

# Validity of a Finalized Criminal Case and Comparison to a Finalized Legal Case

**Bahram Ahmadmanesh\***

MA Graduate, Criminal Law and Criminology, Law Department, Science and Research University, Yazd Branch, Yazd, Iran

\*Corresponding Author Email: [bahramahmadmanesh@yahoo.com](mailto:bahramahmadmanesh@yahoo.com)

**ABSTRACT:** The validity of a finalized issue (*res judicata*) is amongst the essential and accepted principles in the science of law and the scholars and the jurists have reached a consensus thereon. The investigation of the finalized issue's validity has been taken into consideration in the trial regulations to a lesser degree. Considering that the imperative rules trivially govern in such cases, a judge is faced with limitations in trials and issuing robust and inflexible sentences for the advancing and actualization of the fair trial. The area is vaster in both the regulations and the trial course as well as in sentence issuance and it features a lofty stance in trial and formative regulations and the trial order and resolving of the conflict. Consideration of the conditions contributing to the actualization of this maxim and its effects, distinctions made between the finalized criminal and civil issues, their inclusion circle in the law and their effects on the discussions about trial procedures and lawsuits' results have caused the jurists to pay a greater deal of attention to this issue. Theoretical investigation of this important topic can be resolving through studies and investigation of the legal books and written materials. Validation of the sentences issued by the legal authorities and rendering them indispensable, not criminally and civilly suing and judging the lawsuit parties who have been previously tried for the same subject as well as the prevention of the filing of repetitive complaints, unnecessary engagement of the justice department and creation of judicial order are amongst the results of the validity of the finalized issue (*res judicata*). Jurists and, especially, the respected judges and lawyers who are in the context of such issues should apply the principle of the validity of the finalized issue in their trials and filing of the lawsuits so that the abovementioned results can be attained.

**Keywords:** Trial procedure, Validity of the finalized issue (*res judicata*), Validity of a judged issue, Trial order, judicial authorities' ordinance

## INTRODUCTION

The most important goal sought by the legislators in enactment of the civil procedures and rules seminally is preventing the emergence of discrepancies, resolving of the individuals' conflicts and subsequently the creation of judicial justice and establishment of public order and security to the extent that it is observed that such a goal has been particularly taken into consideration in the religious regulations and the judge is obliged to observe the trial principles and perform judgments and trials corresponding to the parties' proofs and documents so as to resolve the conflict and actualize the canonical, philosophical and ethical regulations plus the administration of the Islamic society and establishment of social order. Undoubtedly, the match and closeness of the trial result with and to the truth is the logical prerequisite to the fulfillment of the rights and establishment of judicial justice (Akhondi, 1990). To do so and safeguard the veraciousness of the sentence, the regulations of the trial procedure set the path and provide the judges and jurists with a well-illuminated path.

One issue in the discussions on the trial procedure is the validity of the sentences issued by the qualified courts as a judicial action for the resolution of a dispute that is indeed considered as the termination of the case

and resolution of the conflict. Common sense rules that the public interests should be preferred to the private interests in cases of the expediencies' interference. The public interest lies in the idea that the trial of a lawsuit has to have an end and that it cannot be refiled once it was finalized. In line with this, the definite decision of a court is given a particular credibility, the veneration of which is compulsory for the lawsuit parties and they do not have the right to re-adjudicate a tried issue from the beginning and they are to make appeals or invalidate the sentences issued through the methods predicted in the law. In any system and in regard of the trial procedure, it is stated that the finalized issue is valid or it has acquired credibility when a final decision is reached and a concrete sentence is issued, hence the lawsuit has been terminated. The regulations that have predicted reviewability of the lawsuits in various stages of preliminary, investigatory and appeal trials for the reparation of the judicial mistakes consider the issued sentences as concrete following the investigations and issuance of verdicts and in the course of the various stages and/or after the expiration of the set respites in the law with the actualization of which the re-filing of a lawsuit is prohibited for numerous reasons as believed by the law scientists. A sentence that enjoys the finalized issue's validity can be also enforced because the extraordinary ways of complaining about the sentence cannot prevent them from enforcement and a finalized sentence is indispensable (Abadi, 2005).

