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Retrial of Finalized Supreme Court Judgments

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ABSTRACT

Retrial with respect to judgments that have been finalized by the Supreme Court continues to be situated at the intersection of "finality" and the "right to correct error," facing ongoing scholarly and judicial debate. This study, employing an analytical-descriptive approach and based on seven recent rulings from various chambers of the Court, demonstrates that the current uniform practice rests on two main principles: the formal finality of the Supreme Court does not negate the jurisdiction of the trial or appellate court to hear a retrial, and judgments issued under the framework of Article 477 of the Civil Procedure Code, once finalized, cannot be retried except within the same framework. On the other hand, the Civil Procedure Code does not exempt finalized judgments from retrial in any of its provisions, and given the formal nature of proceedings in the Court, finality signifies confirmation of the trial or appellate judgment rather than issuance of a new judgment. Therefore, whenever the conditions of Article 426 are met, the issuing court may issue an order accepting the retrial, even if the judgment has been finalized by the Court. However, the restriction of the term "judgment" in Article 426 excludes decisive orders from its scope, and the criterion of "probable validity" for suspending execution is interpreted very strictly; consequently, damages resulting from enforcement of finalized judgments are often irreparable. The article proposes that Article 426 be extended to include "decisive orders," that the criterion for suspension of execution be facilitated, and that a mechanism for state compensation for damages be established so that retrial transforms from a paper guarantee to an enforceable legal safeguard.

Keywords: *Retrial, Finality, Supreme Court, Final Judgment, Res Judicata, Article 426 CPC.*

Introduction

In Iranian law, retrial does not automatically prevent the enforcement of a final judgment; the principle is the continuation of enforcement unless the court, after finding "justified reasons" and the "probable validity of the application," issues an order suspending enforcement. An examination of judicial practice shows that courts apply the criterion of Article 427 of the Code of Civil Procedure very strictly; in most cases, no suspension order is issued and enforcement continues. This cautious approach has caused damages arising from the enforcement of a judgment that is later proven erroneous to remain practically irreparable. The author proposes that the criterion for issuing a suspension order be facilitated and that, where suspension is refused and innocence is later proven, the state should be liable for compensation, so that retrial may be transformed from a paper guarantee into an actual enforceable safeguard (1).

In the Iranian legal system, after a judgment is affirmed by the Supreme Court, the issued rulings attain formal finality, and the principle of res judicata prevents any renewed adjudication under Article 366 of the Code of Civil Procedure. Nevertheless, in order to prevent the consolidation of material errors or to allow consideration of newly discovered evidence, the legislature has provided retrial as one of the extraordinary remedies under Article 425 of the Code of Civil Procedure. This confrontation between “the finality of affirmation” and “the possibility of correction” forms the central problem of the present study: Does a judgment that has already been affirmed by the Supreme Court remain subject to retrial, and, if so, which authority has jurisdiction to conduct the substantive examination? (1) The answer to this question is not merely a theoretical problem; it has broad practical consequences. Before the enactment of Article 427 in 2000, enforcement of a judgment continued immediately after affirmation, and even if the application for retrial was accepted, the resulting damages were often irreparable (1). That amendment introduced the condition of “probable validity” for issuing a suspension order, yet this ambiguous phrase has become the basis of conflicting interpretations; empirical examinations indicate that in more than 80% of cases, courts do not issue suspension orders and enforcement continues (1). Consequently, the risk of enforcing an erroneous judgment remains.

The main ambiguity in determining the “competent authority” arises from the conflict between two rules: on the one hand, Article 426 provides that the “court issuing the judgment” must hear the retrial; on the other hand, Article 366 states that the Supreme Court merely “affirms or quashes” and does not enter into the merits. Accordingly, some jurists argue that, since the Supreme Court does not issue a new judgment, it likewise lacks jurisdiction to hear a retrial application, and the case must be brought before the same trial or appellate court (2). By contrast, others maintain that once the Supreme Court has affirmed the ruling, it should be regarded as the “last competent final authority” and should therefore hear the retrial application itself in order to prevent inconsistency among judgments (3). Judicial practice also reflects these two approaches. Branch 36 of the Supreme Court, in 2013, issued an order authorizing retrial by relying on paragraphs 5 and 7 of Article 272 of the Code of Criminal Procedure, but Branch 7 of the same Court in the same case declared that “no new judgment capable of cassation appeal has been issued,” and therefore the case lacked the capacity for cassation appeal, as reflected in Judgment No. 424 of March 4, 2015. This contradiction keeps the claimant trapped in a cycle of referral between branches and, in practice, deprives him of the opportunity to present new evidence (1). Another consequence is the imposition of social and financial damages. The early enforcement of a judgment that is later to be quashed not only violates individual rights but also reduces public trust in the judicial system and imposes the financial burden of compensation on the state (1). Moreover, uncertainty in determining the competent authority prolongs proceedings and increases the final costs borne by the parties; in the absence of a clear compensation mechanism, these costs fall on a judgment debtor who may ultimately be found innocent (1).

In Iranian law, retrial, as one of the extraordinary methods of challenging final judgments, provides an opportunity to correct judicial errors after the finality of judgments. However, when a judgment is affirmed by the Supreme Court, the question arises whether this judgment—which in fact confirms the ruling of the trial or appellate court—can be examined again. Some jurists, relying on the formal nature of cassation proceedings, believe that judgments affirmed by the Supreme Court are not subject to retrial. But is this view compatible with the text of the law and the objectives of criminal and civil justice? This article seeks to answer this question and analyzes the issue by examining the legal literature, judicial practice, and statutory texts.

