



## MUTUAL ANALYSIS OF PROCEDURAL FAIRNESS AND PROCEDURAL LEGALITY IN THE CONDUCT OF CIVIL COURT CASES

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### **Absract**

This article analyzes the doctrines of procedural fairness and procedural legality in civil proceedings. In particular, on the basis of the scientific and theoretical views of legal scholars, the concepts of correct, timely consideration and resolution of civil cases as tasks of civil proceedings have been studied.

Also, due to the fact that the doctrine of stare decisis is important in the application of the principle of legal certainty, having analyzed the horizontal and vertical functioning of this doctrine, a scientific definition of the concept of the principle of legal certainty has been developed, as well as reasonable proposals have been formulated for the gradual introduction of a mechanism for implementing this principle. This article will also analyze the “Basic Principles on the Independence of the Judiciary” approved by the UN resolution, as well as the principle of legal certainty when courts make clear, complete, reasonable, fair and understandable judicial acts, and explore the scientific and theoretical views of legal scholars on this issue. In the final part, proposals and recommendations are put forward that procedural justice in civil proceedings has priority over procedural legality, which, in turn, helps to ensure the true independence of the judge in making fair judicial decisions, increasing confidence in the justice of each person who goes to court, as well as the introduction of the “principle of legal certainty” into Chapter 2 of the Code of Civil Procedure of the Republic of Uzbekistan as a new principle.

**Keywords:** Civil court, justice, judge, procedural fairness, procedural justice, principle of legal certainty, stare decisis, civil process, court decision, tasks of civil proceedings.





## Introduction

The international non-governmental organization World Justice Project measures civil justice in countries' Rule of Law index through key indicators such as accessibility and affordability of civil justice, free of discrimination, free of corruption, free of improper government influence, absence of unreasonable delay, effective enforcement, accessibility, effectiveness and impartiality of alternative dispute resolution mechanisms[1]. At the same time, one of the urgent problems in the world remains the postponement of court proceedings and reduction of costs, the positive impact of court decisions on society, and the application of the principle of legal certainty in court decisions. In order to eliminate these problems, the transition from the model of classical stability theory to the model of modern argumentation theory in civil proceedings, the prevention of various external, strategic influences in the judicial system, and the improvement of procedural mechanisms of civil proceedings are a requirement of the times.

In the world, various legal systems and doctrines often resolve procedural problems by improving and developing the relevant processes and rules regulating judicial processes. In this regard, research on legal doctrines of Due process[2], Res Judicata[3], Procedural fairness[4], Procedural-justice[5], and the principles of Open justice and Open court [6] principle play an important role in improving the efficiency of justice in civil proceedings. Procedural problems of civil proceedings require the study and analysis of certain scientific and methodological approaches.

In our republic, systematic work is being carried out in the field of introducing the essence and content of these legal doctrines and principles into civil procedural legislation, ensuring justice in rendering of judicial acts, and increasing citizens' trust in the court. In particular, the Decrees of the President of the Republic of Uzbekistan dated September 11, 2023 No. DP-158 "On the Strategy "Uzbekistan - 2030"" and dated January 28, 2022 No. UP-60 "On the Development Strategy of New Uzbekistan for 2022-2026" define defines such important priority tasks as increasing the level of access of citizens to justice, implementing the principles of genuine equality and adversarial proceedings, and the phased digitalization of the judicial system[8]. These tasks require the improvement of legislation in this area based on international standards, as well as the fact that the current legislation does not fully cover the essence and content of the doctrine of Procedural fairness as the goals and objectives of civil proceedings, does not clearly indicate the composition of the participants in the process, determines the procedural rules for considering cases related to the protection of the rights and legitimate interests of a group of persons in court and problems arising in judicial practice in the consideration of cases in the claim



proceedings, writ proceedings and special proceedings, requires a scientific and theoretical study. According to court statistics, "the number of cases considered by civil courts in the first instance (including judicial orders) in the republic in 2020 amounted to 291,132, in 2021 - 518,087, in 2022 - 863,883, in 2023 - 943,892" [9]. The annual increase in the number of civil cases, in turn, negatively affects the volume and workload of judges, and ultimately, the quality and effectiveness of justice. This requires the improvement of procedural mechanisms for civil proceedings.

