Conflicting verdicts and their solution in Iran's Legal system, by look on France's law

Amin Pahkideh (M. A) [1], Alireza Shakarbigi (M. A) [2], Farajollah Valipur Dehno (M. A) [3], Amir Ahmadi [4]

[1]Department of law, Payame noor University, Iran
Email: Pahkideha1364@yahoo. com
[2]Department of law, Payame noor University, Iran
Email: Ali. shakarbaigi@gmail. com
[3]Legal disputes MA, Bandar Imam Khomeini (RTA) Petrochemical Special Economic regional organization.
[4]Department of law, Payame noor University, Iran
Email: Amir. ahmadiy91@gmail. com

Abstract: Passing the law equally for all, merely for attaining legislator`s desirable justice and equality isn`t enough, but it is attainable when it is issued about all equally: legislator doesn`t ignore this important issue and some departments like super me high court are established to supervise and monitor these rules: despite of these all strict rules one case with the same subject are investigated by two judges and they have different verdicts. now it is turn to see what solutions did. the legislators prepared for this conflict. When a case is going to be investigated in a legal cycle, at first legislator necessitates the two sides of claim and their agent to in from the judge if there is this case in another courts if so, court refuses to investigate any more and issues the related verdict. but if no one in furs court from another similar case in court, and court issues a verdict, legislator has predicted and convicted one can have an appeal in the legal time of the appealing in this case the second court will breach the second verdict. but if in legal period of appealing no one claims, we will have two conflicting verdicts that both of them can be applied. In this case the legislator has appointed two solutions: one of them is the appealing request (article 376) and retrial (article 439). [Amin Pahkideh, Alireza Shakarbigi, Farajollah Valipur Dehno, Amir Ahmadi. **Conflicting verdicts and their solution in Iran'sLegal system, by look on France's law.**

[Amin Pahkideh, Alireza Shakarbigi, Farajollah Valipur Dehno, Amir Ahmadi. **Conflicting verdicts and their solution in Iran's Legal system, by look on France's law.** *N Y Sci J* 2014;7(1):44-51]. (ISSN: 1554-0200). http://www. sciencepub. net/newyork. 6

Keywords: Conflicting verdicts, Iran's, Legal system, France's law

1. Introduction

Sometimes the best of judges is fallible because err is human and judge issues as verdict that breaches some one`s right and causes duality of verdicts and conflict in Iran's legal system because department of justice is the base of any political system, it`s cohesion or apprising depends on the justice. consequently there should be a system that judge`s verdict can be reviewed about who is convicted. them it should be in a manner that convicted can go another court and in act for him/her self:it should noted that in every case. we can go to the next court and breach judges verdict and all the society gets suspicious about legal systems so in a procedure we should terminate the inspection and close the case and accept the judge`s verdict because according to public reason we should prioritize public benefits on private laws. because with the retrial maybe we have error again. as much as possible we should try to prevent the conflicts, so that we can prevent prolonging of legal process and verdicts unsteadiness. keeping the legislating principle and it`s exact effect on the society deleting or up grading in appropriate laws and also passing the new laws in some cases that there is a legal gap and court`s specializing about different claims and appointing the clever judges and educational level and experience can be good approaches so that can stop issuing conflicting verdicts. but as it was said before, for not issuing conflict verdicts, legislator at first obligates two sides of claim, that if this case has another court session, they should in from the current court according to article 103of civil law, if not and there are two conflicting verdicts about one case, convicted can in act his /her right by appeal or retrial, but if even in this stage we can`t find the truth or it isn`t followed up by the common routine or time for appeal is expired, convicted can follow by the extraordinary procedures (retrial and appeal) part 4of article 426of Iran's civil law about retrial says issued verdict is in contrast with the issued a verdict in another court about the same cases we can see that and in the part 4of article 371we see about breaching verdict or pursuit that conflicting verdicts that are issued in one case without legal reason and between the same claimant and defendant:it is seen that for removing conflict verdicts. legislator about cases which have the same reason apparently, for enacting the oppressed right, has predicted retrial and request for appeal. but this question comes up that when the