Retrial, as the final shield for correcting judicial error after the finality of judgment, is inspired in Iranian law by the French model of Article 593 of the French Code of Civil Procedure (4). In Article 426 of the Iranian Code of Civil Procedure enacted in 2000, the Iranian legislature, without creating any exception for affirmed judgments, has deemed all "finalized judgments" subject to retrial (5). This general wording intersects with Article 366, which introduces the Supreme Court as the "authority of quashing or affirmation," because affirmation is a form of formal confirmation rather than the issuance of a new judgment. Accordingly, the main question of the present study is whether a judgment that has already been affirmed by the Supreme Court can again be subjected to substantive review and, if the answer is affirmative, which authority is competent. Although scattered rulings exist regarding the competent authority for retrial, none has systematically analyzed a group of recent Supreme Court judgments in order to extract a unified pattern. In light of this situation, the present study seeks to answer the following question: "Are judgments that have been affirmed by the Supreme Court subject to retrial, and, if so, which authority—the Supreme Court or the trial/appellate court—has jurisdiction to conduct the substantive examination?" The final objective is to provide an integrated framework that is both consistent with the explicit text of the laws and compatible with the objectives of criminal and civil justice, so as to prevent inconsistency in Supreme Court judgments and the imposition of irreparable damages on individuals.

The Concept and Foundations of Retrial

According to Article 425 of the Code of Civil Procedure, retrial is one of the extraordinary methods of challenging final judgments, whereby the court that issued the judgment re-examines the dispute. This mechanism entered Iranian law from French law and was provided for the purpose of correcting judicial errors. Unlike appeal, retrial is an extraordinary challenge brought after the finality of judgment, and its purpose is to correct a material error or to consider newly discovered evidence. Nevertheless, the legislature has adopted the principle of "continuation of enforcement" and does not regard the mere filing of a retrial petition as an obstacle to enforcement, unless the competent court issues a suspension order under Article 427 of the Code of Civil Procedure. Thus, "suspension of enforcement" is an exception conditioned upon the court's persuasion as to the "probable validity of the application." By recounting the historical development, the author shows that before 2000 and the enactment of Article 427, the country's practical approach was "simultaneous enforcement"; accordingly, many judgments were enforced before the applicant had the opportunity to prove innocence, resulting in irreparable harm (1).

According to Article 427, the court must identify both "justified reasons" and the "probable validity" of the application in order to issue a suspension order. This dual structure has been presumed to prevent abuse and obstruction. In practice, however, courts interpret the criterion of "probable validity" very strictly. Thus, even the presentation of a new document or a new expert opinion is in many cases insufficient to persuade the court. The result is that where innocence is later proven, the damages caused by enforcement—such as seizure of property, auction sale, or even fixed punishments—remain practically irreparable (1).

When a suspension order is issued, enforcement of the judgment is stopped, but finality is not eliminated; therefore, the applicant's request is merely temporary suspension. If no suspension order is issued and it is later proven that the judgment was erroneous, the damages inflicted on the judgment debtor—such as seizure of property, social consequences, or even fixed punishments—remain practically irreparable, because the Islamic Penal Code and the Code of Civil Procedure lack a mechanism for compensating damages arising from the possible enforcement of an erroneous judgment. In this context, even if the applicant ultimately prevails, he can only claim

damages from the former opposing party, such as the complainant or the prosecution authority, while the state, which enforced the judgment, accepts little responsibility (1).

An examination of Iranian judicial practice and comparison with English law show that in “non-monetary” judgments, such as non-contentious matters or custody decisions, the issuance of a suspension order is almost automatic, because subsequent compensation is impossible. By contrast, in “monetary” judgments, the court is required to condition suspension on the provision of “appropriate security” by the judgment creditor so that, if the judgment is ultimately upheld, the damage caused by the suspension of enforcement may be compensated. If the judgment creditor is unable to provide security, or if the court finds that its payment is not possible for him, enforcement of the monetary judgment is also suspended (1).

Accordingly, to reduce the risk of enforcing an erroneous and irreparable judgment, three solutions have been proposed (1).

Clarifying the criterion of “probable validity”; for example, accepting a minority expert opinion or an apparently valid document as sufficient for issuing a suspension order.

Borrowing from criminal law and extending the regulations of Article 477 of the Code of Criminal Procedure to civil disputes, in such a way that automatic suspension for up to six months after the initial acceptance of the retrial application would be provided.

Providing a mechanism for compensating damages caused by delay, so that if the court refuses to issue a suspension order and it is later proven that the judgment was erroneous, the state, as the enforcing authority, would be liable for compensating material and moral damages.

Based on what has been stated, the principle is the continuation of enforcement of a final judgment, and retrial does not inherently prevent enforcement. Yet this very feature may result in irreparable damages if the court delays issuing a suspension order. Therefore, facilitating the suspension criterion and clearly defining “probable validity” are undeniable necessities so that retrial may become an operational instrument for correcting judicial error rather than a paper guarantee, and so that justice may be realized in its true sense.

By contrast, judicial practice maintains that, since the law has not excluded affirmed judgments from the scope of retrial, where the grounds for retrial are established, the court issuing the judgment may issue an order accepting retrial. This view, relying on the principle of the “retriability of final judgments” and the absence of any statutory exception, emphasizes the necessity of accepting retrial even with respect to affirmed judgments.

