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Safeguarding the Unity of Judicial Procedure and Actualization of Its Goals

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Abstract: *As it is known, issuance of the verdicts on the unity of the judicial procedure in line with the resolving of the controversies and conflicts in the courts' verdicts and creating a uniform procedure in respect to the issues proposed in the justice department is one of the main and fundamental duties of the country's Supreme Court; thus, the present study aims at criticizing the safeguarding of judicial procedure's unity with an emphasis on the position of the country's Supreme Court. To achieve this goal, efforts are initially made parallel to the recognition of the country's Supreme Court and gaining insight about its most important duties as well as its structure. The present study has been conducted based on a descriptive-analytical method and the data has been collected through library research. And the information collection tool is note-taking. The information collected through note-taking and library research were analyzed based on descriptive-analytical method as the common method in legal studies. The legal position of the country's Supreme Court in the area of safeguarding the unity of judicial procedure regarding the issued judicial verdicts and studying the discussions in need of the issuance of the judicial procedure unity order is intended to be clarified herein. Following presentation of the basic concepts, the author has dealt with these principles. The results obtained from doing research in this area are reflective of the idea that the clarification of some weak points of the judicial procedure unity verdicts makes it necessary to issue verdicts of judicial procedure unity and that the country's Supreme Court, as the influential institution in the area of safeguarding judicial procedure unity, has been found performing successfully based on the law.*

Keywords: *Country's Supreme Court, Orders of Procedural Unity, Criticism of Orders of Procedural Unity, Safeguarding Procedural Unity.*

INTRODUCTION

Safeguarding the judicial procedure unity for attaining a single and stable pattern in offering verdicts is one aspect and goal of the judicature. Therefore, based on the law, the country's Supreme Court has been given a particular stance parallel to the achievement of this important goal and it works as the superior authority in this regard to adopt a systematic procedure. Based thereon, the issuance of procedural unity verdicts by the country's Supreme Court, as one of its duties in cases that these authorities issue various verdicts in similar cases but by making their own inferences of the regulations, has been underlined in act 161 of the country's Supreme Court. In enforcing the aforementioned act, article 471 of the penal code of procedure, passed in 2014, specifies the quality of requesting and issuing procedural unity verdicts by the general assembly of the country's Supreme Court. Because the issuance of procedural unity order aims at offering a solution to the legal problems and challenges related to the judicial system, safeguarding of the procedural unity of the

country's Supreme Court should take place in such a way that its position can be taken into account in both its general and special sense so that the judicial security can be brought about following the verification of the issue and setting the ground for creating uniform verdicts. Thus, considering the security indicators and judicial development, including the quittance principle and the principle of non-retrospectivity of the regulations and so forth, efforts will be made to elucidate these foundations of safeguarding the judicial procedure unity and its objective. Since the goal in issuing verdicts of procedural unity by the country's Supreme Court is offering a solution to the people's judicial/legal problems in relation to the judicial system, the corresponding authorities should, upon the proposition of the issue in the general assembly of the Supreme Court and receiving the verdict by the aforementioned assembly, should try acting in such a way that the issued verdict can be aligned with this goal, to wit the judicial authority should be guided towards the direction that its verdicts resolve the people's problems. In fact, by the cause of act 161 of the constitution, the Supreme Court of the country is formed based on criteria determined by the head of the judicature to supervise the proper enforcement of the regulations in the courts and creation of a judicial procedure unity and fulfilling of the responsibilities assigned thereto by law. Corresponding to the abovementioned act, the most important duty of the country's Supreme Court is the creation of a judicial procedure unity. At present, as ruled in article 471 of the penal code of procedure, passed in 2014, "when various verdicts are issued by different divisions of the country's Supreme Court or the other general courts for similar cases, including legal, penal and non-litigious affairs for the different deductions of the regulations, the head of the country's Supreme Court or the attorney general, informed of the issue in a way or another, are obliged to request the judgment of the general assembly of the country's Supreme Court for the creation of procedural unity...". According to the aforesaid article, the court's various inferences of the regulations would cause the country's Supreme Court to create a single procedure regarding the issue. The creation of procedural unity serves the preservation of the society members' rights because justice makes it expedient for the community residents to be informed of the way the judges treat the legal issues and not to witness multiplicity of verdicts on similar lawsuits. Therefore, the verdict of judicial procedure unity should be issued in accordance to the legal regulations and be able to assist the better serving of justice. If a procedural unity order is not issued in a timely manner or if it fails to terminate the multiplicity of the courts' orders for a similar case, the serving of justice would be indeed disrupted within the society. The present study has been conducted with the objective of criticizing the country's judicial system along with analyzing and evaluating the country's Supreme Court so that, meanwhile investigating the safeguarding of judicial procedure unity in the country's judicial system, the analysis and evaluation of the country's Supreme Court can be dealt with and the high-level principles and goals of these contents can be put forward. In between, it is necessary to, meanwhile perceiving the concept of judicial procedure unity, thoroughly introduce the country's Supreme Court, its duties and structure and position amongst the legal authorities and, finally, evaluate and investigate the goal of issuing verdicts of judicial procedure unity while, at the same time, dealing with the extent to which the verdicts issued and enforced in this area by the Supreme Court have been successful.

Position of Judicial Procedure Unity in Law Resources:

Used freely and in absolute terms, judicial procedure points to the whole set of the judicial verdicts. But, in its specific sense, it refers to a court or a group of courts' applying of an identical method in certain legal issues as a result of which the verdicts related to a certain case are so frequently repeated that it can be stated that all the courts make the same decision upon encountering a lawsuit of the similar type. It is in this same meaning that the judicial procedure is envisioned as a legal source and it is occasionally found accompanied by the name of a court and its subject (Katouziyan, 2008: 190).

Procedure literally means ideation and thinking about the affairs as well as pondering and contemplating about an issue and a task. Judgment literally means issuing an order, fulfilling, placing and making something come true (Amid, 1998: 669&941). Verdicts issued in the general assembly of the Supreme Court, whether in being recommendatory or indispensable, are considered as judicial procedure or Supreme Court's

procedure. Judicial procedure refers to the set of decisions made by the country's Supreme Court that are indispensable for the subordinate courts and failing to observe them by the courts of the justice department is a stance of violation (Mardani and Beheshti, 2002: 148). In the hierarchy of law resources, judicial procedure takes the third rank following the law and the mores. It is evident that any legislator is incapable of predicting all the relations by the society members hence not the entire legal solutions can be observed in the society's regulations. The judges try meeting the shortcomings via matching the existent regulations with the foreign realities. The collection of the courts' verdicts is intended by the judicial procedure in its absolute sense and the identical and uniform method of all or some of the courts regarding certain legal issues and repeating them in such a way that it can be stated that the same method would be adopted in case of facing the similar cases is intended by the judicial procedure in its specific sense. In other words, judicial procedure can be called the courts' customs.