### **Conceptualization of the Validity of the Finalized Issue**

The validity of the finalized issue has been defined in the criminal and civil trial procedures. Based on the criminal trial procedures' law, the finalized files and the lawsuits for which a concrete sentence has been issued cannot be again tried in the same or other courts. The validity of the finalized criminal issue means the veracity and credibility of the criminal trial's result or the lawsuit for which a concrete writ or sentence has been issued in such a way that the culprit of the same claim cannot be sued and tried for the perpetration of the same crime unless for legal cases (Fallahiyan, 2005).

Moreover, it is stipulated in article 84 of the civil procedures' law in the part related to the complaints about the case's nature that if the lawsuit has been previously filed to the same court or another court of the same rank and it is under investigation or if it is not the same case but completely related to the plaintiff's claim, the latter can refer to a court to object thereto. It has also been stated in paragraph six of the same article that if the lawsuit is previously filed between the same individuals or the others as the parties of the lawsuit or their deputies and a concrete sentence has been issued, it cannot be adjudicated in another court (Katouziyan, 1965).

### **Basics of the Axiom "Validity of the Finalized Issue"**

There are various theories expressed in this regard. Some of them have been pointed out below:

1) **The Theory of Judicial and Quasi-Judicial Contract:** In this theory, the validity of the sentence is realized to be originated from the private contract and agreement between the parties to a lawsuit. It is said that when the two parties to a lawsuit refer to a court for resolving their disputes, they have implicitly agreed to create a judicial truth in their ambiguous relationships and obey to the effects thereof.

2) **The Theory of the Relational and Formal Truth:** Based on this idea, in case that the court's sentence is found contradictory to the truth, it would be also considered as truth hence an incorrect judgment can also enjoy the credibility of the correct sentences according to this theory and the axiom prohibiting the trial of the finalized cases would be rendered non-violable.

3) **The Theory of the Government's Control:** It means that the court's sentence is the government's will expressed by its representative and its credibility, as well, stems from the government's supreme power and law.

4) **Prevention of Resumption of the Lawsuits:** There is no doubt that every lawsuit should be finally terminated and the subject of the dispute should be eradicated as soon as possible and, on the other hand, since the discovery of the truth is difficult and not readily achievable in the majority of the cases, it has been agreed by everyone that the primary goal of the trial is the resolution of the conflict and finding of a legal solution to the various disputes and this can be never ensured with the possibility of repeating and resuming the lawsuits.

5) **Preventing the Issuance of Conflicting Sentences:** The largest flaw in the issuance of the conflicting sentences is the defamation of the judicial system. After the issuance of a sentence, if another authority can cancel the contents of the prior court's ordinance or make a decision against it, there would be left no prestige for the justifying authority.

6) **Foundations of the Axiom in Islam:** A large deal of validity has been dedicated in Islam to the sentences issued by the judges installed by the God, His apostle (may Allah bestow him and his sacred progeny

the best of His regards), Immaculate Imams (peace be upon them) and their specially appointed persons as well as the sentences by the generally permitted judges as the jurists qualified for issuing decrees in such a way that any violation of such sentences would be a dead sin. In Islam's law, as well, the judge's idea is respected when it is in accordance with the law and a person ruling against the canonical rules is a Kaffir and a sinful person with his or her sentence is not being considered influential (Katouziyan, 2008).

7)

### **Conditions Related to the Credibility of the Finalized Issue**

There is a need for the existence of certain conditions between the two preliminary and secondary lawsuits so that the criminal issue can be objected based on the rules of finalized issue. These conditions are: unity of subject, unity of the parties and unity of the cause, each of which have been investigated in separate.

#### **1. Unity of Subject**

It is intended by the unity of subject that the action subject of the new criminal investigation be the same action that had been previously posited in the former investigation. The materiality of the actions and not the criminal characteristics of them are considered in comparisons; put it another way, not only the re-suing of the same crime but the re-suing of the same action has been prohibited and the important thing is that the judicial authority, disregarding the selected accusation title, is obliged to investigate the action attributed to the culprit under all the existent criminal titles and choose the criminal description realized by the then credible regulations. For instance, a culprit who has been once sued for fraud and acquitted cannot be sued for a second time for the same criminal action under a new title like the breach of trust (Khaleghi, 2008).