main direction of claim (issuing conflict verdicts) is the same but why we can use retrial and appeal. what are the effects of following of each one and can we use the two menthol for enacting the oppressed rights ?retrial and appeal are the extraordinary methods of in spec ting to the claims that are for keeping the reputation of law and for keeping the justice respectively in France that our retrial part is adapted from their law is for compensating judges fault and there is no implication in law for that. however. the experts of law and mentioned `s country's legal system, consider this wrong issue as a separating aspect between retrial and appeal. but because some of features of retrial and appeal are the same, sometimes it is hard to differentiate them. in our law, because retrial and appealing are different in many aspects they are different about intentions. as a result, we may have a case that has parts of appeal but without retrial and vice versa. this point can determine the appeal factors from retrial. but in our paper removing the conflict is an aspect that exist in both of them appeal and retrial then it is possible to appeal any edict then in this paper a verdict is given to the layover not is effective the authority. we care about knowing the concept of conflicting verdicts, the reason of its issuing and legal ways of removing verdicts in Iran's legal system in the first part we are going to define conflicting verdicts namely, in the first discussion we investigate the nature of conflicting verdicts, and its specifications in the second discussion we investigate the reason of issuing these verdicts and however legislator predicted all the unexpected situations then in the second part in two sections, retrial and appeal we investigate them.

Chapter one: concept of verdict and verdict conflict

verdict in lexicon mean way (moein, moein`s Persian dictionary, Tehran 2005-p, 530) and in jury's prudence mean analogy that was used in first days of Islam (languid, law terminology –Tehran -1998, p, 325) it isn`t defined in the civil law –article 295is about remedial matters not to detention, while in detention affairs there is verdict (Abdullah shams, civil law –vol 2, edif. p. 215) from the first day of bringing action against somebody till closing off the case, from court in the remedial cases, usually there are different and several decisions how ever in France's legal system all judge`s verdict`s and decisions is called verdict (jusement) in a general definition, but in Iran all court affairs isn`t called a verdict, in fact it means a decision that should be verdict or judicial order (Abdullah shams, Iran's civil law, vol, 2 Tehran, 2005-p, 216) order Sentence in lexicon means order and recommend and the plural is orders Sentences in legal lexicon, means court verdict that compromises a conflict and should have 4 elements 1-it should be given for remedial Lawsuit situation 2-it should be about claim nature -3-should be given by the court -4-it should compromise it should cease a conflict so that it will be a verdict decisive verdict doesn`t mean any determined verdict that is appealable (shams, p, 218) about juridical order we don`t have explicit definition in article 299 we have if court`s verdict is about nature of the claim And ceases it whether completely or not is verdict otherwise it is judicial order, and has given us a negative meaning from the judicial order (vahedi) civil law, Tehran, 2004, p, 134) it should be noted that according to this writing verdict means that particular meaning which is issued by the legal representative or judge to cease the conflict and in the nature of claim is issued as a claim ceasing, that in different situations we have different verdicts which will lead a kind of duality in the legal system first part, concept and definition of conflict.

Conflict in lexicon means contrast, being against each other, and mismatch and in poem and rhetoric means using opposite words next to each other like white and black based on the jurisprudence, conflict means having two evidence quite against each other.

Conflict has two kinds: real and Transverse real conflict means any oppositeness between two verdicts that while confronting the claimant should do one of them and give up another one but I Transverse conflict it isn`t like that because there is an over view of science that one of them is unreal. and it shows that our concern is about real conflict and not Transverse one what is important is that what requirements should conflicting ideas should have to be considered as against according to article 376and part 4 of article 426?

Part4 of article 426 and article 376 of penal law

Corresponds with part 70 of article 504. then it is necessary to talk about establishment requirement told in the article 426 establishing this way of retrial needs some conditions like: issuing two final verdict opposing each other unity of plaintiff and defendant of the conflicting verdict, unity of claim in two conflicting verdict and issuing two conflicting verdicts from one court.