Although the judge is not required to follow the decision s/he has previously made in a given case, it is evident that s/he would psychologically and socially follow the aforementioned decision in similar and subsequent trials. The same holds in regard of following the decisions made in a Supreme Court. Thus, it can be stated that the main element of the judicial procedure is the case sentence issued by the courts and its creation can be realized as stemming from psychological and social factors as well as the factors related to the classification and degrees of the courts. Although some believe that because the judicature should not interfere with the creation of legal axioms as the jurisdiction and specific duties of the legislature and that the courts' sentences are relative in nature, it has to be reminded that the judicial procedure has been applied in its general meaning in the abovementioned discussions. In its specific meaning, judicial procedure is enumerated amongst the direct sources of law but the acceptance of the procedure can, in fact be considered, in a sense, as a legal axiom in the customs and many of the sentence cases as well as in the verdicts of the judicial procedure unity issued by the country's Supreme Court (necessarily indispensable for the other courts. The judicial procedure's interference in the creation of legal axiom predominantly occurs in cases of the violation or silence or brevity and/or, finally, contradiction in the law and it has to be eventually accepted that the judicial procedure has no room in the hierarchy of the legal resources.

According to the aforesaid materials in this chapter, the judicial procedure should be seminally studied as a legal source so that the position of the judicial procedure unity can be determined as the special meaning of the judicial procedure between the legal resources.

To create judicial procedure unity, the country's Supreme Court delegation is comprised of at least three fourth of the heads and consultants and deputy members to the entire divisions of the aforesaid court headed by the chief judge of the court or his deputy and in presence of the country's attorney general or his representative to investigate a discrepancy case so as to reach a final decision. The judicial procedure unity verdicts are devoid of any effect in regard of the decisive verdicts; but, they are indispensable in similar cases for the divisions of the country's Supreme Court and the other courts. The sentences issued in regard of judicial procedure unity are indispensable for all divisions of the country's Supreme Court and the other courts in case of being in accordance with the canonical rules (not opposing the canon) (Shams, 2004, 94-98). Nowadays, certain hierarchies have been accepted in all of the legal systems and the law takes the apex position of all these resources. Due to the same reason, in the contemporary law, the credibility of the judicial procedure and the other legal resources is not considered equal to that of the law and the other legal resources, including the judicial procedure, are less important than the law. Based thereon, the legal regulations obtained from the numerous legal resources do not feature identical credibility and the regulations stemming from low-level resources have no power of contradicting and revoking the high-rank source regulations (Mirza'ei, 2013, 130). It has to be added that the aforesaid principle is also observed amongst various kinds of rules in its general sense in such a way that the ordinary rules should not oppose the constitution. Furthermore, it is based on this same foundation that the governmental procedures are discredited and annulable in case of opposition to the law.

It has to be actually stated that since the legislator is incapable in prediction of all the relationships between the society members, the entire legal solutions cannot be observed in the regulations. To overcome this problem, the judges try matching the existent regulations with the external realities. By the judicial procedure in the absolute space of the whole set of the courts' verdicts and its special space, the identical method of the courts about a given legal issue is intended and it has to be replicated in such a way that it can be stated the same method is practiced in case of being faced with a similar case. In other words, judicial procedure can be also called the governing customs. It has to be noted that trial is not required obey the judgement previously made about a certain case. But, it is evident that the judgement should be psychologically and socially followed in similar subsequent trials (the same holds for obeying the sentences issued by the Supreme Court). However, it can be stated that the main element of the judicial procedure is the case sentence issued by the courts and its creation can be attributed to the social and internal factors as well as the factors related to the classification and grading of the courts. Although a group believes that because the judicature should not interfere with the creation of legal axioms, as the jurisdiction and specific duty of the legislature, and that the courts' sentences are considered relatively credible, it has to be reminded that the judicial procedure has been used in its general meaning in the above discussions. The judicial procedure, in its specific meaning, is considered as direct source of the law. However, it has been accepted that procedure and the verdicts of procedural unity issued by the country's Supreme Court can be, in a sense, considered as legal axiom in customs and in reality. Judicial procedure's interference with the creation of legal axiom predominantly occurs in cases of the contradiction or silence or brevity or contradiction in the law and it has to be eventually accepted that the judicial procedure features a high position in the hierarchy of the legal resources. According to the aforementioned materials, the judicial procedure should be firstly investigated in its general and specific meanings.

Conceptualization of the Judicial Procedure in its General and Specific Meanings:

The verdicts of judicial procedure unity issued by the country's Supreme Court constitute one of the formal sources of the law that is called judicial procedure in general. The judicial procedure is a term usually applied in legal writings for various meanings: in its general meaning, it refers to the collection of verdicts issued in the legal system and as a result of the trials performed by the judicial authorities (including the trial courts, courts of appeals and country's Supreme Court) about a subject. As it was mentioned, the term "judicial procedure" means this same general meaning, i.e. collection of judicial sentences, if applied in a boundless and absolute manner. But, by judicial procedure in its specific meaning, the assumption is intended that all the courts or a set of them practice identical methods regarding a legal issue and the relevant verdicts are repeated to the extent that it can be stated that all the courts would make the same judgement in future if confronted with a similar case" (Katouziyan, 1999, 450).