Therefore, the subject of two or several criminal lawsuit is surely one. It does not matter if the general lawsuit has been proposed by the public prosecutor or a private claimant because the punishment of the culprit is the goal in both of these cases. When one of them posits the criminal issue and a concrete sentence is issued by the judicial authority, the general claim is aborted but there is no subject unity between the sentences issued by the disciplinary courts of the governmental organizations and institutions in the trial of the employees' violations and the qualified criminal courts in the trial of the individuals' general crimes; only the disciplinary courts cannot make a decision opposite to the sentences by the criminal courts.

#### **2. Unity of the Parties**

This one means that the lawsuit has to have been previously filed between the same individuals as the parties to the lawsuit or their deputies. The factor causing the filing of lawsuit has no effect on the achievement of the finalized issue and, if a lawsuit has been adjudicated in the preliminary case in a court against a culprit, the finalized criminal issue can be applied to a second time of filing the lawsuit by the plaintiff against the same defendant. In other words, the important issue is the filing and adjudicating of the general claim and the factor causing the filing of the lawsuit that can be the plaintiff or the suing authority (including courts or the head of a judicial area) and has no effect on the achievement of the intended unity. Conversely, in regard of the culprit, the unity comes about when the same person is again sued under the title of the guilty party, accomplice or crime assistant. The aforementioned condition pertinent to the relative credibility of the finalized issue is constantly evident and sure in the entire criminal lawsuits in systems that assign the courts to the preliminary investigations because, in such trial procedures, it is essentially the duty of the attorney, even in case that a private claimant files the criminal lawsuit, to issue an order for the suing of the criminal issue and bring the general case to the judicial authorities for suing them.

#### **3. Unity of the Cause**

The unity of the perpetrated action's cause in both of the lawsuits is the third condition for the acceptance of the finalized issue. By the lawsuit's cause, the foundation or the goal is intended based on which, trial is held. The credibility of the previously tried and finalized case prevents the retrial when the lawsuit cause in a former trial is the same as in the new trial meaning that the cause in both of them is the imposition of punishment or taking of preventive and corrective measures. Therefore, since it is possible for a perpetrator's action to have caused financial losses to the victim and, for the same reason, the related legal case might have led to the issuance of a concrete sentence against the perpetrator, this trial cannot bar the investigation by a punitive authority of this perpetration that may be found matching with one of the criminal titles (Khaleghi, 2004). Thus, the unity of cause means that it is forbidden to file a second criminal lawsuit based on the same cause against a person who has been formerly convicted and/or acquitted (Ashouri, 2008). Considering that the legal and material elements of the crime based on which a sentence has been finalized should be identical in the prior and new criminal lawsuit for the actualization of a credible finalized case, it is evident that if a crime was tried and a final sentence was issued and the convict subsequently perpetrated the same action, s/he has to be approached based on recidivism axiom and the finalized issue cannot have any effect on the criminal's repetitive

perpetration of a crime. The existence of such a condition as the unity of the cause sometimes needs to be more carefully taken into account and that is when the action subject of a preliminary conviction features numerous descriptions from the perspective of penal law and the material actions of the perpetrated crime are found distinct and different. It is also sometimes the case that there is unity of cause in the perpetrated actions; however, it can be seen using a little scrutiny that there is no unity in terms of material element in two criminal lawsuits. One example of this latter case is the incident for which the French court made a decision: a person was accused of negligent murdering of his wife by placing an oil lamp on the flaming part of which there was no guard near his wife's bed and causing her sustain severe burn and death. After the criminal suing of the culprit, the court finally sentences the husband to incarceration and pecuniary punishment for unintentional murder and the issued sentence is eventually concretized. Later on, proofs are found making it clear that the convict has intentionally poured oil on his wife and caused her to be severely burnt and die. The convict is again sued for a more important crime and, this time, he is convicted to a legal punishment in a penal court. According to the sentence issued by France's court of justice, the preliminary concrete sentence does not have the credibility of a finalized issue in regard of the new case considering the fact that the cause is not the same in both of these cases (Khazani, 1998).