But if there is a conflict between verdict and judicial order or between two judicial orders in this way vertical won`t be done addition ally all two verdicts should be finalized because, otherwise the usual way of complaint toward one of this verdicts is at least open and this is likely that no definite verdict is abolished with appealing and conflict is removed because in this case retrial is abolished subjectively and the reason is clean because retrial that is from ways of complaint extra ordinary way just is done

only if the normal way of reinvestigation is blocked. some verdicts have been issued from the Iran's high super me court that says we should have two conflicting verdicts to find the existence of contrast and not verdict or judicial order in article 480 we see that conflicting between two verdicts (judgment) is a cause for establishing retrial so, the conflict between two definite judicial order on between one definite verdict and one definite judicial order is enough for establishing this condition if the court believes that second claim is different from first claim, or both of them (conflicting verdicts) can be, here we should go to appealing because there is a breach of law about an issued verdict that has been reliable (hayati, retrial in Iran's and France's civil law IBID, p, 95, based on et……n 923, p, 432).

The question is that if we wish that retrial must be done in what parts of the verdicts should be mismatch.

The law says: verdict is the way of establishing justice the solves the problem and sentences one of them but the means of verdict are some evidences that can convince the judge to issue the verdict, this evidences can be content of law book or external evidences like confession, attribution, with messing and signs (Catoozian, the validity of judged issue in civil claim, 1998, p, 163) verdict will get the validity of judged issue but about the evidences of the verdict there is we matching idea to be yes or no, however a big part of French jurists says no to that, some others differentiate the near or very near confrontation means to announce them as a valid issue, however the French sniper me court in the latest news has rejected the inclusion of credit base to the verdict`s confronting means (hayati, retrial in Iran and France civil law, p, 96, based on ouches Gerard et….. op cetin 279-464. pp. 463-464) we can say that when there is conflict between two verdicts the fourth aspect of retrial issues will be established but if there is conflict between causes and reasons of two verdict it seems that because the verdicts causes and reasons don`t have the validity of judged issue, cant lead to have retrial for this case.

Two conflicting verdicts should be about the same issue and plaintiff and defendant are the same. in another word unity of both sides of claim is necessary.

Conflicting verdicts in one court should be between the same claimant and defendant and about the same claim so that we can have retrial. but if two conflicting issued verdicts are from two different courts, article 376of penal law will decide about it from two issued verdicts about one case from two courts. the former verdict is valid "consulting recommendation of justice department no 711-250. 1992).

Second part: the reasons of issuing conflicting edicts

In Iran's constitution introductory we see (Get people to a just verdict) but however our legal system is based on some principles likes keeping Islamic rules, unbiased nests principle of judge being opened of all court session principle of acquit all the principle of being legal of crime and punishments the principle of compensating caused by legal decisions the principle of being evident and documentary of verdicts and courts verdicts the principle of retrial, but it is seen that are some conflicting verdicts by the courts about one case that are against logic:their issuing reason should be investigated and experts talk about suitable approaches that results in not issuing or decreasing them.

First debate: court qualification

Court`s qualification has two kinds: inherent and relative qualification also we don`t have definition of them but based on lexicon and also the considered concepts in the past laws and including articles 10-11-12and part 1 of article 197former civil law passed in 2001, we can infer it briefly but it seems that the rules of relative qualification and determining court`s inherent competence isn`t hard job, but in some rare cases. but to determine a competent court from the relative.

(local) competence is faced with difficulty and needs to be analyzed but also to know it`s general rules and using practically can be useful and effective court`s relative competence is determined based on the claim subject and some other relation factor the main factors of relation are: resident, domicile place of property (moving or non-moving) place of establishing the deed, the place of establishing the contract the place of performing the contract. and the place of evidence taking place that in articles 11-25of civil law and other parts of this rule and in another rules like Non-litigious affairs it is pointed to the court`s competence. these rules contain one main rule, some exceptional rules, some arbitrary and rules that in some cases provide the possibility of choosing the place of the court and determining the qualified people for setting up the claim, brings up the ground for bringing the same claim to the court. however we can refer to this selection that in article 23about field of bringing a claim to the court caused by companies commitment toward some people out of the company existed and explicitly says that bringing these claims to the court should be done that it was done or committed, or goods should be delivered, or money should be paid. and it shows that the legislator at first takes care about place of trade and commitment then the place of goods delivery and finally the place of paying money as a place for bringing the claim to the court and if in one contract we have all these cases