In this case, a sure custom and habit of the judicial type has come about in practice. Therefore, the judicial procedure, in this sense, refers to a relatively fixed solution employed by the judges in cases of the law's silence or when interpreting and executing the law and it can be considered as the product of customs formed in the courts (special customs). Based thereon, it seems that the legal courts' method drawn on the necessity of sending a letter of announcement before demanding the liquidation of the promissory notes is an example of the judicial procedure in this sense (Fakhari, 2009: 158). The same holds for accepting the credibility of an ordinary deed in the transactions of immovable and registered properties the same way that a verdict is issued for the negation of forcible occupation in the established procedure of the courts in case that the losing party is found having given the property to a third person against the current occupier so that the illegal action of the losing party cannot prevent the implementation of the verdict (Hayati, 2011, 292-323). However, by the judicial procedure, in its specific sense and alongside the other legal sources, the very necessarily enforceable verdicts by the general assembly of the country's Supreme Court or the so-called judicial procedure unity is intended. So, according to the prevalent notion in the legal writings, only the typical sentences of the country's Supreme Court are to be considered as the formal legal sources and the rules

created based on them are indispensable like statutory provisions (Katouziyan, 1999: 468). As it is known, it is via distinguishing the formal sources of a country's laws that the legal sources thereof can be determined: by the formal source, a type of source is intended that the court can substantiate its rulings on the regulations enacted by it and the judge becomes needless of justification and reasoning in this position. Based thereon, the law is undoubtedly a legal source. The same holds for the typical verdicts (procedural unity) by the general assembly of the country's Supreme Court (Ibid, 5). Thus, the judicial procedure unity sentences cause the creation of general and indispensable axioms, like law, hence enumerated amongst the legal sources. Resultantly, the verdicts by all of the courts do not cause the creation of legal maxims. In countries having written legal systems only judicial procedure unity sentences are like this¹ (ibid., 5).

Each law dictates a model of order that is established in a gradual manner and the people get used to it little-by-little. The existence of procedural unity guarantees the judicial security and prevents elongation of the trials. By the judicial procedure here, its general meaning is intended because it is, in a sense, more important than the judicial procedure, in its specific sense. Specific judicial procedure incorporates the verdicts by the country's Supreme Court issued in the position of procedural unity and feature scientific value and are decisively used to resolve the disputes. But, the thing that promulgates the judicial culture and legal culture in the society is the judicial procedure in its general meaning that is to say the verdicts expressed by the different divisions of the courts countrywide regarding single subjects (Nowruzi, 2001: 71). On the other hand, the expression "judicial procedure" refers to the whole set of the judicial verdicts if applied in an unbound manner and in absolute terms. But, in its specific sense, it is used where courts or a set of them practice an identical method regarding one of the legal issues and the verdict is so frequently put into use that it can be stated that all the courts would make the same decision upon encountering a similar case. It is in this sense that the judicial procedure is enumerated amongst the legal sources and it is often stated along with the name of the court and its subject such as the procedures of the legal courts regarding listing and separating the estate of a deceased as well as the country's Supreme Court about occupation and others topics of the like. This way, the judicial procedure is a specific form of customs but not a common habit of the people and it is based on a tradition practices by the judges of the courts.

In other words, it can be stated that judicial procedure encompasses the sentences, verdicts and notions formed into tradition in the course of courts' issuances of verdicts. In Iran's laws, judicial procedure is more specific and refers to the verdicts issued in courts of appeals in such a way that as ruled in the single article, passed in 1960, the sentences issued by the courts would not become credible unless about the subjects for which they are issued (Ansari and Taheri, 2010:1056). Thus, the judicial procedure is in its specific sense in Iran's laws hence it has to be necessarily followed by the courts and that is when a verdict is issued by the general assembly of the Supreme Courts (Ja'afari Langerudi, 1998: 340). The head of the country's Supreme Court or the country's attorney general, no matter how informed of the issuance of different verdicts in the divisions of the country's Supreme Court or each of the other courts for similar cases, whether legal, criminal or non-litigious affairs, based on various perceptions of the regulations, are obliged to take it to the general assembly of the country's Supreme Court in seek of procedural unity. In addition, each judge of the country's Supreme Court and/or the other courts can request the ruling of the general assembly about the case by presenting it with reasons through the head of the country's Supreme Court and/or the country's attorney general. The verdicts of the general assembly of country's Supreme Court are devoid of effect in respect to the decisive verdicts and they are to be necessarily followed by the Supreme Court's divisions and other courts in similar cases. The verdicts by the general assembly of the country's Supreme Court cannot be revised but can only be made devoid of any effect by the law. In other words, it is said in finding an answer to the question as

¹ Due to the same reason, the courts have been prohibited from issuing verdicts in a general manner as ruled in civil procedure law. Article 4 of the civil procedure of the general and Enghelab courts law has the following stipulation regarding the civil affairs passed in 2001: "the courts are obliged to make certain determinations regarding each claim and they should not issue orders in a general manner because generality is a trait of the law and legal axioms and the court is the place of resolving the controversies not enacting law.

to how the legal regulations are created or from where they are sourced that they are obtained from legal resources hence the legal resources are the manifestations of the legal regulations or embodiments of the legal regulations (Katouziyan, 2001: 301). It has to also be emphasized that the forms of creation and manifestation of the legal regulation are intended by the legal source and not the authority or the position having the enactment right. Based thereupon, the authority having the option and qualification for creating the axioms is not the source of laws rather his action's outcome taking the form of a procedural unity verdict would become the source of law. In elucidating the concept of legal source, it has to be added that a part of the legal regulations are substantiated in the courts whereas some regulations are born of the reasoning process in the courts. The issue is rooted in a fundamental truth and that is the idea that law is a science formulated based on two topics, namely substantiation and reasoning, each administrating the legal system. Some legal resources rely on substantiation meaning that the credibility of some legal regulations (procedural unity verdict and law) is tied to the authority or quality of the institution enacting or issuing them (Ibid, 302). In this case, the regulations the credibility of which has been proved beforehand or the ones with constant authenticity are substantiated. It is sometimes the case that the legal axiom is consisted of certain reasons in its premise justifying its acceptance as a legal axiom by the courts². It is in this same meaning that customs are recalled as sources of law. The legal principles and legal spirits, as well, are to be grouped in this set of the resources. Additionally, the judicial procedure means the procedures formed in the courts as a result of repeating the prior verdicts and relying on reasoning element and the legal principles become the themes of these procedures.

Conditions of Creating Judicial Procedure Unity Verdicts:

To create judicial procedure unity, the general assembly of the country's Supreme Court, composed of at least three fourth of the heads, consultants and deputy members from all its divisions, headed by the chief justice of the supreme court or his deputy and in presence of the country's attorney general or his representative is held and takes certain measures in line with issuing a procedural unity verdict that is to be necessarily followed by the entire divisions of the country's Supreme Court and the other courts. The general assembly of the Supreme Court is held in cases that the divisions of the country's Supreme Court or the Justice Department's courts issue different sentences for similar cases or in case that the judges of the Justice Department's courts are found not having correctly perceived the non-litigious affairs.