## **Validity of the Finalized Issue in the Decisions by Investigatory and Sentencing Authorities**

### ***1. Decisions Made by Investigatory Authorities (Courts)***

The final decisions by the investigatory authorities might be case-specifically mandatory or thematic. The writ of prosecution suspension due to the perpetration's not being a crime and time lapse and general amnesty are mandatory and re-suing is impossible even in case that new proofs are found. It has to be noted that the investigating judges should pay attention to all of the descriptions when trying a case; then, come up with an appropriate writ. A concrete writ of prosecution suspension bars the re-suing even under other descriptions of the perpetrated action. According to the fact that the time lapse is differently considered for the criminal actions and offensive actions, the writ of time lapse incorporates a longer period of time in case of the offensive actions in case of finding new proofs changing the description of the offense and making it appear as a criminal perpetration. Thus, the change in the crime type provides for the re-investigation of the subject in terms of the new descriptions. For example, in a simple robbery considered as an offensive action based on the former general penal codes of law, the issuance of a writ of prosecution suspension due to time lapse did not bar the re-suing of the culprit even with the attainment of new robbery proofs that made the offense appear as a criminal perpetration not yet subjected to time lapse. Conversely, the decision would be thematic when judges decide the suspension of the culprit's prosecution based on the inadequacy of the proofs, hence such decisions enjoy temporary validity and they can be changed if new proofs are found; so, they are considered suable with the prescription of the court because the investigatory authorities' measures, writs and decisions essentially serve the preparation, supply and supplementation of the proofs for the courts and the future courts are not bound or limited to the obedience of them. Hence, the courts have complete freedom in the reinvestigation of the lawsuits in all respects and evaluation of the proofs and ideas of the previous courts and reaching a final conclusion and issuing of sentences that might confirm or contradict the previous judges' sentences.

### ***2. Decisions Made by the Sentence Issuing Authorities (Courts)***

The decisions of the courts can have the validity of a finalized issue when they, whether be writs or sentences, are found appealable or reviewable. In other words, a finalized case can be never filed again until the door is open to objection to the sentences through appeals or protestation. In case of the finalization of a sentence, any criminal suing of the culprit in regard of the same case becomes prohibited. In cases that the sentence by a court can be asked for appeal or review in higher judicial authorities and a second sentence is again issued following investigation of the case, it would be considered finalized even if the punishment specified for a concrete conviction is not correct and the retrial becomes consequently impossible. As for the acquittal sentence, as well, the retrial would be rendered impossible in case of the issuance of a concrete sentence even if new proofs are found. The only exception that has been accepted by the legislators in the criminal trial procedures regarding the courts' sentences is such an enactment as the *de novo* trial in criminal issues regarding the conviction sentences and/or appeals by the attorney general for the preservation of the law. The reason for such an exception to the aforementioned maxim is the consideration of the new trial regulations, elimination of judicial mistakes and preservation of the rights of the defendant in case of being found innocent. In this regard, the finalized case has been accepted in absolute terms for exoneration sentences considering the acquittal principle so there are predicted very few exceptional cases to the axiom of finalized issue by the legislator in line with avoiding flaws to the credibility thereof (Najafi, 2008).

## **Validity of the Finalized Issue in Regard of the Domestic and Foreign Courts' Sentences in Penal Regulations**

Besides the emphasis made by the domestic regulations and judicial system on the observance of the finalized issue, there is an international axiom under the title of prevention of the double trial and punishment meaning that if a person was sued for an accusation that subsequently led to the issuance of a sentence, s/he should not be again subjected to suing and punishment for the same accusation. So, a person should not be punished more than once for a single crime and it is here that it becomes important to pay attention to the foundation of the axiom "validity of the finalized issue" as well as the acceptance or non-acceptance of the validity of the sentences issued by the foreign courts in regard of the criminal subjects that are more related to the countries' governmental matters.

### **1. Penal Sentences Issued by Domestic Courts and Included by the Axiom "Validity of Finalized Issue"**

Based on the criminal procedures' law, finalized issue's validity is one of the cases aborting the general lawsuits. The legislator has attempted to make use of various instruments to minimize the possibility of the judicial mistakes, including multistage trial, prediction of secondary ways of retrial and so forth. But, it is in such a way that the lawsuit finally reaches its termination point and the issue is closed following which there would be no other way for retrial. Therefore, if the same finalized issue is again brought to the course of investigation and is pursuit with a new complaint after its arrival at a termination point, the trial is stopped relying on the validity of the finalized issue and the lawsuit's abortion is subsequently declared. The trial order renders expedient the veneration of the legal decisions made by the courts.