and each one of them are in the special place we should think about the first preference and cancel the authority of choosing place from the claimant so that we don`t have any contrast about validity of court in his residence place but practically shows that in this rule he have the choosing article of "or" then legislator wanted to make claimant free in choosing the place of the claim this is misused by some people and the same claims are brought to the different courts that causes duality in the verdicts about the same claims in this case sometimes, both defendant and or his agent knows this issue and for any reason didn`t act according to articles 84, 89and wait for investigation in different courts and naturally different issued verdicts in some cases plaintiff in one case claims to the court and considers the defendants resident as the way of work and again in another court, which is capable for investigating this case, claims, but considers the residence of defendant as unknown and tries to print an advertisement based on article 73second debates legislating references in the country there are some different departments and references that accept the responsibility of passing the law that in this paper we will have a look on them briefly but it is worth noting that this reference not only aren`t suitable but also in some cases are considered as the weakness of legislating system that personal tastes are taken sauce and some contrasting rules will be executed that not only don`t reduce people`s legal problem, but also it increases the legal complexities. now we tell them briefly.

Main references of legislating

1-islamic national council

The most important and the most scientific way of legislating is by national council. council in one country is a sigh of democracy that cares about people and their representative.

2-internal commissions of national council

They are another reference for legislating according to article 85of Iran's constitution a lot of rules and laws are passed by these specialized commissions and after confirming Guardian Council and national council has been applied for execution, in the modified content of Iran's constitution also all basic laws should be passed by this commissions all consider something or giving it up as a crime and determine the punishment for that according to this rules, all council laws have legal validity and can be executed experimentally.

B-complementary reference of legislating

1-Guardian Council

According to article 94of constitution all council laws should be approved by the Guardian Council and if it is approved it`ll be applicable however Guardian Council doesn`t intervene in to rule making process directly but it is very important for making the final decision.

2- Expediency Discernment Council

Sometimes representative should surpass some limitations of construction and pass some laws contrasting with the constitution, in this case Expediency Discernment Council comes to help them. this assembly was established for settling up this conflicts and in the year 1889it was accepted by all.

This assembly makes decision in some cases first some cases that Guardian Council considers the council bill as against law and religion or against constitution Guardian Council investigates this mismatching with religion and constitution, so when Guardian Council disagrees with a bill it shows that this bill is against religion and constitution.

Second when the super me leader assigns some cases to the Characterized by the Expediency Council, these cases are articled completely and contain all the military, cultural, economic and social issues third other duties that are mentioned in the constitution it is worth noting that in some of constitution rules Expediency Discernment Council is assigned leader consultant, because all leader words can be accepted as rule then Expediency Discernment Council can affect legislating indirectly.

3-council of the ministries or each of them

In article 138 of constitution we have: in addition to some cases that council of ministries or one of them is responsible for writing executive regulations, also council of ministries can pass some regulations for doing their official duties and ensuring about doing all the rules well but they shouldn`t be against the religion and constitution in continuation we have:government can assign some ministers to pass some rules, what they pass is applicable after confirming the president:constitution, in this cases, makes government to deliver these new rules to the national council although super me high court is responsible for controlling all the government laws(law of official justice, 2006, article 18) and solved the conflicts to some extent but it doesn`t cover all the decrees because they investigate those cases that has plaintiff totally speaking lack of a place for legislating, possibility of passed laws conflict, effects of special political issue and non-legal on passing some special laws, repetitive changing the laws because of different ideas variation, possibility of thing political verdicts under the coverage of law, disruption in performance of law –executing organizations all field makers of issuing conflicting verdicts.

Third debate: laws

Laws should be clear non-conflicting and according to social realities. if the substantial laws

are unclear or brief they couldn`t be interpreted because of that different interpretation of one law is made that not only prolongs the legal session but also maybe leads to issue conflicting verdicts.