Although the creation of the judicial procedure unity has been expressed based on act 161 of the constitution as one objective of the Supreme Court's establishment, the authorities of the country's Supreme Court in regard of the issuance of such verdicts should be undoubtedly envisioned as one method of the foresaid court's supervisory role in respect to the proper implementation of the regulations in the courts. The procedural unity verdicts terminate the numerous and different inferences of the courts and divisions of the Supreme Court of the law and devise a single practice in inferring the law. Moreover, considering the fact these procedural unity verdicts are to be necessarily followed by the courts and divisions of the country's Supreme Court in similar cases, the ground would be set for the uninform interpretation and correct implementation of the law in the courts.

The single article related to the judicial procedure unity, passed in 1957³, and article 3 appended to the law on criminal procedure, passed in 2003⁴, are the basic document of the procedural unity verdicts' issuance by the general assembly of the country's Supreme Court in cases that the divisions of the Supreme Court or the

² Raz, Joseph, (1977), "the concept of a legal system", Oxford, p.196

³ "Whenever various practices are found exercised in the divisions of the country's supreme court for similar cases, the general assembly of the country's Supreme Court, in this case consisted of at least three fourth of the heads and consultants of the foresaid court, is held by the request of the minister of the justice department or the head of the foresaid court and/or the general attorney to investigate the debated issue and reach a decision about it. In this case, the idea by the majority of the aforesaid assembly is to be necessarily followed by the divisions of the country's Supreme Court and the other courts for similar cases and it would not be changed unless by force of a sentence issued by the general assembly or by law".

⁴ Whenever the courts, legal and criminal, are found adopting various procedures regarding the inference of the regulations, the attorney general, upon being informed, presents the issue to the general assembly of the country's Supreme court and asks for its ruling. The general assembly's sentence is devoid of any effect for decisive cases but it has to be followed by the courts in similar cases".

other courts are found having adopted different practices regarding the interpretation of the regulations for similar cases. In this case, by the request of the head of judicature or the head of the country's Supreme Court and/or country's attorney general regarding the procedure of the divisions of the country's Supreme Court and by the request of the country's attorney general in regard of the procedural mismatch in the courts, the issue is presented to the general assembly of the Supreme Court and the verdict issued by the foresaid assembly is to be necessarily followed by the divisions of the country's Supreme Court and the other courts in similar cases. As for the courts' discrepancies in non-litigious affairs, as well, the article 43 of the non-litigious affairs law stipulates that "the attorney general of the country, no matter how informed of the incorrect inferences of the law's articles in the courts or the important and influential courts' discrepancies regarding the non-litigious affairs, requests the idea of the general assembly of the country's Supreme Court and informs the ministry of justice (judicature according to the current reforms) to announce the issue to the courts which are consequently obliged to act in compliance to the aforesaid idea".

It can be seen that the aforementioned methods, considering the judicial prestige and nature of the Supreme Court, are case-specific judicial investigations performed in line with supervising the good enforcement of the regulations in the courts that can properly safeguard the formation of the country's Supreme Court that is the very safeguarding of the law's veneration in the courts through case-specific judicial investigations. The establishment of a unit for supervising the courts by the country's Supreme Court would be an effective measure parallel to its fulfillment of its duties in regard of supervising the good enforcement of the regulations in the courts if being in line with the fulfillment of the judicial duties of the country's Supreme Court as explained above and for the purpose of determining the cases necessitating the enforcement of Paragraph two of article 18 of the law on the formation of the general and Enghelab courts or proposition of the issue in the general assembly of the Supreme Court for adopting a single procedure and issuance of procedural unity verdict. But, if its objective is performing inspections of the courts via dispatching inspection teams for supervising the quality of regulations' enforcement in the court, it would be an example of Supreme Court's violation of its legal duties and contradicting the historical goals of forming this superior authority hence causing the downgrading of the most supreme judicial authority of the country to the rank of an administrative and executive source and this is not deemed desirable in consideration of the country's judicial expediencies. The notion by the respected Guardians Council should be also interpreted in this same regard in response to the attorney general's request for information. To create judicial procedure unity, there is a need for certain conditions with the actualization of which it would become feasible and it has to be necessarily followed corresponding to the law for the other courts in similar cases. For the time being, as ruled in article 471 of the criminal procedure law, passed in 2014, when the various divisions of the Supreme Court or the other courts are found issuing different verdicts in similar cases, including criminal, legal or non-litigious, based on making different inferences of the regulations, the head of the country's Supreme Court or the attorney general, no matter how informed, are obliged to ask for the idea of the general assembly of the country Supreme Court parallel to the achievement of a procedural unity. Each of the judges from the divisions of the country's supreme courts or the other courts or the public prosecutors or justice department's lawyers also can request the ideas of the general assembly about the issue via presenting proofs through the country's Supreme Court or the country's attorney general. The general assembly of the country's Supreme Court is held headed by the chief justice or his deputy and in presence of the country's attorney general or his representative and a minimum three fourth of the heads and consultants and deputy members to all the divisions to investigate the issue and make a decision about it. The verdict reached by the majority of the attendants is to be necessarily followed by the divisions of the country's Supreme Court and the other courts, including judicial and non-judicial, for similar cases. However, the verdict is devoid of any effect for decisive sentences. Based on what has been mentioned up to now, four conditions should be provided for the creation of judicial procedure. The following sections deal with these four conditions in four paragraphs.

- **Issuance of Various Verdicts in Similar Cases:**

The first condition for the issuance of judicial procedure unity verdict in regard of a case pertains to the various sentences ordained in various courts on similar cases. As it is known, based on the prescriptions of the latest section of act 73 of the constitution in regard of the disputes between the individuals, the judges, playing the role of clarifying the right, make interpretations the credibility of which is exclusively case-specific hence not indispensable in other cases even by the same judge. Since judges match the general orders of the law with certain and detailed cases thereby to resolve the judicial affairs, they are considered as the executors of the law and their interpretations in cases of necessity are indispensable as ruled in act 167 of the constitution meaning that they can be sued in case of avoidance and refusal to find a verdict for a lawsuit in the codified laws (Ja'afari Langerudi, 2000:5015). Therefore, the various verdicts by the courts come about during the judges' interpretations and inferences of the laws and they are rendered discredited if they are found contradictory to the explicit text of the law hence refutable. The result would be that if the courts offer different interpretations for similar cases when interpreting the regulations for having them matched with the filed lawsuits, it can be stated that various verdicts have been issued by the courts and this does not embrace the inaccurate verdicts against the law.