Conditions of Retrial in Iranian Law

Retrial, as one of the extraordinary methods of challenging final judgments, has always been designed in Iranian and French law for the purpose of correcting material errors or considering newly discovered evidence. In Iranian law, Article 426 of the new Code of Civil Procedure enacted in 2000 expressly provides that “with respect to judgments that have become final, an application for retrial may be made” (5). Unlike the former 1939 law, which deemed only judgments “issued as final” subject to retrial, the new law has expanded the scope to all “finalized judgments,” whether they became final at the trial stage or after the expiration of the appeal period (6). This change responds to legal criticisms that the right to appeal would remain ineffective where forgery is discovered after the expiration of the time limit (2).

In French law as well, Article 593 of the New Code of Civil Procedure deems a “decision having the authority of res judicata” subject to retrial, and Article 500 of the same Code states that a decision acquires such authority when

it is no longer subject to any appeal with suspensive effect or when the relevant time limit has expired (4). Therefore, in both systems, “actual finality”—not merely the issuance of a ruling under the title of “final”—is the initial condition for retrial. The difference is that French law expressly includes decisive orders disposing of the case under Article 480 of the French Code, whereas Iranian law, following Article 426, refers only to “judgments” and refrains from including orders—even orders such as “dismissal of the claim” or “inadmissibility of the claim” (1). This exclusivity is the most important point of criticism raised by jurists against Iranian law; for where the defendant has obtained an order of inadmissibility through forged documents or concealment of evidence, the claimant has practically no way other than filing a new action, which is incompatible with the principle of “access to justice” (6). By contrast, French law, by using the general term “jugement” in Articles 593 and 749, has expanded the scope to the rulings of all adjudicatory authorities, including social councils, agricultural bodies, and even commercial arbitration (4). On the other hand, both systems restrict substantive adjudication in retrial to the grounds invoked by the applicant; that is, the court may not go beyond the grounds specified by law under Articles 426 of the Iranian Code and 593 of the French Code (7).

With respect to the “judgment of the Supreme Court,” both systems agree that, since proceedings before the Supreme Court are purely “formal” and the Court does not issue a new judgment, its rulings are not subject to retrial under Article 366 of the Iranian Code of Civil Procedure and Article 593 of the French Code of Civil Procedure. However, Iranian law, by establishing “review branches” under Article 18 of the Law on the Establishment of Courts enacted in 2002 and by authorizing substantive judgments in special cases, has in practice created an exception to this rule. Yet the same article states that “decisions of review branches are in all cases final and non-appealable,” unless the Head of the Judiciary finds them contrary to Sharia (5). In French law as well, a decision of the Council of State, which adjudicates at the highest administrative level, may be overturned only in very limited cases and through an extraordinary application for retrial (4).

Overall, it may be said that both systems regard “actual finality” as the main criterion for the eligibility of a ruling for retrial. However, French law has expanded access to this extraordinary remedy by accepting decisive orders disposing of the case and rulings of specialized bodies. Iranian law may also achieve greater harmony with international standards and comparative law by amending Article 426 and adding the phrase “and decisive orders disposing of the case,” or by adopting a broad interpretation of the term “judgments” within the framework of justice principles (1).

Legal Effects of Retrial

Retrial is the final defensive barrier for correcting material errors after the finality of judgment. However, recourse to this extraordinary remedy produces immediate and extensive legal effects on the course of proceedings and the enforcement of judgments. On the one hand, its suspensive effect may stop or limit enforcement of the judgment, and on the other hand, its devolutive effect transfers the entire dispute into a new phase that is limited solely to the invoked grounds. These effects are analyzed below by reference to statutory provisions and juristic opinions.

A) Extraordinary Nature and Effect on Enforcement

According to paragraph (a) of Article 432 of the Code of Civil Procedure, retrial is an “extraordinary remedy” that may be brought after the finality of judgment and upon the occurrence of one of the grounds expressly stated in Article 426 (8). Unlike cassation, its suspensive effect directly concerns “enforcement operations,” not the original

proceedings, because the original proceedings have already ended and only enforcement of the judgment becomes subject to suspension (9).

B) Division of Effects into Principal and Incidental

Article 432 divides the effect of retrial into two categories:

Principal: an independent application filed after the finality of judgment; suspension of enforcement is dependent upon issuance of an acceptance order.

Incidental: an application raised during new proceedings; it immediately suspends the principal proceedings until the final judgment is issued (8).

C) Suspensive Effect on Enforcement of Judgments

Article 437 of the Code of Civil Procedure provides:

If the subject matter of the judgment is “non-monetary,” enforcement is “absolutely” suspended after the acceptance order, without any need for security.

If the subject matter of the judgment is “monetary,” suspension is conditional upon appropriate security by the judgment creditor, unless the court determines that security is unnecessary.

An application concerning only “part” of the judgment suspends only that part, while the remainder is enforced (9).

D) Devolutive Effect: Transfer of the Dispute to the Extraordinary Stage

After the judgment is quashed, the court is required to examine “only” the specific ground for retrial invoked by the applicant, together with all factual and legal issues related to it, and to issue a new judgment. Therefore, other grounds not raised in the application fall outside the scope of adjudication (10).

Although retrial is extraordinary, it has powerful legal effects: suspension of enforcement upon acceptance, transfer of the dispute to a new stage, and limitation of adjudication to the invoked ground. This mechanism establishes a balance between the “finality of judgments” and the “correction of judicial error.”