According to Article 2 of the Civil Procedure Code of the Republic of Uzbekistan, tasks of civil proceedings shall include the following:

the correct, timely consideration and resolution of civil cases with a view to protecting the personal, political, economic and social rights, freedoms and legitimate interests of citizens of the Republic of Uzbekistan, as well as the rights and legally protected interests of enterprises, institutions, organizations, non-governmental associations and citizens' self-governance bodies (hereinafter – the organizations);

promotion of the strengthening of the rule of law and order, ensuring democracy, social justice, civil peace and national harmony;

forming a respectful attitude towards the law and the court.

The above-mentioned general tasks and goals of civil proceedings, in general express the ideas of the whole society about the necessary and expected result of the administration of justice in civil cases. All other norms of civil procedural law and the activities of the participants of the process cannot contradict the stated general tasks and goals of civil proceedings. The principles of civil proceedings also guarantee the implementation of the tasks of civil proceedings in the administration of justice.

Shorakhmetov emphasizes that "regarding the tasks of civil proceedings (civil procedure), it should be said that it consists of the correct, timely consideration and resolution of civil cases in order to protect the personal, political, economic, and social rights, freedoms, and interests of citizens, as well as the rights and legally protected interests of enterprises, institutions, organizations, public associations, and bodies of citizen self-government"[10].

According to M.M. Mamasiddikov, "the tasks of civil proceedings include protecting the violated rights and legally protected interests of citizens and thereby educating citizens in the spirit of a conscious attitude towards the implementation of laws and legal norms"[11].

As can be seen from the opinions of the above-mentioned legal scholars, the main tasks of civil proceedings are the protection of the personal, political, economic, and social rights, freedoms, and legitimate interests of citizens, the rights and interests of the Republic of Uzbekistan, as well as the rights and legally protected interests of



enterprises, institutions, organizations, public associations, and bodies of citizen self-government. Such a sequence of purposeful orientation of the procedural activity of the court and other participants in civil proceedings corresponds to the provisions of Articles 13, 19, 20, 24 of the Constitution of the Republic of Uzbekistan on the priority of the rights and freedoms of man and citizen.

The general tasks of proper and timely consideration and resolution of cases specified in Article 2 of the Civil Procedure Code of the Republic of Uzbekistan are a means of achieving the ultimate goals of all civil proceedings. The tasks at the stage of preparing the case for trial are also understood as the ultimate goals achieved by fulfilling the specific tasks defined by procedural law.

The main and optional goals specified in this article are final and remain unchanged throughout the civil proceedings and are achieved through the implementation of common tasks, as well as the requirement for the correct and timely performance of each procedural action from the moment the civil case is initiated until its termination. In accordance with Article 2 of the Civil Procedure Code of the Republic of Uzbekistan, one of the tasks of civil proceedings is the **correct, timely consideration and resolution of civil cases**.

According to O.P. Chudayeva, "along with the requirements for the correct and timely consideration and resolution of civil cases, it is advisable to strengthen the principle of **fair consideration and resolution** of civil cases as a general task of civil proceedings." The requirement for a fair consideration and resolution of a case by the court is not an integral part of the task of proper consideration and resolution of a civil case, since, in essence, when considering and resolving a case, making a decision, the court may apply its discretionary powers (optional), as well as due to the fact that the current legislation of the Russian Federation provides for the possibility of using analogy of law and analogy of law [12].

According to M. Tojiboev, "in the new Civil Procedure Code, the term related to the verification of the fairness of a judicial act is used eight times, which are reflected in the norms of Section IV of the Civil Procedure Code, entitled "Review of Judicial Acts." This requires the introduction of a separate norm in the new Civil Procedure Code of the Republic of Uzbekistan, which has been in force since April 1, 2018, defining that court decisions, rulings, and decrees must be lawful, justified, and fair, and the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 24, 2019 No. 12 "On the Court Decision" explains in what the criteria for the legality and validity of judicial acts, as well as their fairness, are manifested [13].