- **Positing the Issue in the General Assembly of the Country's Supreme Court:**

After the emergence of various verdicts in similar cases, the issue has to be presented in the country's Supreme Court. According to article 471 of the criminal civil procedure, only the head of the country's Supreme Court and the attorney general can request the idea of the general assembly about the issue; furthermore, each of the judges from the divisions of the Country's Supreme Court or the other courts or the public prosecutors or the justice department's lawyers can request the idea of the general assembly regarding the issue via mentioning the proof through the aforementioned authorities. Thus, the issue is posited to the general assembly of the Country's Supreme Court when the abovementioned authorities propose it and the other individuals do not have such a chance.

- **Formation of the General Assembly for Procedural Unity of the Country's Supreme Court:**

As ruled in article 471 of the criminal procedure law, when the courts are found having issued various sentences in similar cases, the head of the country's Supreme Court or attorney general are obliged to request the idea of the country's Supreme Court for the creation of judicial procedure unity. According to the aforementioned article, the general assembly of the country's Supreme Court can be only held by the request of the chief justice of the country's Supreme Court or the attorney general and the other individuals, including the judges and justice department's lawyers and public prosecutors, can only request the general assembly's meeting only through the chief justice of the Supreme Court and/or attorney general.

The general assembly of the country's Supreme Court is held headed by the chief justice or his deputy and with the presence of the attorney general and/or his deputy and a minimum three fourth of the heads, consultants and judges from the various divisions of the country's Supreme Court and deputy members to all the divisions. So, when any of the abovementioned conditions is found not actualized for the meeting of the general assembly of the country's Supreme Court, there would be surely no chance of the creation of the judicial procedure unity. Hence, the controversial issue is investigated and proper decision would be made following the gathering of the general assembly of the country's Supreme Court in a manner specified by the law. The verdict reached by the majority of the general assembly members of the Supreme Court is to be necessarily followed by the divisions of the country's Supreme Court and the other courts as well as the other authorities, including judicial and otherwise.

Objectives of Judicial procedure Unity Verdicts:

The goal in issuing the judicial procedure unity verdicts is creating a single procedure by the courts in confrontation with similar issues meaning that when the courts are found making contradicting judgements based on their inferences of the law in similar cases, the judicial procedure unity is proposed regarding the creation of a single procedure for the proposed subject. But, it has to be noted that the essential and important benefit of the judicial procedure unity is the creation of legal security and judicial safety of the society members. In fact, the procedural unity verdict serves the safeguarding of the individuals' judicial rights otherwise the creation of an identical procedure for the courts is not valuable in itself and it intends identical reacting to the individuals referring to the courts with similar cases and also aims at barring the multiplicity of the verdicts on similar cases so that the consequences of the legal actions can be predictable in respect to the courts' procedure.

Indiscriminate performance by the judicial system is amongst the prerequisites to the achievement of the judicial security. Correct and on-time performance of the judicial system in some of the cases and its inaccurate or late performance in some other cases do not seem to bring about security and discrimination in the practices and processes of judgement and issued verdicts not only cause the decline of some objective indices of judicial security but also make people distrust the judicial system through negatively influencing their mentalities and this can be followed by subtle effects in the mutual actions between the people and the judicial system (Ali Naghi, 2001:58). In today's social system, the judicial procedure unity verdicts are enumerated amongst the most important factors of creating security in the judicial system. One of the expediencies of the legal order is the common understanding of the legal regulations in such a way that the existent laws and the ordinance issuing law are perceived and exercised identically by all the individuals facing them in practice (Nowruzi, 2001:75). It becomes clear from the abovementioned discussions that the goal in issuing judicial procedure unity verdicts is the actualization of the judicial security that is always an open area of investigation.

The legal systems are not fixed sets of regulations governing the people's relations rather they reside within a coherent and dynamic framework and always prone to expansion. These regulations would be accompanied by the legal relations by gaining dominance over the people's security. In other words, the citizens should be insightful of their rights and be capable of predicting the results of their legal interventions. It is in this stage that the judicial security is proposed as a dynamic principle disordering the staticity of the legal system. Due to the same reason, the principle, as the driving force enabling the expansion and sublimation of the legal systems, enjoys a noteworthy role and it is recounted as one of the most important ultimate legal goals (Vijeh, 2004: 116). The principle of judicial security is amongst the standards of the general laws always forming the basis of actions in all of the legal systems. The principle is rooted in the properties of each legal system that are currently considered as inseparable components of them. The stability of the legal system and safeguarding of a permanent support of the individuals' rights, regulations' decisiveness existent therein and creation of trust in the legal system are amongst the most important of these properties. Due to the same reason, the principle is posited in a great many of the legal systems exactly as a valuable necessity. In fact, on the one hand, the principle of judicial security is considered as one of the important indices of the governance of law and its guarantee is the first ultimate goal of each legal system. The country's Supreme Court, as well, as one important constituent of the legal system should take the judicial security of the society members into consideration in issuing verdicts of judicial procedure unity and try alleviating the damage to the citizens' judicial security wherever it is found exposed to risk. Thus, judicial procedure unity aims at creating judicial security.

A) Characteristics and Basics of Judicial Security (Development of Judicial Security):

The principle of judicial security dates back to long ago. In fact, this evident principle was accepted from the very beginning and states that the judge should substantiate his proofs or reasons of a judgement on the regulations that have been existent previously. Therefore, the rationale of the judicial security and, especially,

the predictability of the law had been prescribed from the beginning in Roman laws. However, in Islamic jurisprudence as the root of Iran's statutory provisions, the principle has been pointed out in many of the cases but the principle of judicial security has not been investigated under this title and in the form of the output of all the more detailed principles (Vijeh, 2004:122). Therefore, in a historical analysis, the roots of the judicial security can be traced into the laws where two ancillary principles are identifiable in the formation and actualization of the judicial security. The first one is assurance. In this sense, it has to be clear what behaviors become the subjects of the laws. From this perspective, the laws should not be vague and/or their logics should not be in such a way that they can be interpreted rather vastly. This way, the judicial security can be proposed as one of the basics of change in the governance of law. The principle causes changes in the concept of laws' governance from a formative system to a system qualified for substantive nature. In other words, the principle of judicial security is one of the factors causing the accomplishment of the contents of the legal norms by a system based on the hierarchy of these norms. In fact, the law should not be codified in such a way so as to flaw the individuals' acquired rights; and, secondly, security that means objective reverence of the norms, judicial procedures and contracts. During the entire course of the medieval epochs, the contents of this principle were accepted and they were also extensively employed in the modern era with the preservation of religious roots. In 17th century, or specifically in 18th century, the concept underwent abundant theoretical expansions that were particularly owed to a German jurist, named Robert Von Mohl, who attempted in his works to establish a direct relationship between this concept and governance of law with the latter being crystalized by the German jurists and implying the supervision over the government's power, government's respect to the regulations and judicial protection of individual rights and freedoms. Undoubtedly, there is a deep relationship between the principle of judicial security that guarantees the citizens' rights and the governance of law one premise of which is preservation of the individuals' rights and freedoms.