The Competent Authority for Retrial in Civil Matters: Between Trial, Appeal, and Supreme Court Affirmation

Where a trial judgment has become final for any reason, including failure to appeal or lapse of the right to appeal, the trial court is the competent authority for hearing retrial. This is because retrial is an exceptional form for departing from the same judgment and removing the effect of “res judicata,” and must necessarily be brought before the same court that issued the judgment, so that upon finding one of the grounds expressly stated in Article 426, it can quash the judgment and issue a new one (3, 11). The conceivable exception is the dissolution of that court; in such a case, one of the civil branches in the same judicial district is deemed its successor and will have jurisdiction to hear the application (3). With respect to incidental retrial, the distinction between the “court receiving the petition” and the “court issuing the challenged judgment” is important. Article 433 of the Code of Civil Procedure provides that the petition for principal retrial is filed with the same issuing court, whereas an incidental application is first submitted to the court before which the judgment has been presented as evidence in a new dispute, and is then sent within three days to the issuing court under Article 434 (12). Therefore, regardless of whether the appellate court examines all or part of the trial judgment, the court that ultimately issued the judgment—whether trial or appellate—is the competent authority for retrial, and the devolutive effect extends only to the limits that were subject to appeal or

retrial. Reduction of the claim is possible at any stage, but increase of the claim after the end of the time limit for the first hearing is not possible. Thus, the boundary of jurisdiction and the scope of devolutive effect always depend on the final court issuing the judgment and the limits of the applicant's request.

The philosophy of civil retrial regulations must be sought in the same image of the "angel of justice," which spreads its wings again whenever it is discovered that the issued ruling did not correspond to the reality of life, so that the right unjustly lost may be returned to its owner. For this reason, the legislature has not even excluded a final judgment issued by a mujtahid judge from this remedy of justice, and has only drawn a prior distinction: if the judge finds the law contrary to Sharia before issuing judgment, the case is referred to another branch; after finality, however, there is no distinction between judgments. Within this framework, although the suspensive effect of retrial in its incidental form prevents the continuation of the principal proceedings, in its principal form it merely suspends enforcement of the judgment so that, during the opportunity for reconsideration, the devolutive effect may also operate and the court, after quashing the former judgment, may once again examine all factual and legal issues and issue a new judgment free from error. Thus, every new ground for retrial may simultaneously bring about a "new action" and transfer the case from the ordinary course into extraordinary adjudication. On the other side of the dynamic system of objections lies appeal, which, by virtue of the philosophy of "review and supervision," transfers the trial judgment in full devolutive form to a higher authority and grants the appellate court complete powers of adjudication. Nevertheless, because the purpose is merely to correct errors of the first instance, Article 362 of the Code of Civil Procedure prevents a newly arising claim from being raised for the first time at this stage. This limitation does not, however, prevent the presentation of new evidence, provided that it is used to prove or defend the same previous claims. Therefore, both the appellant and the appellee may rely on new documents and testimony to make the scales of justice more precise, but they cannot hang a new bag of unknown claims on the wall of the second stage. Thus, while retrial opens new doors to new truths, appeal is more a path by which the same old truths are weighed again, this time under the sharper and potentially less erroneous gaze of a judge other than the trial judge (7).

Judgments Affirmed by the Supreme Court

According to Article 366 of the Code of Civil Procedure, the Supreme Court conducts only a formal review of judgments challenged by cassation appeal and does not enter into the merits of the dispute. Therefore, affirmation of a judgment means confirmation of the formal validity of the ruling, not the issuance of a new judgment. Some jurists believe that since the Supreme Court does not issue a new judgment, retrial with respect to it is meaningless.

Textual analysis of the law: none of Articles 425 to 434 of the Code of Civil Procedure excludes judgments affirmed by the Supreme Court from the scope of retrial. Moreover, Article 426, which states the grounds for retrial, generally refers to "finalized judgments" without distinguishing between ordinary judgments and affirmed judgments.

Analysis of judicial practice: in judicial practice, courts have in some cases issued orders accepting retrial with respect to judgments affirmed by the Supreme Court, provided that the grounds for retrial, such as discovery of new documents or proof of forgery, have been established.

Comparative legal analysis: in French law, which is the source of retrial in Iranian law, rulings of the Court of Cassation may also be subject to retrial where special conditions are met. This shows that, even in the original legal systems, the formal nature of the proceedings does not bar retrial.

Commentary on Judgments Affirmed by the Supreme Court

In the Iranian legal system, cassation appeal to the Supreme Court is not regarded as a renewed trial, but rather as an instrument of formal and legal control over final judgments. At this stage, the Court does not enter into fact-finding or reassessment of evidence and merely evaluates the conformity of the ruling with Sharia standards and statutory provisions. This formal view has important legal consequences concerning the corrective or rescissory nature of this proceeding, as well as the question of before which authority a retrial must be brought after the Supreme Court has affirmed a ruling. The present discussion seeks to clarify the scope of powers and limitations of the Supreme Court in light of authoritative legal sources by examining three axes: “the purely formal nature of cassation review,” “the absence of a corrective or rescissory nature in Supreme Court proceedings,” and “the rule governing retrial with respect to an affirmed judgment.”

The Formal Nature of Cassation Review in the Supreme Court

Cassation review consists solely of examining the conformity of the ruling with Sharia standards and laws and involves no entry into factual or substantive matters. Therefore, the Supreme Court does not issue a new judgment to replace the ruling of the lower court under Article 366 of the Code of Civil Procedure (13).

Absence of Corrective or Rescissory Nature in Cassation Appeal

Since the Supreme Court is neither the original issuing court nor an authority that enters into the merits of the dispute, its proceedings are neither “corrective”—because it does not issue a new judgment—nor “rescissory”—because it is a higher authority, not the authority issuing the ruling. Therefore, the Supreme Court’s affirmation or quashing affects only “enforceability” and does not alter the nature of the ruling (14).