Human laws and rules are in change always the passages of time make some of them old and out of use than the legislator should upgrade them. now that our laws in inspired by the Islam, legislator should pass some laws that provide people safety and security in all cases, but un fortunately there are some rules that are obsolete and just mislead our judges or make legal hallucination.

Fourth debate investigating judge

The broad authority of executing the laws between minimum that is determined by the text of law and maximum that is expressed by the spirit of law should be given to those people who has these two features. it is imperative for judges to be qualified scientifically and practically about all kinds of daily and complex crimes, while investigating the cases they be familiar with day`s science like chronology penal codes, scientific prisons, penal policy, coroner's office, scientific police, finger printing, body investigating pathology, legal chemistry and ….. With issuing comprehensive orders and using present facilities investigate the cases, differentiate truth from lie, in for spirit of law and prevent the traffic of the cases.

Second chapter: solving the verdicts conflict from the usual ways of complaining against verdict

First debate: petition (the first method of removing conflict of verdicts).

Petition means to protest against a verdict (MOEIN, Persian dictionary, 4th vole, Tehran 1981, p, 4933) and in law uniquely means any complaint that absent convicted one protest against a sentenced passed in absentia (hayati, civil law in new discipline of law, Tehran, 2011, p, 5291) that is, at first the find judgment hasn`t been done and the case isn`t finished and until retrial, eventually breaches the former verdict. in Iran's law, that absentia verdict was passed there was a time for protesting and also there was a right for petition, in this stage of investigation in fuming the judicial officials about being the conflicting verdict for vindicated is opened.

In France's law, except some cases that are considered as absentia verdict. there is a right of retrial for convicted it is worth noting that petition doesn`t make a new process but it is that last process in which begins again and instead of using the last stage we use the last section in which shows that last section and petition contemporarily make a next section (Shams, civil law, p, 317).

Second debate: retrial (second method of removing verdicts conflict)

Retrial in lexicon means start again and reinvestigate (hashemi, hamid Persian dictionary, tehran, 2004, p, 202) and in law means protesting against verdict in common way that is predicted in the 4th part of civil law for reinvestigate in higher legal, officials, in this step we should in from the legal officials from the conflicting verdicts in which following it`s approving the necessary verdicts is issued and prevents issuing conflicting verdicts, but retrial Has its own condition.

Second chapter: removing verdicts conflict by using extraordinary ways of protesting from a verdict

Retrial and appealing are two extraordinary ways of removing conflict from a verdict but there is dispute about which one is suitable? Which one is better to be selected and what is their effect?

First discussion: retrial (third method of removing verdict in law there is no complete definition of retrial

In fact our legislator or has articulated some rules about that, but jurists have removed this defect to some extent, including, prescribing reinvestigate about one case. however there was a definite verdict about that (VAHEDI, necessary points of civil law, Tehran 2000, p, 26).

First discussion: conditions of accepting retrial

retrial is one of the extraordinary ways of claiming against verdicts that more than other issues damages the validity of that issue the more range of retrial reception is extended, the less verdicts are stable, French civil law decreased the domain of retrial in order to make the courts verdicts stronger and deleted bout of ten. according to principles we should just refer to those cases that are articulated by the legislator explicitly. article 426says: about verdicts which are definite ….. Retrial should be required. It is necessary we mutation some problems that legal system faces.

1-juridicial order: according to above, retrial is about those claims that are opened only about verdicts, so, courts or order even definite orders of claim (Located revocation petition, petition rejection, rejection argument, etc.) And Safeguarding order including Commit the demands, temporary order aren`t retrial able (shams, civil law investigation, vol, 2, IBIN. p. 468).

France new definition of civil law in article 593has determined the range of retrial able verdicts in a definition about retrial. this article says retrial is Deviation from a verdict which is out of judgment validity and credit then we conclude that courts definite verdicts and claims definite orders are valid after they are finished comparing new and old law of France, it is clear that the same change, which happened in Iran rule about retrial, has happened in

France law. more ever in the France's new civil law according to article 749of this law all the refer rant of commercial, social, agricultural, worker and boss ship are refillable more it is while not accepted in Iran's new civil law (Hayati) retrial, IBID, p, p, 51-53) then it isn`t acceptable not to reject retrial toward judicial orders in some conditions, which are predicted in the verdicts.