The principle of judicial security is recounted as a dynamic standard in legal system. In fact, the principle features two primary specifications: on the one hand, the principle determines the amount of change in a judicial system hence it is based on this same trait that the judicial procedure analysis makes it clear if its contents are aligned with the common goals set for the judicial system or not. As it is known, the safeguarding of the citizens' fundamental rights is at the center of the judicial system's goals and all the variegations in this system should be aligned with this lofty goal in substantive and formative terms. Using scrutiny, the judicial security exists in all these alterations as a touchstone. From another perspective, the principle along with the other principles governing this system is distinctly manifested in all the proposed issues. This manifestation is more frequently seen in the qualitative and temporal issues related to the enforcement of the regulations. This way, judicial security is posited as one of the foundations of revolution in the laws' governance. The principle changes the concept of governance of law from a formative system to a system featuring substantive requirements. In other words, the principle of judicial security is one of the factors enabling the advancement of the system based on the legal norms' hierarchies towards the contents of these norms. Governance of law is a system of political and legal organization the ultimate goal of which is the protection of the fundamental rights. Such principles as separation of the faculties, legality, proportion and judicial security respond to the substantive requirements of the law's governance the existence of which augments the power of judicial system for warranting the fundamental rights. In a nutshell, it can be concluded that the existence of this principle is quite necessary for the actualization of what is called "superiority of law". Knowing the importance of judicial security as a principle of a legal system, familiarity should be seminally made with the definition and theoretical foundations of this principle. Then, the area of the principle's enforcement will be dealt with and the limits of its applicability are subsequently examined.

B) Judicial Security and its Indicators:

Islamic Republic of Iran's constitution is amongst the few explicitly mentioning the principle of judicial security. Paragraph 14 of Act 3 of the constitution knows the full-scale safeguarding of the male or female individuals' rights as well as the creation of a fair judicial security for everyone and also everyone's equality

before the law as one of the duties of the government of the Islamic Republic of Iran. Judicial security includes the appropriate quality of the courts' performance in applying the legal mandates in such a way that the citizens are deterred from violating the law and their obligations as well as assurance of the idea that the law and the legal regulations and the other types of the individuals' private contracts are enforced in any situation (Hajzadeh, 2017:67). Judicial security can contain the following indicators: appropriate quality of the courts' performance in applying the legal mandates in such a manner that the citizens are prevented from violating the regulations and their obligations (Nowruzi, 2001:68); citizens' respect for the judicature and the law and all individuals' equality before the law; assuring that the judges act based on law and correct, on-time and indiscriminate performance of the judicial system for achieving the predefined objectives and the general public's trust in their doing so (Ali Naghi, 2001:57).

This way, Iran's laws are legally laid on the foundation of this principle; but, unfortunately, the legislating authorities and the constitution have not paid sufficient attention to the expansion of the contents thereof. In the meantime, it has to be noted that even the members of the Islamic Consultative Assembly have not been aware of the importance of enacting this paragraph in their final investigation of the constitution and, due to the same reason, there is no discussion made about it (the detailed minute of the Islamic Consultative Assembly's negotiations regarding the final investigation of Islamic Republic of Iran's constitution, volume 1). In sum, in an analysis of the act three of Islamic Republic of Iran's constitution and its important paragraph on the rights, to wit paragraph seven, that speaks of the safeguarding of the political and social freedoms within the limits of law, it can be concluded that this paragraph along with paragraph 14 provide the required statutory basics for the actualization of law's governance. In the end, the result should be the elucidation of the act and the entire of the other principles left in the margins so that a coherent set can be presented. To do so, this section firstly analyzes the discussed principles in two groups of individuals' judicial security and law's judicial security with the former being related to the principles safeguarding the citizens' judicial security against the governmental power. Protection of individual freedoms, non-retrospective nature of the regulations, the citizens' right of defending themselves and the quittance principle are amongst these principles. In the second part, principles related to the safeguarding of the citizens' rights are taken into account that. These principles are legitimate trust, respect to the acquired rights and the law's transparency. In general, the judicial security principle can be divided into two sets: the first incorporates the principles related to the quality of law enforcement. The principle of transparency, the principle of having access to the law, the principle of efficiency and the principle of effectiveness all belong to the first group. Put differently, the existence and enforcement of these principles cause the higher quality demanding and enforcing of the regulations and rules specified in the law.

The other group is comprised of the principles related to the necessity of the law's predictability. These principles assist the creation of a system wherein the citizens can get aware of their rights and predict the outcomes of enforcing them. The non-retrospective nature of the regulations, principle of protecting the acquired rights, the principle of legal confidence and, finally, the principle of the stability of the contractual relations are amongst these proposed principles in this set (Vijeh, 2004: 121).

1. Individuals' Judicial Security and the Dependent Concepts:

To guaranty the judicial security in the society, the following principles should be observed by the country's judicial system. The observation of these principles contributes to the actualization of the judicial justice as the main factor of the judicial security. The most important principles that should be observed by the judicial system in trying the lawsuits are the principle of judicial independence and impartiality, principle of quittance, the principle of the legality of the crimes and punishments, the right to have a lawyer, being able to defend oneself in interrogations, the principle of everyone's equality before the law and the overtness of the trials and others of the kind. The following section briefly presents important principles the observation of which by the judicial system is necessary based on the religious and legal foundations:

1) Protection of the Individual Freedoms:

Undoubtedly, the most important goal of the judicial security is the safeguarding of the individual freedoms. This is the issue underlined in all of the advanced constitutions and/or implicitly aligned with. Due to the same reason, the judicature should safeguard the citizens' judicial security in relation to the protection of their individual freedoms. Thus, one of the important guarantees taken into consideration in the constitutions for the protection of the citizens' judicial security is the judge's independence. In other words, the same way that the law should take various objective scales into consideration in respect to different persons the law executives, disregarding the external pressures, should enforce them in an identical manner in respect to the citizens. But, the question raised herein is that what is intended by the individual freedoms? In its broad sense, individual freedoms embrace any right needed by everyone for organizing life. In its narrow sense, the concept only includes the freedom of coming and going. In more simple terms, the broad concept of the individuals' freedoms can be considered in this regard. It is in practical use of the concept that its relationship with the principle of judicial security is made completely clear. It is evident that the citizens are in need of stability in their legal statuses so that they can organize their lives and this same issue renders inevitable their right of judicial security.