Retrial with Respect to an Affirmed Judgment

When a final judgment is affirmed after cassation review by the Supreme Court, the application for retrial is directed to the same trial or appellate court that issued the substantive ruling, because the Supreme Court has no substantive jurisdiction and the principle of “the inadmissibility of quashing the ruling of a higher authority by a lower authority” is observed. Therefore, referring the retrial application to the original issuing court not only does not violate this principle, but also ensures that reconsideration takes place at the same substantive level and by the same issuing judicial authority under Articles 426 and 433 of the Code of Civil Procedure (14).

Retrial with Respect to Rulings Affirmed by the Supreme Court: The Supreme Court’s Lack of Jurisdiction and the Return of the Matter to the Substantive Issuing Court [An Examination of Retrial in Seven Cases and the Related Supreme Court Judgments and Uniformity of Judgments]

In the Iranian civil and criminal procedure systems, the Supreme Court is recognized solely as the “authority of formal affirmation or quashing” of final judgments and is never considered the “court issuing the judgment.” Therefore, after cassation appeal results in the affirmation of an appellate or trial judgment, a renewed objection through retrial cannot be brought before the same branch of the Supreme Court, but must be referred to “the same court” that issued the substantive ruling. Numerous cases from various branches of the Supreme Court—from Branches 5, 8, and 12 to Branch 25—have relied on Article 366 of the Code of Civil Procedure and Articles 426, 433, and 434 of the same Code to emphasize that an “affirming ruling” is not subject to retrial before the Supreme

Court. This is because the Supreme Court does not enter into fact-finding or substantive adjudication and merely controls the conformity of the ruling with Sharia and legal standards. On the other hand, Uniform Judgment No. 854 of the General Assembly of the Supreme Court, adopted on October 29, 2024, by clarifying that judgments issued within the framework of Article 477 of the Code of Criminal Procedure are no longer subject to another retrial before the Supreme Court, prevents any endless cycle of objections and strengthens the finality arising from affirmation. As a result, this body of unifying judgments draws a single line: retrial with respect to a judgment previously affirmed by the Supreme Court falls exclusively within the jurisdiction of the "court issuing the substantive ruling," and the Supreme Court is merely the final formal authority, not the originating substantive authority.

First Case

Branch 20 of the Supreme Court, in the course of a case under Judgment No. 94/38 dated July 13, 2015, concerning "retrial with respect to the stoning judgment against the convicted person D.F., which had previously become final pursuant to Judgment No. 72 of December 9, 2009, issued by Branch 1 of the Criminal Court of Qom Province and affirmed by Branch 7 of the Supreme Court on February 19, 2011," declared that since, in the retrial proceedings, only the retrial application had been rejected and the same previous stoning judgment had been confirmed, no new judgment capable of cassation appeal had been issued and the previous affirmation was final. Therefore, the case lacked the capacity for cassation appeal. On the other hand, determining the manner of carrying out stoning under Article 225 of the Islamic Penal Code falls within the jurisdiction of the "trial court issuing the final judgment," and the Supreme Court is not considered a court. Accordingly, by quashing the decision of Branch 1 of Criminal Court 1 of Qom, the case was returned to the same trial court to determine the manner of enforcement.

Second Case

On January 26, 2013, case file No. 8/911662 was registered and brought before Branch 8 of the Supreme Court, in which Mr. H.Sh., against Ms. Z.J., filed an application for retrial with respect to Judgment No. 6800751 of December 18, 2011, issued by the same branch. That judgment had previously affirmed the appealed judgment of Branch 5 of the Provincial Court of Appeal. Branch 5 of the Provincial Court of Appeal, by issuing an order of lack of jurisdiction pursuant to Article 433 of the Code of Civil Procedure, had declared that the authority competent to hear the retrial was "Branch 8 of the Supreme Court," because it was the authority that had issued the final ruling under challenge. After examination, Branch 8 of the Supreme Court declared that the Supreme Court is merely the authority for quashing or affirming cassation judgments and conducts formal review, whereas retrial requires substantive adjudication, which under Articles 426 and 433 of the Code of Civil Procedure and the note to Article 435 must be conducted before the "court issuing the final judgment," namely Branch 5 of the Court of Appeal. Therefore, the lack-of-jurisdiction order of Branch 5 had no legal basis, and the case was returned to the same authority for examination of the retrial application.

Third Case

In this case, the husband, Mr. M.Kh., applied for retrial against the judgment of a branch of the Supreme Court dated May 23, 2015, which had affirmed the ruling of the Court of Appeal of Qazvin Province. He claimed that the wife had not made any waiver or relinquishment of dowry or alimony and that hardship and distress had not been established. The Supreme Court branch, relying on Article 366 of the Code of Civil Procedure, declared that the

ruling of the Supreme Court was merely affirming and lacked substantive nature. Therefore, retrial was directed to the same final "appellate court" ruling, and the Supreme Court lacked substantive jurisdiction. As a result, it rejected the husband's cassation appeal and affirmed the challenged ruling. This judgment once again emphasizes that the ruling of the Supreme Court is purely formal and that retrial must be brought before the substantive authority that issued the final judgment.

Fourth Case

Judgment No. 900417, dated March 8, 2015. Issuing authority: Branch 5 of the Supreme Court. Claim: retrial with respect to an affirming judgment of the Supreme Court. Parties: Mr. M.N. as applicant against Mr. H.F. as respondent in cassation.

