within one of these categories, thus providing a form of de facto compliance and reinforcing the Court's authority in the international legal system.

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Transparency of Data

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References

1. Sadeghi M. Legal Principles and Their Status in Substantive Law. Tehran: Mizan Publishing; 2005. 26 p.
2. Boulanger J. General Legal Principles and Substantive Law. Journal of the Faculty of Law and Political Sciences, University of Tehran. 1997(36):73, 90.
3. Brownlie I. Principles of Public International Law. Oxford: Clarendon press; 1990.
4. Barikloo A. Civil Liability. Tehran: Mizan Publications; 2018. 22 p.
5. Omid T. Analysis of the Right to a Fair Trial in Light of Human Rights Documents with a Look at Iranian Laws [Ibid.]. 2016:23-40.
6. Gorji AA. The Foundation and Concept of Fundamental Rights. Constitutional Law Journal. 2004(21):9.
7. Yazdi A, et al. A Look at the Concepts of Equality, Equity, and Justice from the Viewpoint of Islamic Ethics and Law. In: Ashouri M, et al, editors. Human Rights and the Concepts of Equality, Equity, and Justice. Tehran: University of Tehran Law and Political Sciences Publications; 2004.
8. Shams A. Evidence for Proving a Claim. Tehran: Drak Publications; 2013. 135 p.
9. Ghamami M, Mohseni H. Transnational Civil Procedure. Tehran: Enteshar Publishing Company; 2011. 15 p.
10. Rosenne S. The World Court: What it is and how it works. London: Martinus Nijhoff publishers; 1963.
11. United N. Repertory Practice of United Nations organs, vol.v. Articles 92 -111 of the Charter. NewYork: 1955.
12. Aceves WJ. Vienna Convention on Consular Relations - Legal Effect of I.C.J provisional measures orders. American Journal of International Law. 2002;96.
13. Rosenne S. The Law and Practice of International Court of Justice. Netherlands: A.W.Sihoff; 1965.
14. Kelsen H. the Law of the United Nations, a Critical analysis of its fundamental problems. NewYork: Frederick A.Praeger; 1951.
15. Bedjaoui M. International Law: Achievements and Prospects. Paris: UNESCO, Martinus Nijhoff publishers; 1991.
16. Bernhardt R. Corfu Channel Case. Encyclopedia of Public International Law. 2: North - Holand Publishing Company; 1981.
17. Bothe M. Certain Expenses of United Nations (Advisory Opinion). Encyclopedia of Public International Law. 21981.
18. Chatero S. The Enforcement of International Judicial and Arbitral Decisions. American Journal of International Law. 1969;54.
19. Vonglahn G. Law among Nations, an Introduction to Public International Law. NewYork: the Macmillan Company; 1966.
20. Dehkhoda AA. Dehkhoda Dictionary. Tehran: University of Tehran Press; 2004. 1218 p.
21. Sima B. The Charter of The United Nations, A Commentary. NewYork, and Oxford: University press; 1995.
22. Kiakobad KH. the International Court of Justice and Judicial Review: A study of The Court's powers with respect to Judgments of the ILO and UN Administrative Tribunals. The Hague/ London/ Boston: Kluwer Law International; 2000.