2-judhe verdict: This isn`t recrialable in Iran's civil law because article 426of this rule supervises the verdicts of courts and not verdict that judge issues based on article 454and also Iran's civil law. court`s investigation about judge`s verdict is restricted to the mentioned articles in article 489and however the predicted cases about retrial, Is possible toward issued verdicts (hayati, retrial, IBIDp, p, 56-57).

3-issued verdicts from the Dispute Resolution Council)

However based on article 456 we can ask for retrial about finalized verdicts and articles 433and 434 of above-mentioned rule explicitly names the court, but recently Dispute Resolution Council obey of the general rules of civil law. it is no doubt that the Dispute Resolution Council does legal affairs and courts assign some of their duties to the Dispute Resolution Council and Dispute Resolution Council verdict are retainable and all the legal formalities and deadlines are applicable about Dispute Resolution Council (cited from pnu –club. com –masini attorney at law) and these verdicts are used for removing conflict from the issued verdicts.

4-issued verdicts from the high super me court in France law, that country`s jurist based on article 593.

Believe that country`s high super me court aren`t retrial able because in this article the purpose of retrial is to reinvestigate the claims both in subjective and "Decrees"affairs and while investigation in high super me court is formulated and this manager doesn`t enter the nature of claim.

In Iran's law, with regard to this point that Iran's high super me court, merely should investigate and according French jurists inference, since the objective of retrial is to reinvestigate both in subjective and Decrees claims, the admission of retrial isn`t defendable integrated to this reference verdicts. another case that amplifies non permission of retrial in the high super me court, is a principle that based on that the second judge and court cant breach the first reference, so since the super me court naturally doesn`t issue a verdict, basically issuing the conflict verdict sin super me court has subjective exit

5-psends they all refer rants of verdicts

The verdicts of these kind with former legal refer rants in clouding tax conflict removing assemblies and conflict removing assemblies in work law and super visor assemblies in the rule of property and documents register aren`t retrial able, because in this case there in no implication of complaint against verdicts while those requirements which predicts retrial regard to court's verdict`s, logically, there is about verdicts of this refer rant.

In France law, retrial has been predicted in first book (articles 593-603), according to article 749 of this law the regulation of first book for all legal reference that investigates about civil, commercial, social, agricultural, worker and boss ship is representative, except in some cases that special rules toward some of affairs or specific for some legal officials, have been predicted as a result, retrial in France is possible about all legal verdicts, in Iran, too modification of civil law that basically including all non penal affairs in all non –penal courts seems suitable and necessary.

6-legal order

Sometimes the both sides of claim compromise their conflict in the court that is called legal order. in France's law, legal order because it isn`t considered it`s real concept as a verdict isn`t retrial able, it is true about Iran's legal system; first the legal order isn`t considered as a verdict and naturally it doesn`t get the crèche of closed case and secondly this contract will be cancelled in the registering court.

Second discussion: directions of retrial

Iran`s civil law has initialized the concept of retrial by articulating directions of retrial in article 426. in this article direction of retrial is considered in seven cases. the new law didn`t change dramatically about the past law but in France law between old and new rule there are dramatic changes in the field of retrial aspects. including decreasing of 10cases to 4cases. about retrial law in Iran it is good idea to mention some points before articulating the retrial aspects first, merely the existence of one of the retrial aspect, they obligate to court to accept retrial to conform the case by the legal investigation, secondly, regarding this point that retrieval is one of the ways of extra ordinary petition a gains verdicts so, merely by the existence of one of the aspects is acceptable thirdly: in all aspects of retrial we should notice that for the direction of retrial, if the law breaking is intentionally, namely one court hadn`t kept one article or formalities isn`t included in the range of retrial but it is placed in the domain appealing in this paper we focus on fourth side of retrial the fourth aspects of legal investigation that is mentioned in the article 426says:issued verdict with another verdict in that same.