Background: In Judgment No. 300516 of August 9, 2014, issued by Branch 3 of the Public Court of N., both the wife's claim for dispossession of 13 hectares of land and the husband's counterclaim for annulment of title were rejected. The husband filed cassation appeal against the part rejecting the counterclaim, and Branch 5 of the Supreme Court, in Judgment No. 900417 of March 8, 2015, found the cassation appeal unfounded and affirmed the appellate ruling. The same husband has now applied for retrial with respect to that affirming judgment.

Ruling of Branch 5 of the Supreme Court: By relying on Article 426 and paragraph 6 thereof, as well as Articles 430, 433, and 434 of the Code of Civil Procedure, it was declared that "retrial with respect to rulings of the Supreme Court has not been provided for; proceedings before the Supreme Court are formal, not substantive." Accordingly, an order rejecting the retrial application was issued and the case was closed.

Fifth Case

In case file No. 8/91162, Mr. H.Sh. sought retrial with respect to Judgment No. 6800751 of December 18, 2011, of Branch 8 of the Supreme Court, a judgment that had previously affirmed the ruling of Branch 5 of the Provincial Court of Appeal. Branch 5 of the Provincial Court of Appeal, by issuing lack-of-jurisdiction order No. 001172 of December 11, 2012, declared that the competent authority should be the same Branch 8 of the Supreme Court and sent the case to the Supreme Court. After examination, Branch 8 of the Supreme Court declared that, according to Article 366 of the Code of Civil Procedure, the Supreme Court is merely the authority for formal affirmation or quashing and issues no substantive judgment. Therefore, the title "court issuing the judgment" in Article 426 and the note to Article 435 of the Code of Civil Procedure does not include the Supreme Court. For this reason, the retrial application must be brought before the same Branch 5 of the Provincial Court of Appeal that issued the final substantive ruling. On this reasoning, it quashed Branch 5's lack-of-jurisdiction order and returned the case to the same authority for retrial.

Sixth Case

Branch 25 of the Supreme Court, by Judgment No. 25/92/92 dated May 20, 2013, affirmed the ruling of Branch 1 of the Public Court of District M., Judgment No. 00158 dated May 19, 2012. After affirmation, the lawyers of the judgment debtor, Messrs. R.K. and M.A.T.M., on June 11, 2014, against Mr. A.F.M., filed an application for "authorization of retrial" with the judiciary of M. concerning the same affirming ruling and the trial judgment. The trial court issued a rejection order, No. 00364 dated July 17, 2014, and declared itself incompetent because, in its view, substantive adjudication had previously been conducted by the Supreme Court. Branch 23 of the Court of Appeal

of Mazandaran Province quashed that order by Judgment No. 00195 dated May 14, 2014, and sent the case back to the trial court. However, the trial court again relied on affirmation by the Supreme Court and issued an order of lack of jurisdiction in favor of the Supreme Court, eventually sending the case to Branch 25 of the Supreme Court. In response, Branch 25 of the Supreme Court, expressly relying on Article 433 of the Code of Civil Procedure, declared that "a retrial petition must be filed with the same court that issued the judgment," and since "the Supreme Court is not a court," it has no jurisdiction to conduct substantive examination of a retrial application. Rather, this duty belongs to the same Branch 1 of the Public Court of District M. that issued the substantive ruling, which was later affirmed at the cassation stage. Therefore, on August 24, 2015, Branch 25 of the Supreme Court issued final Judgment No. 9309981984100242, confirmed the trial court's lack-of-jurisdiction order, and returned the case for substantive examination to the competent authority, namely the Public Court of District M. The clear message of this judgment is that affirmation by the Supreme Court does not eliminate the jurisdiction of the branch issuing the judgment to hear retrial, and that the Supreme Court is merely the authority of formal quashing or affirmation, not the authority for substantive hearing of a retrial application.

Seventh Case

Branch 12 of the Supreme Court, in Judgment No. 9309970907200503, expressly denied its jurisdiction to hear an application for retrial. The matter began when Mr. M.R., after his divorce ruling dated April 21, 2014, of Branch 12 had been affirmed by the Supreme Court, filed an application for retrial with respect to the same affirming ruling before the Family Court on August 4, 2014. The trial court, relying on the fact that the ruling under application had previously been affirmed by the Supreme Court, sent the case to the Supreme Court. Branch 12 of the Supreme Court, after examining the retrial claim, stated that "the Supreme Court is not a court, but rather the authority for quashing and affirming final rulings and does not conduct substantive adjudication." Therefore, an application for retrial concerning rulings affirmed by the Supreme Court cannot be brought before any branch of the Supreme Court and must be brought before the same court that issued the substantive ruling under Article 433 of the Code of Civil Procedure. Thus, the case was returned in full to Branch 235 of Family Court One of Tehran, and it was emphasized that "branches of the Supreme Court are not courts" and lack jurisdiction to conduct substantive examination of retrial.

Uniform Judgment No. 854 of the Supreme Court: Retrial with Respect to Rulings Affirmed under Article 477 of the Code of Criminal Procedure Is Not Subject to Article 474

The General Assembly of the Supreme Court, in its session of October 29, 2024, following a divergence of interpretation between Branches 2 and 33 of the Supreme Court regarding the "capacity for retrial with respect to rulings issued by special branches of the Supreme Court in implementation of Article 477 of the Code of Criminal Procedure," issued Uniform Judgment No. 854. In the first case, Branch 2 of the Supreme Court entered into the merits and rejected the retrial application due to lack of new evidence; but Branch 33 denied its jurisdiction and declared that "a ruling issued in implementation of Article 477 falls outside the scope of Article 474." The General Assembly, confirming the view of Branch 33, declared that retrial under Article 477 is an extraordinary and special mechanism concerning "manifest contradiction with Sharia," which is authorized by the Head of the Judiciary and involves substantive adjudication by special branches of the Supreme Court. Therefore, after such a ruling is issued, one cannot again file an application for retrial by relying on the paragraphs of Article 474. Article 477 is an expanded

form of Article 474 and prevails over it. Accordingly, a ruling issued in this regard is final and not subject to further retrial, unless a new contradiction with Sharia is discovered, which itself would fall under the same Article 477.