### **2. Foreign Courts' Penal Sentences Included by the Finalized Issue's Validity**

Since the basics of a judged issue's validity are theoretical, they are not accordingly limited to a certain country. A lot of attentions have been paid in the jurisprudents' books to the discovery of the issue but not in a restricted manner. Regarding the inclusion of the foreign courts' sentences by the finalized issue's validity in Iran, there were discrepancies between the jurists and the courts. Some believed that the foreign courts' sentences enjoy the validity of the finalized issue in respect to Ta'azir Punishments and some others have evaded the validation of such sentences due to the legislator's silence; however, it was with the enactment of the Islamic penal code of law that the existent doubts were eliminated and the articles 7 and 8 of the foresaid law have explicitly included the specified foreign courts' sentences by the validity of the finalized issue in regard of Ta'azir Punishments.

Article 7 stipulates that "besides the aforementioned cases, when one of the Iranian citizens perpetrates a crime outside the country, he will be sentenced and punished corresponding to Islamic Republic of Iran's regulations in case of being found in Iran or extradited thereto provided that a) the perpetrated action is envisioned as a crime according to the Islamic Republic of Iran's law; b) in case that the perpetrated crime deserves Ta'azir punishment and the culprit is tried but not exonerated in the crime occurrence place or, in case of conviction, has not been completely or partially subjected to the punishment; and, c) based on Iran's regulations, there is found no cause for prevention or stoppage of the pursuance or the non-enforcement or abolition of the punishment (Pradel& Corsentz, 2008).

## **Validity of the Finalized and Judged Issue in Jurisprudence**

Jurisprudents have also paid attention to the issue of the sentences' validity and they have strongly emphasized on the referral to a qualified judge for resolving the disputes and the prohibition of the reference to the judges of the same rank; as for the sentences issued by the righteous ruler, they essentially believe in the certainty and the impossibility of disagreement thereto.

Jurisprudents essentially realize the sentences issued by the righteous and qualified judge who is decisive and credible and do not permit disagreement thereto, rather they require adherence to the sentences and verdicts issued by the qualified judges as Shahid Thani knows it necessity for everyone to remain bound to the sentences by the ruler for their being valid (abovementioned Hadiths) and his being appointed by Imam (PBUH); it means that since the ruler's verdict receives its legitimacy from the God, it is necessary for everyone to obey the judge's sentence because disagreement to it is, in fact, disagreement to the God. The author of *Al-Qaza'a fi Al-Fiqh Al-Eslami* finds the sentence by a judge influential for intellectual and canonical reasons. He finds the judged issue valid for the fact that judgment seminally serves the resolution of disputes and also because it is canonized to be enforced and its legitimacy would be meaningless without enforcement (Pralus, 1998).

## **Validness Cases of Finalized or Judged Issue from the Perspective of the Intellectuals**

### **1) Economic Necessities**

Trying every lawsuit imposes extravagant sums of costs on the justice department. If it was so that every case could be always again filed even after the trial and issuance of sentence, the government would have to incur intolerable expenditures. Justice department is a place for the people's refuge and recourse in their sufferings, and it is not a center for the government's acquiring of revenues.

**2) *Social Necessities (Preservation of Good Relations between the Society Members)***

It might be the case that the elongation of a lawsuit causes the disordering of the good relationships between the individuals or even the disintegration of their family foundations. For instance, in inheritance-related cases, the family members preserve their relationships and communications like before if the disputes are resolved as soon as possible. But, if the trial takes more time than expected and lawsuits are filed again and again after the issuance of a sentence, the dispute gives its place to hatred and the social security and public order is jeopardized.

**3) *The Necessity for the Creation of Legal Security in the Society***

Justice department is obliged to specify the people's duties. In their transactions and personal statuses and all of their legal affairs, people need security and peace of mind. If the courts' sentences are credible, the people can more peacefully engage in their transactions without any concern. It is evident that the only way for validating the sentences by the courts is the credibility of the judged issue.

**4) *The Necessity for Preventing Chaos***

Not only the courts should be prevented from retrial, but also the parties of a lawsuit should be also prevented from filing lawsuits and the latter should not even have the right to disagree with the issued sentence, the wrongness of which, is assured because it would otherwise result in chaos in the legal system.

**5) *The Necessity of the Finalized Issue's Validity from Practical and Executive Perspectives***

As it is known, the judge and the ruler who have been from the beginning in the course of investigation, can come up with better assertions, on the one hand, and, although the entire trial stages and the majority of the parties' expressions are reflected in the file, one cannot, on the other hand, practically gain insight through the mere study of the file over the issue the way that an investigating judge can. The possibility of refileing of a lawsuit after every issuance of a sentence is faced with the two formerly mentioned problems. Anyway, even if this case is not accepted, the other abovementioned cases altogether make it necessary for any intellectual to accept that the time should come for the judge's sentence to gain validity of the non-violable type.