In this regard, agreeing with O.P. Chudayeva and M.M. Tojiboyev, it should be noted that the "**fair**" consideration of civil cases plays an important role in increasing





citizens' trust in the court in the administration of justice. There are scientific doctrines on ensuring procedural justice in the consideration of cases by the court. In this regard, different legal systems and doctrines solve procedural problems in different ways. For example, the legal doctrine of **Due process** ensures fair and impartial treatment of persons in accordance with the law. Also, when applying this doctrine in civil proceedings, the possibility of warning and listening to the parties is created, the right to a fair trial (parties have the right to participate in an impartial and impartial trial and they have the right to present evidence, interrogate witnesses and, if they wish, to be defended by a lawyer), the right to present evidence, the right of legal representation, the right to appeal, adequate means of protection (the possibility of citizens using appropriate means of protection in civil cases) is ensured [14].

The doctrine of **Procedural justice** is also called **procedural legality**. This doctrine encompasses the following four main pillars: **voice**: everyone is given the opportunity to tell their side of the story; **respect**: all individuals are treated with respect and reverence; **neutrality**: decisions are made based on impartial, consistent, and transparent considerations; **trustworthiness**: decision-makers express credible motives and concern for the well-being of those whose decisions have influenced them [15].

According to the legal doctrine of **Procedural fairness**, when considering a civil case, the judge must make a decision based on his inner conviction, and the decisions must be impartial and fair. In this doctrine, procedural justice prevails over procedural legality. This doctrine gives judges great independence and freedom in decision-making.

Moreover, in the "Basic Principles on the Independence of the Judiciary," approved by the UN resolution, The principle of judicial independence grants and requires judicial bodies the right to ensure a fair trial and respect for the rights of the parties [16].

It is not without reason that the President of the Republic of Uzbekistan, Sh.M. Mirziyoyev, emphasized: "Every person who comes to the court building should leave believing that justice exists in Uzbekistan. This is the President's demand!" [17].

Legal scholars have also expressed their opinions on procedural justice. In particular, according to S.V. Kornakova, "Fairness is a category of both spiritual and legal consciousness, therefore this social activity is also expressed in terms of obligation. Fairness is a legal phenomenon, that is, a concept that defines its fundamental basis. Any legal system or legislation that is not just is destined to disappear eventually. This is because society possesses the power to abolish such a legal system. For this reason, special emphasis is placed on ensuring that justice prevails in all areas of law[18].



These thoughts on justice essentially express that laws, regulations, and other universally binding rules and structures are implemented solely for the purpose of establishing, upholding, and restoring justice in society, which is a necessary social relationship for both society as a whole and its individual members. At the heart of any legal change, any innovation lies only the pursuit of fairness. Adherence to the principle of fairness in civil courts, like other judicial processes, is mandatory and extremely important. Because, according to the difference in the social relations they defend, since civil courts consider cases related to property and entrepreneurship, their attention and need for property, which is the driving force of people's material life, is always high. As long as there is a worldview or need in society regarding property, which in some cases prevails over the dignity, reputation, and even health of its owner, it is extremely necessary that the problems, conflicts, or disputes related to it be more just than ever [19].

"Fairness is a necessary factor in all spheres of state power and public life. This factor also plays an important role in the judicial body, or more precisely, in the courts that work directly with citizens - civil courts. After all, the sole purpose of citizens applying to the court is to establish or restore justice. If justice had been served between them in advance, the problem wouldn't have reached the court. When it comes to the judiciary, all people think of an arbitration body that works with the laws that restore justice and makes an unbiased decision with all the details of the problem"[20].

Based on the above features of the legal doctrine of **Procedural fairness**, the international legal document, and the opinions of legal scholars, it is time to strengthen the trust of citizens in the court in the implementation of fairness in our national procedural legislation, to recognize judges as morally high, honest, just, and worthy of trust, and to strengthen **procedural fairness** as one of the main tasks of civil proceedings.