Put more clearly, Uniform Judgment No. 854 is directly related to an “affirmed ruling,” because the subject of the uniform judgment is retrial with respect to a “final ruling affirmed” by special branches of the Supreme Court under Article 477. Here, “affirmation” is not merely a formal stage, but the final substantive judgment itself, which can no longer be challenged again under the title of retrial under Article 474. The judgment states that after “affirmation of the judgment” within the framework of Article 477, the Supreme Court no longer has jurisdiction to hear another retrial application, because affirmation in this context is regarded as a final and non-appealable judgment, unless a new contradiction with Sharia is discovered, which itself would fall within the same Article 477. Consequently, this judgment prevents a “cyclical chain of objections” to affirmed judgments and strengthens the finality arising from affirmation. Therefore, if someone seeks to file another retrial application against a judgment that has previously been affirmed by the Supreme Court within the framework of Article 477, Uniform Judgment No. 854 constitutes a strong legal barrier. This systematization guarantees the stability of extraordinary judgments and prevents endless objection-seeking.

Retrial with respect to rulings affirmed by the Supreme Court has in recent years faced three fundamental pitfalls: “the competent authority,” “the substantive or formal nature of review,” and “the possibility or impossibility of renewed appeal.” In the seven examined cases, a single pattern is visible: whenever a trial or appellate judgment has been affirmed by branches of the Supreme Court, the retrial application must be brought before the same trial or appellate court, not before the Supreme Court, because Articles 426 and 433 of the Code of Civil Procedure expressly identify the “court issuing the final judgment” as the competent authority, while the Supreme Court performs only “formal affirmation or quashing,” as reflected in Cases 2, 5, and 6. Even if the Supreme Court enters into substantive adjudication under Article 477 of the Code of Criminal Procedure and issues a new judgment, Uniform Judgment No. 854 of October 29, 2024, emphasizes that this judgment is no longer subject to another retrial, unless a new contradiction with Sharia is discovered, which itself would fall under the same Article 477.

The second pitfall is the restriction of the title “judgment” in Article 426, which excludes decisive orders disposing of the case, such as dismissal of the claim, inadmissibility, and annulment of the petition, from its scope. By contrast, comparative law, particularly French law, through the general word “jugement,” even regards arbitral awards and decisions of specialized councils as subject to retrial. This exclusivity has caused claimants in divorce and title-annulment cases who have faced forgery or concealment of evidence to have no path other than filing a new action, thereby effectively being deprived of “access to justice.”

The third pitfall is “proportionality of punishment.” In economic cases, courts sometimes impose a single heavy punishment, up to 15 years’ imprisonment, on all offenses committed over a five-year period without distinguishing the period of tenure and degree of influence of each defendant. However, the unified practice of the Supreme Court, as seen in Cases 6 and 7, emphasizes that the “statutorily specified criminal title” must be observed and that ordinary breach of trust cannot be directly transformed into “major disruption of the economic system.” Therefore, punishment must be determined in proportion to the same specific title, with a maximum of three years’ imprisonment.

To move beyond these pitfalls, the following are proposed: first, Article 426 should be amended by adding the phrase “and decisive orders disposing of the case,” so that orders issued through forgery or concealment of evidence may become subject to retrial; second, the law should expressly provide that “the authority competent to

hear retrial with respect to an affirmed judgment is the same trial/appellate court," so as to prevent a cycle of referral between the Supreme Court and lower courts; third, for rulings issued by special branches under Article 477, an "extraordinary retrial" based on new evidence or manifest contradiction with Sharia should be provided so that the right of defense is not denied; fourth, courts should be required to distinguish offenses according to the "period of tenure" and "degree of influence" of each defendant, individualize punishment, and avoid general judgments.

Overall, the current practice rests on two axes: affirmation by the Supreme Court does not eliminate the jurisdiction of the trial authority to hear retrial, and rulings under Article 477, after finality, are no longer subject to renewed retrial except within the same Article 477 framework. These two principles draw the boundary between "extraordinary finality" and "the right to a fair trial," and require legal and regulatory redefinition in order to prevent endless objection-seeking while preserving the legitimate right of defense.

Conclusion

In view of the analysis of the statutory text, judicial practice, and legal foundations, it may be said that judgments affirmed by the Supreme Court are subject to retrial where the grounds for retrial are established. Affirmation of a judgment is merely formal confirmation of the ruling, and no new judgment is issued. Therefore, the court issuing the judgment that has been affirmed may, upon finding the grounds for retrial, issue an order accepting it. This view is not only consistent with the text of the law but also compatible with the objectives of judicial justice and correction of errors.

The findings derived from the examination of seven recent judgments of the Supreme Court, including Branches 5, 8, 12, 20, and 25 and Uniform Judgment No. 854 of 2024, indicate a clear uniform practice: in all these rulings, the Supreme Court consistently declares that "the Supreme Court is not the court issuing the judgment," and therefore retrial with respect to judgments previously affirmed by the Supreme Court cannot be brought before any branch of the Supreme Court, but must be filed with the same trial or appellate court that issued the substantive judgment. This view rests on two foundations: first, proceedings before the Supreme Court are purely formal and do not enter into the merits under Article 366 of the Code of Civil Procedure; second, Article 426 of the Code of Civil Procedure expressly limits jurisdiction over retrial to the "court issuing the judgment." Thus, formal affirmation does not eliminate the jurisdiction of the substantive authority. The prominent exception in this framework concerns judgments issued under Article 477 of the Code of Criminal Procedure. Uniform Judgment No. 854 provides that such judgments, after finality, are no longer subject to renewed retrial, unless a new contradiction with Sharia is discovered, in which case it may again be examined within the same Article 477 framework.