**6) *The Goal is Resolving of the Conflict***

If it is accepted that judgment aims at administering and enforcing justice, it is subsequently made clear that its final objective is the resolution of the disputes in which case everyone should believe in the validity of the judged issue.

**7) *Sentences' Validity is the Expedient Prerequisite to the Accomplishment of the Judgment's Goal***

One of the important goals of the canon is administering justice and eradication of injustice and, in order to achieve this goal, it has tools like ethics and worships. In addition to them, canon uses judgment as a means for the actualization of such a goal. Put differently, the objective of judgment is the administering of justice and eradication of injustice. Thus, a judge's verdict is credible hence non-violable (Riyazi, 1982).

**The Relationship between the Finalized Issue and the Legal Affairs and Civil Trial Procedures**

According to paragraph (6) of article 84 of the civil trial procedures, "if a newly adjudicated case is found having been previously filed, tried and concluded between the same individuals or their deputies, the court cannot enter a substantive trial again and, based on the axiom of the finalized issue's validity, a writ should be issued for the lawsuit's rejection.

**1) *Finalized Issue's Validity and Legal Courts' Writs***

According to the interpretations made for the term "sentence" as stated in paragraph 6 of article 84 of the civil trial procedures' law, it has been found by some as including "sentence and writ" and some others, considering the fabrication philosophy of the finalized issue as well as article 299 of the civil procedures law, know it only inclusive of the court's sentence. The gist of the legal doctrine is that "the principle is the invalidity of the finalized issue in regard of the writs" and its generalization to writs is an exceptional issue and the finalized issue's validity should be tested for every individual cases of them. As a specimen, according to the discriminant ordinance number 10/06/1948-960 by the country's Supreme Court, the writ of document originality is included, like the courts' sentences, by the axiom "the validity of the finalized issue"; also,

according to the declaration number 02/20/1983-5776 by the legal office of the justice department, the lawsuit abolition writ is equivalent to the issuance of a sentence for the rightlessness of the plaintiff and, in case of being found certain, it would have the same validity as the finalized issue.

## **2) *Validity of the Finalized Issue and Legal Court's Qualification***

The validity of the finalized issue is closely interconnected with the court's qualification. If a court is found having issued a sentence without observing the regulations related to qualification, the sentence cannot have the validity of the finalized issue. In other words, if the authority issuing the sentence is found having issued it outside its relative jurisdiction, it would be included by the credibility of the finalized issue and in case that the court is found having issued the sentence outside its inherent jurisdiction, it cannot be included by the rulings pertinent to the finalized issue's validity.

## **3) *Validity of the Finalized Issue and Non-Litigious Affairs***

Considering the fact that there is no dispute in the non-litigious affairs and the hearing is not held to resolve the dispute, the finalized issue's validity does not include the non-litigious affairs. The significations of article 40 as well as the concepts introduced in article 41 of the law on non-litigious affairs and also the contents of the sentence number 11/7-9/1983-13464 issued by the legal office of the justice department regarding the permission for retrial of the request for a certificate of exclusive inheritance confirm this same purport.

## **4) *Validity of the Finalized Issue and Corrective Report***

According to the discriminant sentence number 10/08/1931-884 by the Supreme Court: "courts can issue a writ of the lawsuit rejection without substantively entering the case if it is found having previously been settled down and led to the issuance of a sentence". Furthermore, based on the contents of the insistency sentence number 03/11/1959-6446 by the general assembly of the legal divisions of the country's Supreme Court, no.26, and in confirmation of the sentence by the fifth division of the provincial court, the corrective report is realized included by paragraph (6) of article 84 of the law on civil trial procedures hence cannot be retried.

## **5) *Finalized Issue's Validity and the Arbitrator's Sentence***

Considering the philosophy of the arbitration's fabrication in the law, the sentence issued by an arbitrator through taking into account the arbitration principles, including its justification and substantiation and non-contradiction of the constructive regulations, enjoys the validity of the finalized issue unless all of the parties find it generally refuted and ineffective according to the contents of article 486 of the civil trial procedures and paragraph 1 of article 481 of the same law in which case it would be devoid of any fault to refile the lawsuit in the qualified authorities.

