

The Role of General Principles of Procedure in Commercial Disputes in Iran and the International Court of Justice

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1. Round 1

1.1. Reviewer 1

Reviewer:

The manuscript states in the introduction that “this article is confined to the substantive instances in which the Court has invoked them,” while the title and opening paragraphs emphasize “procedural principles.” This is a serious conceptual contradiction. If the article is about procedural principles, then the ICJ section should focus on procedural principles such as jurisdictional consent, equality of parties, res judicata, good faith in proceedings, evidentiary burden, due process, advisory jurisdiction, intervention, and admissibility. If the article is about general principles of substantive international law, then the title, abstract, and Iranian civil-procedure section must be substantially revised.

The sentence “The analysis of the role and implementation of general procedural principles in commercial disputes in Iran, as well as in the contentious and advisory opinions of the Court, constitutes the subject of this article” promises a comparative analysis, but the body of the manuscript mostly presents two separate descriptive chapters. The authors should add a comparative analytical framework explaining what is being compared: normative sources, judicial functions, sanctions for violation, interpretive methods, or legitimacy effects. Without such a framework, the connection between Iranian civil procedure and the ICJ remains associative rather than analytical.

In the introduction, the manuscript cites several ICJ and PCIJ cases, including Oscar Chinn, Chorzow Factory, Corfu Channel, and the Genocide Convention advisory opinion, but it does not provide case citations, paragraph references, or official ICJ/PCIJ report details. For a legal article, case-law precision is essential. Each case should be cited using authoritative legal citation format, including full case name, year, court, report series, page or paragraph number, and whether the reference is to the judgment, advisory opinion, separate opinion, or dissenting opinion.

In section 1.3.1.2, the statement that “Article 371(3) of the Civil Procedure Code absolutely regards failure to observe procedural principles as a ground for quashing the judgment” needs more nuanced legal analysis. The authors should examine

whether every violation of the adversarial principle automatically leads to cassation or whether materiality, prejudice to defense rights, stage of proceedings, and possibility of cure affect the sanction. A doctrinal discussion of harmless error, procedural nullity, and material breach would improve the scientific rigor of this section.

In section 1.3.1.3, the manuscript refers to “Articles 8 and 91 of the Civil Procedure Code” as the legal basis for independence and impartiality, but it does not sufficiently explain the content of these provisions or how they operate in practice. The authors should specify what each article regulates, how recusal grounds are triggered, what procedural mechanism is available to parties, and whether violation results in disciplinary liability, nullity, cassation, or retrial. The current treatment compresses too many doctrinal consequences into one paragraph.

In section 1.3.1.4, the discussion of public hearings is useful but incomplete because it focuses on publicity as transparency while giving limited attention to its exceptions, limits, and procedural safeguards. The authors should explain who decides to close a hearing, whether such decision must be reasoned, whether parties can challenge it, and how Iranian law balances publicity with privacy, morality, public order, trade secrets, and confidential commercial information. This is particularly important if the article is meant to concern commercial disputes.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The section “1.1. The Concept of Procedural Principles” defines procedural principles as “general, fundamental, and guiding standards,” but the definition remains too broad and does not distinguish principles from rules, standards, rights, guarantees, and formalities. Since the conclusion later relies heavily on the distinction among “principles,” “rules,” and “formalities,” this distinction should be developed at the beginning of the manuscript. The authors should establish criteria such as level of abstraction, derogability, connection with public order, sanction for violation, constitutional status, and interpretive function.

The paragraph titled “The Constructive and Mental Nature of Procedural Principles” states that procedural principles “are conceivable in the realm of the mind” and “are not objectified in the judicial system.” This formulation is philosophically vague and potentially misleading, because procedural principles are often objectified through constitutional provisions, statutory guarantees, judicial decisions, and procedural sanctions. The authors should either refine the jurisprudential meaning of “constructive and mental” or replace it with clearer doctrinal categories such as normative abstraction, interpretive generality, institutional embodiment, and judicial enforceability.

The section “The Mandatory and Non-Derogable Nature of Procedural Principles” treats procedural principles as categorically non-derogable, yet the introduction itself acknowledges exceptions to public hearings. The authors should distinguish absolute principles, qualified principles, and waivable procedural rights. For example, impartiality and judicial independence may be framed as core non-derogable guarantees, whereas publicity, oral proceedings, and certain formalities may be subject to statutory exceptions or party waiver. This taxonomy would make the argument more legally precise.

In section 1.2.1, the manuscript states that “procedural principles are the source from which law is created, and it is the law that must be subordinate to principles.” This is a strong jurisprudential claim that requires deeper theoretical support. The authors should explain whether they are adopting a natural-law, constitutionalist, Dworkinian, or general-principles theory of adjudication. They should also clarify how this claim operates in Iranian positive law, where statutory provisions, constitutional norms, Islamic legal principles, and judicial practice may interact differently.

Section 1.2.2 discusses the interpretive function of procedural principles but remains abstract. The authors should strengthen this section by adding concrete Iranian judicial examples showing how courts have used procedural principles to interpret ambiguous provisions of the Civil Procedure Code. For instance, the discussion could include cases involving defective service, late submission of evidence, denial of the right to respond, recusal of judges, or access to counsel. Without examples, the section reads as general legal theory rather than applied procedural analysis.

In section 1.3, the manuscript introduces two possible classifications of procedural principles but does not justify why it ultimately chooses the two-part classification of “fundamental principles” and “principles relating to quality and organization.”

The authors should explain the analytical advantage of this classification over the three-part alternative. They should also state whether the classification is derived from Iranian doctrine, comparative procedural law, constitutional law, or the authors' own proposed framework.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.