2) Principle of Non-Retroactivity of the Regulations:

The principle of non-retroactivity of the regulations, especially the penal ones, is currently being enumerated amongst the evident principles in the modern law. Considering the clarity of the subject of the principle, it is not defined here and sufficiency is only made to the principle of judicial security. In fact, the principle has been laid on the foundation of the idea that the individuals' rights and duties should be predictable. In the present era, "predictability" of the regulations has become a necessary principle for the legal systems. The essential value of the principle is clearly visible especially in the criminal affairs and definition of the crimes and penalties. Various reasons can be put forth for enforcing this principle and preventing the generalization of the regulations' effects to the past. For instance, the retroactivity of the financial regulations would harm the rights of the citizens who have taken advantage of the past regulations and should now withdraw from their advantages.

3) Principle of Quittance:

Principle of quittance encompasses "every issue entailing the imposition of a sort of effort or loss or freedom deprivation and/or incurring of a sort of meagerness to an individual and simultaneously being found dubious in its addressing of certain individuals as a result of which these latter persons would be acquitted from the duty and effort because the imposition of the duty and effort on individuals for no decisive reason is not right". These foresaid statements have been stated as the meaning of principle of quittance (Ja'afari Langerudi, 1998:49). Therefore, should a person claim a right or debt from another, s/he would have to prove it otherwise the pledge of the defendant would be followed by the issuance of quittance verdict (the civil procedure law of the general and Enghelab courts in civic affairs, passed in 2001). In Islam, as well, an axiom holding that "presentation of proof is the duty of the claimant and the denier has the right to defend" emphasizes on the offering of proof by the claimant. It is the claimant who should present proofs and not the defendant. One can swear in denying the accusation because it is assumed by default that s/he is exonerated. In the Holy Quran, it is explicitly ordered that "the believers should avoid suspiciously treating the others because some of them are sins"⁵ (HUKUM: 12) and this is reflective of the idea that the holy

⁵ "Ya Ayyoha Al-Lazin Amanū Ejtanebū Kathiran Min Al-Zann Enna Ba'az Al-Zanna Ethm" (HUKUM: 12)

Quran not only gives no value to the dubious thoughts and reckons and guesses in the judgment and arbitration but it also considers them as sins. Therefore, according to the principle of quittance, nobody can be forced to an action or an issue with no concrete proof.

- **Other Principles:**

Despite the codification of the regulations in an exact, clear and explicit form, the law is required to be interpreted in a great many of the cases. The axiom that has to be considered when interpreting the law is that the law should be interpreted narrowly and not expansively meaning that the purport of a rule should not be generalized to the other similar cases not explicitly mentioned in the law. Of course, the authority responsible for making such an interpretation has been mentioned in the law for some cases and it is the judges and the arbitrators who shoulder interpretation in the other cases and they have been advised to do so based on knowledge of all the aspects of a subject and the entire regulations and their boundaries in a narrow manner.

- **Principle of Equality Before the Law:**

Based on this principle, everybody is equal before the law and gender, race, religion, class, ethnicity and others should not cause discrimination. This is also called indiscrimination principle. Of course, exceptions have been stated for this principle in Islam's and our country's legal system such as the differences between men and women in atonement, judgement, testimony and others of the like. Moreover, immunities are sometimes granted to some jobs for their special importance such as the parliamentary immunity of the representatives or the immunity of the judges. However, the equality before law is an important principle that has to be observed for the preservation of the people's security and establishment of judicial justice.

- **The Overtness of the Legal Hearings:**

The overtness of the hearings is amongst the necessary principles for a fair trial. The goal in legal hearing's openness is allowing the people supervise the trial course thereby to prevent the judicial system from violation. It is stated in the constitution of the Islamic Republic of Iran that the "legal hearings should be held openly" and the individuals can attend freely unless such openness is found by the court as contradictory to the chastity rules or public order or if the parties ask the closed holding of the hearing in private lawsuits⁶.

- **The Principle of Necessary Investigation of the Complaints and Oppressions:**

Judicial security necessitates the existence of a formation and institution inside the political structure of the government with the duty of investigating the complaints, abuses and oppressions. Corresponding to act 158 of the constitution, this is the duty of the judicature. The act is important in that the executors and the others abusing the people's right find a system above their head in the society that does not permit abuse and extremism and decisively treats them in case that such crimes are perpetrated following which the people would feel security and can comfortably engage in work and life.

- **Judicial Independence:**

Judicial independence means that the judicial system, on the one hand, and the judges, on the other hand, issue verdicts impartially and away from any influence and effect of factors outside the regulations and solely based on legal regulations. In judicial independence, judges' independence is the most important pillar and it means that the judges serve justice with complete impartiality and in adherence to the law and fear no one and do not give up to the biases of various atmospheres and spreading of rumors and powerfully and firmly announce their sentences based on the proofs as well as what they infer from the law.

2. Judicial Security of the Rights and Related Principles (Principle of Legal-Judicial Security):

Essentially, the judicial security of the rights has been guaranteed less frequently than the judicial security of the individuals. In other words, the judicial security of the rights is less important in the majority of the legal systems than the judicial security of the individuals. However, this should not cause neglecting the collection of principles and refraining from investigating them and their positions in the legal systems. It has to be also

⁶ Act 65 of the constitution

added that these principles are considered as more modern concepts in contrast to the principles related to the judicial security of the individuals.

1) Principle of Legitimate Trust:

Principle of legitimate trust is related to the judicial security in that it enables citizens predict the results of their interventions in legal terms. In fact, it can be stated that, by the cause of this principle and as a result of predictability of the legal results, a sort of trust comes about in the legal system in the citizens. Or, in other words, the principle is a special expression for the predictability principle that is considered as the tools of judicial security principle. It has to be noted that the legality of a legal status in respect to the legal system obliges the system to guarantee the situation and provide the citizens with the related information. The existence of this principle and its implementation by the general authorities helps citizens evaluate the solidarity and continuation of the process by the authorities. The evaluation by the citizens and, especially legal persons responsible for private law, leads to the question that whether the interventions by the general authorities are based on certain and stable foundations or based on economic and political conditions? The issue plays a very considerable role in the evaluation of the judicature and exerts a large deal of effect on the internal and external investment tendencies and, particularly, capital drain.