## **6) *Validity of the Finalized Issue and the Judicial Authorities Dependent on Justice Department***

It has to be noted in this regard that "the court's domain does not have any effect on the validity of the sentence in regard of the principles hence, the same way that the sentences issued by the general courts enjoy the validity of the finalized issue, the sentences issued by exceptional authorities and outside the justice department have the same privilege. For example, the decision made by the municipality or tax division's dispute resolution committee regarding the government's entitlement to a right is decisive and no court can retry those cases again" (Katouziyan, 2004). In addition, if the notary public office investigates a case and issues a decisive sentence in a community dividend case and/or one of the exceptional administrative authorities like the tax commission or the municipality's article-100 commission, the retrial of the case in the aforementioned authorities is deemed impossible. The judicial procedure, as well, has accepted such a reasoning as explicitly declared in the insistency sentence number 10/05/1359-3475 issued by the general assembly of Supreme Court's legal division.

## **7) *Validity of the Finalized Issue and Third Persons***

Although a sentence cannot create a right or an obligation in favor or against the individuals who have not been the parties to a lawsuit, the third parties cannot in the meantime deny the legal status that has come about as a result of the sentence and should identify and respect it (Shams, 2006). Thus, the sentence can be substantiated against all the individuals. According to the article 44 of the law on the enforcement of the civil sentences that normally realizes the sentence enforceable even if the sentenced item is in possession of a third person and paragraph (B) of article 419 of the civil trial procedures that also realizes the sentence against a third person adducible, the only way for a third person to evade such a sentence normally is objection and this is clearly indicative of the sentence's being adducible against a third person (Langarudi, 1973).

## **8) *Validity of the Finalized Issue and the Sentences Issued by the Foreign Legal Courts***

Generalization of the axiom “validity of the finalized issue” to the sentences by the foreign courts has been vividly deduced from the first part of article 971 of the civil law that states “in terms of the courts’ qualifications and regulations related to the judgment principles, the lawsuits obey the rules of the locations wherein they are filed ...”. Considering such a description, although the filing of a lawsuit in a foreign court does not dismiss the responsibility of an Iranian court corresponding to the second part of the aforementioned article, termination of a case in a foreign court does not provide for the qualifications of retrying the same case in the Iranian courts unless the sentence is found against the right-constructing regulations in Iran. This is a proof to the necessity of observing the axiom “finalized issue’s validity” in regard of the foreign legal courts’ sentences.

### **Exceptions to the Axiom “Finalized Issue’s Validity”**

1) ***Insolvency Sentence:*** Considering the fact that insolvency and affordability are issues that can change time to time, the occurrence and justification of each at any time changes the nature of sentences. Thus, essentially, the finalized issue’s validity does not hold for the insolvency lawsuits. Thus, due to the same reason, article 508 of the civil trial procedure states that “exemption from the trial cost for every lawsuit should be separately calculated ...” And, of course, the discriminant sentence number 10/01/1947-1116 by the fourth division and discriminant sentence number 12/03/1946-1505 by the sixth division of the country’s Supreme Court underline the same issue.

2) ***The Sentence Rejecting the Plea of Bankruptcy Discharge:*** According to article 573 of the business law, a bankrupt merchant faced with the rejection of his or her plea of bankruptcy discharge can again request discharge of bankruptcy from the court six months after the issuance of the rejection sentence. And, “of course, the aforementioned article has been stipulated due to the reason that discharge of bankruptcy is a gradually attainable status and the conviction of the claimant at the time of the sentence issuance cannot be generalized to later times (Hosseini, 2004).

3) ***Insanity:*** It is also amongst the incidental happening and an individual whose insanity has been posited in a court and a sentence has been issued declaring his or her capacity can be again brought to the court by introducing new proofs. Likewise, a request can be made to a court for declaring the capacity of the individual whose incapacity has been previously sentenced in this regard. It is based on the same premise that article 72 of the law on non-litigious affairs stated that “sentencing the capacity or incapacity of an individual does not work as a barrier if the capacity of one of the parties is proved in a court before the issuance of a sentence for his or her incapacity and/or after the elimination of his or her incapacity in which case the court can consider effective what has been proved to it”.