Thus, it may be said that retrial of "affirmed judgments" is no longer an ambiguous matter. The unified practice of the Supreme Court has drawn a clear roadmap: return to the substantive court, stabilization of the criteria for suspension, and broader inclusion of orders if the law is amended. However, for this roadmap to become effective in practice, the legislature must abandon passivity and, through a "retrial reform package," establish three pillars simultaneously:

Structural reform: adding a note to Article 426 that, while expressly recognizing the jurisdiction of the trial or appellate court whose judgment has been "affirmed," also expressly includes decisive orders disposing of the case within the scope of retrial. This would prevent future inconsistency in rulings and reduce the costs of renewed litigation for claimants.

Procedural reform: adopting a regulation that defines the criterion of “probable validity” as “preponderant probability” and provides that whenever the applicant submits a new document or a credible expert opinion, the court must issue a suspension order within ten days. In case of refusal, the court’s decision must be reasoned and appealable at the same stage so as to prevent instability in enforcement.

Responsibility reform: establishing a “Fund for Compensation of Damages Arising from Enforcement of Final Judgments,” financed from the budget of the Judiciary and the Supreme Audit Court. Where, after full enforcement of a judgment, retrial results in quashing, the injured person should be able to receive material and moral damages within six months from the date of notification of the quashing judgment, without needing to file a separate action. This mechanism would not only increase courts’ incentive to exercise caution in enforcement but would also strengthen public trust by showing that justice is not merely a slogan for stabilizing error.

Alongside these reforms, it is necessary for the Supreme Court to issue a complementary uniform judgment to clarify two remaining ambiguities:

A) Suspension of enforcement of an affirmed judgment in the trial court: Can the originating court issue a suspension order before sending the case to the Supreme Court for examination of retrial, or must it first seek the Supreme Court’s view regarding the admissibility of retrial? An affirmative answer to this question would reduce referrals to the Supreme Court and accelerate adjudication.

B) Determining the allocation of damages in the case of incidental retrial: If, in a new action, suspension of the principal judgment is ordered through incidental retrial but the original judgment is ultimately upheld, should the costs of suspension be borne by the new claimant? Establishing a criterion for cost allocation from now on would prevent the filing of delaying claims.

At the academic level, it is also proposed that future studies use big data from the judgment registration system and quantitative econometric methods to assess the relationship between “strictness in issuing suspension orders” and “the increase in irreparable damages.” Such a study could provide a scientific basis for prioritizing legal reforms. Furthermore, holding joint workshops for trial judges and Supreme Court judges on “risk management in the enforcement of final judgments” and introducing a unified checklist for evaluating the “serious risk of error” would reduce inconsistency in criteria.

Overall, what this study has shown in light of documents and figures is that “affirmation” is not the end of the path, but only a station for formal control. The road remains open toward the substantive court, provided that the legislature, through the aforementioned reforms, removes legal and procedural obstacles. If this occurs, retrial will not be a means of endless return to the cycle of litigation, but rather the final guarantee that “the right reaches its rightful holder,” and that the angel of justice, this time without any fracture, spreads its wings over every person unjustly bent beneath the heavy weight of judgment.

The detailed findings from the analyzed cases show that in monetary disputes, issuance of a suspension order is almost always conditional upon appropriate security, whereas in non-monetary judgments such as custody or divorce, automatic and unconditional suspension occurs. The restriction of the term “judgment” in Article 426 has caused decisive orders disposing of the case, including dismissal of the claim or inadmissibility, to remain outside the scope of retrial. In economic cases, some courts impose punishments of up to 15 years without distinguishing the period of tenure and degree of influence of each defendant, whereas the Supreme Court, relying on the principle of proportionality, has reduced the same punishment to a maximum of three years.

The limitations of the study mainly arise from the geographical dispersion of judgments, most of which relate to branches in Tehran and Qom, leaving the possibility of different practices in other provinces unexamined. Moreover, lack of access to judges' internal case reasoning for rejecting suspension orders makes it difficult to quantitatively evaluate the criterion of probable validity and, therefore, limits the generalizability of the findings. Practical proposals include amending Article 426 by adding the phrase "and decisive orders disposing of the case" so that orders dismissing the claim or declaring it inadmissible may also be subject to retrial; clearly defining the criterion of probable validity as preponderant probability, together with requiring the court to issue a suspension order within ten days where a new document or expert opinion is submitted; inserting a new Article 427 bis requiring the state to compensate material and moral damages if the court refuses suspension without justified reason and the erroneous nature of the judgment is later proven; and providing extraordinary retrial for Article 477 rulings in the event of discovery of new evidence or a new contradiction with Sharia. Proposals for future research include comparative examination of the German and Italian systems to identify mechanisms for mandatory postponement of enforcement, designing a field experiment to assess the effect of facilitating the suspension criterion on reducing enforcement of erroneous judgments, and applying economic analysis of law to evaluate the cost-benefit balance of state compensation compared with the social costs of enforcing erroneous judgments.

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Authors' Contributions

All authors equally contributed to this study.

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Transparency of Data

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