Same, that is issued by the court before is opposite, however it isn`t the legal cases of this conflict. issuing different verdicts by the same or different courts are conflicting so, if a claim is

brought up in a court and verdict is issued about that, it shouldn`t be investigated against, because the benefit of society necessitates that claims after issuing the verdict. are finished and both sides of claim get their right. this is known as credit of judge issue. the base of this credit is to prevent rebranding the claims and issuing conflicting verdicts. article 84 has determined one of the draw balks as the discredit of judged issue. the judged issue has some consequences like: that claim isn`t retrial able in the count and any official organization or government can`t change the verdict or prevent it`s execution (article 1 of civil verdicts) and no one can`t prevent the court cycle or change the verdict (article 8) this way is against the fourth aspect of article 376says:if in a case different verdicts are issued, no regard both said of claim or canalling the court`s verdict, the latter verdict will be breached and will Bemis credit on the favor of beneficiary, also the first verdict will be breached if against with law. including from one court and different courts article 439has told if the process retrial is for conflict between two verdicts, court after accepting retrial cancel`s the second verdict and the first one will be steady then in France law, conflicting verdicts whether they are from one court or from two different court branches, when the verdicts are definite just they are from appeal (Hormazi, a thesis for PHD paper appeal) from civil verdicts and high super me supervisory role in presenting the duties well).

According to the new law by the number of retrial times, there is possibility of retrial relative to any verdict which is issued during retrial in France law according to article 503, any verdict that is issued as a result of retrial will not be retrial able in clouding (Nature - the contract is reasonably request - the refusal) and in our new law according to article 603"claimant can't ask for retrial about a verdict which is abolished as a result of retrial.

Second discussion (appealing (4) The way of way of removing conflict)

As it is said appealing is the way of extra ordinary protest of a verdict. then those verdicts are appealable which are explicated in the law. legislator considers the principle of not being appeal from review courts in article 368and first courts of article 368 has predicted the role of Iran's super me court guarantees the unity of interpretation and preventing any deviation in doing rules in courts and justifier of legal procedure.

In article 370 attention just paid to the legal regulations DR shams believes that defendant`s appealing verdict will be love ached if it is according to religious rules and not legal rules so, according to this idea the expression "religious regulations "isn`t extra and has a high legal burden and in some cases according to article 167of constitution, the judge is obliged to refer to religious document if he can`t find the rule in the rule book so in this case the investigator branches of court have to adjust the defendant appealing with religious codes and determines the rightness or wrongness of the verdict (hayati, civil law in new discipline of law, IBID, P, 622) we can say that the rule of determining the conflicting verdicts based on this article, is to accept the shortage of judged issue in investigation on lead to issue second verdict on the other hand, the second verdict is issued that beneficiary of first verdict for any reason, the problem of judged affair in the investigation resulted to that isn`t proposed or it is proposed, the court didn`t pay attention to that, because with regard to unity of claim members, the subject and reason, claim should be about a claim led in to first different verdict more ever you should mention that when in a case the verdict the defendant appeal verdict is going to be abolished because of conflict that this conflict remains valid and reliable as a result, if the first verdict was can celled because of appeal or retrial, or conflicting it is subjectively cancelled and there won`t be any cancelling of second verdict, if the conflicting verdicts have been issued, the latter will be invalid and in the honor of the beneficiary it is considered as valid less the first verdict by being any of the disqualification will be cancelled including issued verdicts from one or different courts (article 376) but if uniquely the latter verdict is abolished (it is considered as invalid, this abolishment should be out of reference, if the first verdict is cancelled According to article 406it should be done.

In France's law, the cases for breaching the law isn`t considered and it is made by the legal procedure, but the abolishment of verdict because of not articulating the subjective directions and Respects the judgment are the important aspect of breaching in the high super me court 4 th chapter.