4) ***Revising the Sentence to the Eviction of the Rented Property for Personal Needs:*** Since the nature of the claims for the eviction of the rented property for personal needs is in such a way that it can be continuous by the cause of the need and since the claim for personal need might not be justified at one time and justified in another time, the petition for revising these claims cannot be included by the finalized issue’s validity.

5) ***Request for the Moderation of the Rentals:*** According to article 4 of the law on the relationships between the landlord and the tenant passed in 1977, “landlord or tenant can ask for the revision of the rentals based on the increase or decrease in the life cost provided that the rent period is expired and three years are elapsed since the tenant’s use or since the date specified in the definite sentence issued for the specification or moderation of the rent price. Subsequently, the court asks for experts’ ideas and moderates the rentals to the fair rate of the day. The court’s sentence in this case is definite”. However, the filing of a lawsuit for the moderation of the rentals in adherence to the conditions inserted in this article does not enjoy the validity of the finalized issue.

6) According to article 28 of the law on the relationships between tenants and landlords passed in 1977, “in cases that the sentence issued for the eviction of a rented property also demands the payment of good will, the landlord is obliged to deposit the specified sum of money in the justice department’s fund or pay it to the tenant within three months since the announcement of a definite sentence, otherwise the aforesaid sentence would be devoid of any effect ... In other cases, as well, the issued sentence would be devoid of any effect if the landlord falls short of demanding the issuance of a writ of execution within one year after the issuance and declaration of the definite sentence ...” The invalidity of the aforementioned sentences in the abovementioned article does not bar the refiling of a lawsuit for the eviction of the rented property and the resuming of the claim here does not obey the axiom “Finalized Issue’s Validity” (Shahidi, 1961).



## Comparing the Finalized Issue's Validity in Criminal and Civil Rights

The law scholars used to previously justify the validity of the finalized issue in criminal cases based on the texts of the civil law and deduced the conditions of its regulations from the axiom of the sentenced item in the civil law. But, currently, the criminal experts believe that the conditions and reasons related to the finalized criminal issue are not consistent with those pertinent to the finalized civil issue for the fact that the authorities of a sessions' judge differ from those of a civil judge. The civil judge issues a sentence based on the proofs presented by the parties whereas the sessions' judge has vast authorities and numerous instruments of investigation for acquiring proofs and discovery of the crime and the real recognition of the perpetrator. Furthermore, the goal in the criminal trial procedure is the punishment of the convict plus safeguarding of sufficient and necessary guarantees for the preservation of his or her defensive rights; however, the divergence of the principle "the validity of the finalized criminal issue" is elaborated based on certain penal code of law. In criminal cases, the principle is applied so that the ground cannot be set for the issuance of contradictory and shaky sentences in the courts' decisions and, finally, the primary and essential conditions in the effectiveness of the criminal suing, i.e. speed, stability and decisiveness, cannot be flawed and wasted (Stephany et al., 1998).

## CONCLUSION

Finalized issue's validity is amongst the evident and sure subjects in law as well as in jurisprudence. Based on the legal foundations, if a sentence is issued by a judicial authority considering all the conditions, no other authority can violate it and the agreement by the parties to a lawsuit for referring to another judge or judicial authority for a second time and coming to terms with the sentence issued by the other judge causes the violation of the first judge's sentence. In a stage that all of the investigations have reached their end, if the same finalized issue with the threefold unity of the parties, the subject and the cause is again placed in the orbit of investigation and pursuance with a new complaint, the investigation has to be ceased relying on the axiom "the validity of the finalized issue" and the case should not be tried and judged except for the cases of the legal texts. Besides the emphasis made in our country's domestic regulations on the adherence to the axiom "the validity of the finalized issue", the international regulations, as well, know it necessary to pay attention to the validity of the finalized issue in such a way that there is also an international axiom under the title of "prohibition of double trial and punishment", meaning that if a person was sued for an accusation that subsequently could led to the issuance of a sentence, s/he should not be sued and penalized again for the same accusation. Article 326 of the law on civil trial procedures and article 272 of the law on criminal trial procedure have permitted the violation of the sentences and the possibility of appeal and resumption of the trial in some cases that are not contradictory to the validity of the finalized issue. In addition, there are posited some exceptions in some of the domestic regulations that do not decrease the importance of such an axiom as "the validity of the finalized issue".

## Conflict of interest

The authors declare no conflict of interest.

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