2) The Principle of Judicature's Accountability:

According to this principle, the judicial system should remain accountable to its measures at any needed time. In Iran's constitution, like in many of the other countries, the right to supervise the courts has been assigned to country's Supreme Court. The country's Supreme Court has the supervision right but it does not practically supervise all the courts except in special cases and the files referred thereto. However, corresponding to the constitution, the Supreme Court has the general right of all courts' supervision.

3) The Principle of Suitable Speed:

The principle of speed in judicial interventions is a necessity for the judicial security. In this regard, there is another principle termed "ease of access". Under the current circumstances, many of the complainants withdraw from adjudication of their complaints due to the complexity of the trial stages or, due to the large number of twists in the civil procedure and trial formalities and elongation of the trials, the complainants are incumbently urged to withdraw from their complaints. Due to the same reason, meanwhile not sacrificing precision for speed, a good deal of speed should be emphasized and taken into account.

- Other Principles:

The numerous meanders and swirls of the trial usually make people refrain from referring to the judicial system. The people sometimes feel that the judicial system is not available for them. Judicial security is attained when all people feel they have a shelter, named judicature, to which they can bring their complaints and lawsuits. That security is lost if this feeling is diminished. The entire people's consideration of judicial system as a refuge is the real meaning of judicial security.

- Principle of Compensation Necessity of the Material and Spiritual Losses Resulting from Judge's Fault or Mistake:

Considering the fact that making mistake is not so improbable in judgement, the judicial justice necessitates the prediction of solutions to the compensation of losses stemming from mistakes. According to act 171 of the constitution, if a harm of a type (whether material or spiritual) is caused to a person as a result of a judge's fault or mistake in the subject or verdict or in sentence adjustment to a certain case, s/he would be held liable in case of being found guilty otherwise the loss is to be compensated by the government and the culprit's defamation should be restored at either of the cases. Specialization of the lawsuits' investigations is amongst the principle emphasized in the general policies enacted by the expediency discernment council. Corroboration

of the supervisory and inspection system of the judicature is amongst the cases underlined in the general policies of the System Expediency Discernment Council.

Discussion and Conclusion:

The principle of the regulations' independency reminds that "the judicature should not issue verdicts generally and in the form of overall axioms rather the legislation belongs to legislature; however, when the courts issue different verdicts for similar cases, the legislature has allowed the judicature in line with preservation of procedural unity in the courts and prevention of the multiplicity of the verdicts on similar cases issue verdicts of procedural unity". The issuance of contradictory verdicts in similar cases by the trial courts as well as the courts of appeals and Supreme Court is also possible and even relatively common. In fact, considering the fact that the judges of the Supreme Court, as well, like the other judges, enforce their personal perceptions of the rules and regulations when issuing sentences and are not obliged to obey the ideas of the other judges, the different perceptions of the numerous judges of single texts are always possible. However, considering the fact that the legislator's intention and purpose of every text is clear and it cannot differ based on its interpreters, it is necessary to identify and declare the intention in discrepancy cases so that the individuals' rights are not wasted and the inaccurate judicial interpretations do not take place. Under such a condition, when, in similar cases, contradicting verdicts are issued by the trial courts or appeal courts' divisions, the chief justice is obliged to posit the subject in the general assembly of the Supreme Court as soon as getting informed thereof. The verdicts issued by the majority of the general assembly's members is devoid of any effect in infirmed subjects but they are to be necessarily followed by the Supreme Court's divisions and the other related authorities. In 1950, in order to prevent the issuance of the scattered verdicts and different judicial procedures, a law was approved under the title of the single article related to judicial procedure: "whenever various procedures are found having been practiced in the divisions of the country's Supreme Court for similar cases, the general assembly of the country's Supreme Court consisted, in this case, of at least three fourth of the heads and consultants of the foresaid court's divisions, holds a meeting by the request of the minister of the justice or the head of the country's Supreme Court or the attorney general to investigate the debated issue and make proper decisions about it. In this case, the verdict issued by the majority of the aforesaid assembly's members is to be necessarily followed by the divisions of the country's Supreme Court and by the other courts for similar cases and it cannot be changed except by the idea of the general assembly or the law".

It sometimes happens that a division of the higher judicial authorities makes a special inference of a law and issues a verdict based thereon in regard of a legal article while another division makes another perception of the same legal article about a similar subject and issues a verdict contradicting the previously issued with the subjects proposed to both of the divisions are completely identical and they have reached the different inferences based on a single article.

In such cases, the legislator has predicted that the general assembly of the country's Supreme Court consisted of the judges of the country's Supreme Court should hold a meeting and procedural unity verdict is issued following conversation and investigation of the issue and reaching a conclusion based on the majority's decision. Nowadays, nobody can deny the characteristics of the judicial procedure. The importance of this source in various areas for which it has enacted rules would be the criterion of action such as in contracts law and family law and the civil liability stemming from crime and so forth. In written legal systems, such as Iran's law, the judicial procedure is the crystallization of the law. The judicial procedure objectifies the law and makes it dynamic and makes it up for its weak points, severities and shortfalls thereby to make law match to the social needs. Thus, it is a good touchstone for assessing the justice and its output would be a reflection of the ethics and civilization of a nation and its use is generally easier than the legal rules. Judicial procedure plays an important role in the actualization of judicial security for the reason that the judge can

coordinate it with the society's latest needs through making interpretations and it is by means of this scale that the approach towards the fair judicial evolution can be rendered practical and also it is based on fair interpretation of the regulations that such scales as efficiency and reaching an optimal point, assumed as justice, would become clearly vivid. It has to be noted that the judicial procedure is an important factor in the actualization of legal order and, in the absence of regulations that are comprehensive and perfect in all respects, it is better to employ the similar past decisions for achieving the judicial justice and security for filling the legal gaps and it has to be accepted that the judicial procedure cannot be disregarded at all. Considering the complexities resulting from the social-political and economic relations and so forth, the regulations cannot wait for proper interpretation of the legislator or enactment of novel rules so as to become coordinated with the society's everyday changes. So, if the issue is left unnoticed in the judicial procedure and legal axioms are not created in line with interpretations matching the realities and legal needs of the society, the law would remain silent in some cases and/or would be disqualified for the legislator's intended effect. The main effort of the judicial procedure is to provide the judge with the law so that the examples can be discovered and spirit of the justice can be manifested within the society based on logical interpretations of the regulations. In case that such a procedure was absent, the judge would become servant of the law and the strict and petrified implementation of the general regulations and the daily problems of the legal system and, subsequently, the social system would be accompanied by challenge and the social system would be stripped of security.

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