. **Conclusions**

Sometimes because of any reason including; existence of different legislator reference, miswriting of laws and being abundance of inferences, not being comprehensive and exclusive laws silence, ambiguity and brief, law`s conflict with the religion, not knowledgeable judges, not specialized courts, make the fields of issuing conflicting verdicts it is naturally clear that conflicting verdicts and different ways in issuing verdicts, defames the legal system and investigation system. the abundance of processes isn`t valid for the legislator because when different verdicts are issued about similar subjects of different court branches the legislator has predicted the issuing unity of verdict in high super me court and

considered the court validity for the unity of court procedure, so for the reason of issuing conflict verdicts in the same subjects in the same courts, it has more sensitivity, legislator has predicted this problem. then for preventing to issue conflicting verdicts in the same claims, if the claim had any precedence of last investigation and lead to issue a verdict for that claim, the case is closed and they don't offer reinvestigation and also obligate the both sides of claim and their agent if this case has any precedence tell the court, to the court not to issue any conflicting verdict. because maybe there are two conflicting verdicts about one thing, but if in this case the court issues any conflict verdict it has two situations:whether it issues a verdict like the old one that it is out of problem or after investigation there will a verdict that is against the last verdict and it is and this subject has some subdivisions if the new verdict is absentia at first petition and following appealing and if it is in the presence of the claimant it is ok for appeal and in this stage the both side of the claim can in from the judge from the last verdicts, but if in this case again no one tell the judge about the last case namely, conflict isn`t removed by the normal way of complaint, we can do something from the unusual and extraordinary way (retrial and appeal) they do something. the legislator for removing this problem has predicted to different ways:first one the appeal request to cancel the conflicting verdict and another one is retrial for removing second verdicts that plaintiff according to article 426asks for cancelling the second verdict of issuer court petition, appealing and retrial have their own way of investigation but what is important is that the removing the conflict in the stage of petition and appealing, because they are in the same way there won`t be any problem for both sides of the claim, but because but because different verdicts about one claim can be trouble, some it will important for all the legal cycle care should be taken in this case. So, by the existence of appealing and retrial in following up the issued verdicts, we should go ahead carefully and choose all the aspects with high precision.

One of the basic differences of retrial with petition or appealing is that retrial cares about just verdicts and not judicial orders another difference is that by the advent of claim, retrial is quite clear and obvious for that, the predetermined court later decides about rejecting or accepting the retrial and if so starts reinvestigating:second in the retrial (against appeal) except what is mentioned in the retrial another aspect isn`t going to be explored third:if the retrial is about a part of verdict, just that defective part needs to be modified fourthly about verdict that is issued after retrial, again the retrial isn`t accepted from that side but this verdict is under the regulation from the perspective of being appealable or retrial able fifthly in the retrial no one can interfere but both sides of one claim, So we can`t say that whet her using appealing or retrial in following up the claim (conflicting one) is better and the beneficiary is responsible to find the better one Our law has this drawback that judicial order aren`t retrial able while those reasons which leads to accept retrial in the legislator idea may be presents about the majority of judicial orders by this hypothesis it isn`t logical not to pay attention retrial about this claims in general if we don`t accept retrial we protested against justice, the duty of legislator is to provide all options and exit ways for both sides it isn`t acceptable if defendant uses tricks and cheating and so one to win a cases so not accepting the judicial orders in relation with retrial isn`t justifiable and an option should be found about it totally speaking conflicting verdicts about the same cases leads to appear imbalance in the legal system. it goes without saying that issuing conflicting verdicts in the same subjects has more sensitivity, then it is the duty of legislators to think more and more effective to find better ways and prevent issuing the conflicting verdicts.

Corresponding Author:
Amin Pahkideh (M. A)
Department of law, Payame noor University, Iran

References

1. Hayati, civil law in the new discipline of law –Tehran, 2011.
2. Hayati, retrial, 2008.
3. Shams, civil law, i`st vole 1, Tehran, 2005.
4. Shams, civil law, 2 nd vol, Tehran, 2003.
5. Fayz, basics of jurist prudence and religion.
6. Moein, Persian dictionary, Tehran 1981.
7. Katuzian, the validity of judged issue, Tehran 1998.
8. Vahedi civil law, Tehran 2004.
9. Vahedi –necessities of civil law, Tehran, 1990.
10. Hashemi, hamid Persian dictionary, Tehran, 2009.
11. Hormozy, a dissertation for getting pid of private law appealing from civil verdicts. And supervisory vole of high super me court in presenting the law better (Tehran university, 2004).

12/30/2013