Currently, the principle of legal certainty is lacking in the issuance of court decisions by courts that are clear, complete, substantiated, fair, and understandable. Because the content, essence, and concept of this principle are not defined in the Civil Procedure Code.

According to S. Lewis, "The application of the principle of legal certainty remains relevant throughout the world (the principle of legal certainty implies the establishment and provision of clear and fair rules of the game for everyone)" [21].

According to S.Solanki, "Legal certainty is manifested, first of all, in the precise application of norms by the courts. To achieve such clarity, it is necessary to apply the doctrine of stare decisis to reduce the errors of lower courts and ensure the consistency of judicial practice" [22].



According to K.T.Lash, "the abstractness, diversity, breadth, rapid change of legal norms, the breadth of legislative activity and the difficulty of ensuring professionalism in it (the strength of populism and lobbying) lead to various ambiguities, contradictions of norms, as well as confusion in judicial practice" [23].

In this regard, B. Khodjaev also expressed his opinion: "The rapid changes in norms in Uzbekistan, their varying interpretations, and contradictions in their application make the establishment of legal certainty the most crucial task. Without legal clarity and stability, it is impossible to implement reforms. Legal certainty necessitates a harmonious combination of the stare decisis doctrine and the principles of judicial independence and legality" [24].

Analyzing the opinions of the aforementioned legal scholars, the doctrine of stare decisis (standing in one decision) is considered important in applying the principle of legal certainty. This doctrine is a doctrine in which the courts adhere to judicial precedent in making their decisions. Stare decisis, translated from Latin into English, means "to stand by things decided". This doctrine operates both horizontally and vertically. A horizontal view refers to a court that adheres to its precedent. The court makes a vertical judgment when applying precedent from a higher court [25].

Based on the above analysis, the concept of the principle of legal certainty can be defined as follows: the principle of legal certainty is understood as the issuance of a court decision by the courts that provides a legal assessment of the causes of the dispute and applies legal measures to prevent or eliminate them, while precisely, correctly, and fairly applying the norms of both procedural and substantive law.

In Uzbekistan, the time has come to strengthen the principle of legal certainty in civil procedural legislation. Because this principle is of great importance in making court decisions clear, fair, and understandable to the parties. In the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the Court Decision," it is explained that "according to part four of Article 253 of the Civil Procedure Code, the reasoning part of the decision must indicate the circumstances established by the court that are relevant to the case. Unilateral presentation in the decision of the arguments and evidence of the party that made the decision in favor of the court is not allowed. The court is obliged to indicate on what grounds the arguments of the other party were not accepted by the court. The court is obliged not only to indicate in the decision the evidence that confirms certain circumstances relevant to the case, but also to set out the content of these evidence. If, having assessed the evidence, the court establishes that the circumstances on which the parties based their claims and objections are based are not confirmed by certain factual data, the court must substantiate its conclusion in the decision [26]. Although this Plenum resolution also



provides an explanation regarding the justification of the court decision, the court decision does not provide an explanation regarding the causes of the case under consideration (dispute) and the implementation of specific preventive measures to prevent them, i.e., based on the principle of legal certainty. In our opinion, it is advisable to implement the mechanism for this principle in stages, specifically based on the sequence of "Resolution of the Plenum of the Supreme Court - generalization - final decision." That is, the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan should first provide guidance on the reasons for the emergence of a civil case (dispute) (for example, social networks or other reasons may be the main reason for divorce), why such cases are sharply increasing in judicial practice, and how to prevent them. Subsequently, the judicial summaries on this type of case must be reviewed. Further, we believe that when issuing decisions in cases of this type, the courts should state and substantiate this issue based on the principle of legal certainty. Also, in our opinion, in the future, it is advisable to introduce the "Principle of Legal Clarity" as a new principle into Chapter 2 of the Civil Procedure Code.

Based on the foregoing, we can conclude that the supremacy of procedural fairness over procedural legality in civil proceedings ensures the true independence of judges in achieving fair court decisions. This, in turn, increases the confidence of each person who comes to court in the justice system and allows individuals to see the court and judges as their reliable defenders.

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