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An Investigation into the Certainty of Provisions Based on Confession and Experts' Consensual Judgments and Perspectives in Legal Lawsuits in Iranian Courts

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Abstract

In legal disputes, in some cases which judges cannot issue verdict due to the specialty of the matter, an expert or more are assigned by court as requested by parties to issue verdict. Now this question arises is that can the verdict issued based on confession and experts' perspectives be objected by parties? This study seeks an answer to this question by examining Civil Code and verdicts of Supreme Court as well as current literature.

Keywords: Confession, Expert's Perspective, Consensual, Court's Verdict, Iran laws.

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Introduction

In Persian, confession literally means “to consolidate somebody or something in a situation or place”, and in Law, Article 1259 of the Civil Code defines it as “to plead guilty in favor of other party and to self-detriment”.

Legislators enumerate verdicts on appeal in Article 331 of the Civil Procedure Code as follows:

1. In financial disputes which the good or its value exceeds 3 million Rials.
2. All issued verdict in non-financial disputes.
3. Verdict on accessories of disputes if verdict on the main dispute is considered on appeal.

Verdicts of non-appeal are stated in the article clause as “verdicts based on confession at courts ... are non-appeal unless in jurisdiction of court or issuing judge”.

A significant point about this clause is that confession is apparently non-appeal if made in court. However, in chapter ten, part two, no difference is mentioned between the case confession is made in a court or the case outside a court; and Article 202 of the Code states that “if a person confesses to a matter that is due to him being the rightful, no further reason is required to prove that”. Despite Articles 203 and 204 only consider cases inside a court, Article 205 validates confessions made outside a court. Also, the word confession implied in the Article includes the expression corrupt confession. However, such an article is not effective, and in accordance with article 1277 of the Civil Code, confessor can claim the confession as being corrupt or wrong; thus, a request of appeal on the matter is with no fault.

First discussion: the certainty of verdicts based on confessions

To understand the notion of confession at courts, we must mention that confession is of two types from the standpoint of validity: confession made inside a court and confession made outside a court.

Legislators define confession at courts in Article 203 of the Civil Procedure Code as “if confession is made in a court lawsuit or during the proceedings at a court or stated in bills

presented to a court, then is considered confession made inside court; otherwise it is considered confession made outside court”. A confession during proceedings at a court is one which is made by one of the parties at a formal court session at the presence of a judicial authority, whether the authority is a court of law or a prosecution office. Of course, the confession made at a prosecution office must differentiate between civil and criminal matters. About criminal matters, judge asks defendant in accordance to Clause 2 of Article 193 of the General Procedure Code as “do you accept the charges or not?” thus, about criminal matters (we specifically discuss about criminal matters here, as some non-litigious matters are the responsibility of prosecution offices), confessions made at a prosecution office can cause judicial matters, and such confessions are more difficult to prove than ones made at a court of law which is because of specific reasons. Hence, a confession made before or after a formal court session is not considered a confession made inside court, despite the fact that it is made at the presence of a DA or other judicial authorities. According to Article 250 of the Civil Procedure Code, a confession made at a session of local research at the presence of a court representative is considered a confession made inside court.

A confession made in a bill presented to a court is considered a formal-written-inside-court confession, whether bills are to explain matters or to not attend the court session (both defense and objection bills).

As explained above, apparently there is no vagueness in the Clause of Article 331, but Article 476 of the former Civil Procedure Code passed in 1939 considered non-appeal verdicts stating in Clause 5 that verdicts based on decisive confession made inside court is non-appeal; but the expression “decisive confession” is left out in the current Code. Now there a vagueness arises that is does confession itself renders verdict non-appeal or a decisive confession cause it?

It must be explained here that a confession comprises two types which are a decisive clear confession about a dispute and a confession about dispute premises. The former is a confession about the nature of a dispute meaning that sometimes the subject of a confession is matters included in dispute premises like a confession about the authenticity of a legal document which is called a confession about dispute premises. Such a confession only proves the authenticity of the legal document, but does not mention any details about the document’s

provisions, for instance about confessor's debts stated in the document in favor of other party. Because the debts may have already been paid off in the document.

Considering the removal of the expression "decisive" from the Clause of Article 331, and since it is mentioned in Article 369 stating that verdicts based on "decisive confession" at courts are not subject to appeal, some Lawyers accept that "even confession about dispute premises can render the verdict non-appeal. The separation of the two types of confession from the standpoint of decisiveness is related to the former Code and it is not possible according to the current Code". But it must be said that the Procedure Principles Law (also known as Temporary Law Principles of Legal Mahkamat) enacted on November 10th 1911 stated in paragraph 6 of Article 485, the same as the new law "Verdicts Based on Confessions", confessions without decisive action as not subject to appeal; but at that time prior to the enacting of the former Procedure Code, there were some perspectives from the Supreme Court which did not consider confession to dispute premises as the certainty of issued verdict. The same perspectives could be found at the Judges Supreme Court verdicts at the time. As a matter of fact, legal proceedings consider a confession not subject to appeal that is about the nature of the dispute and this action in order to protect the rights of the sentenced person is primitive. Hence, based on equal rights, it must be stated that also at the time of the current Procedure Code, courts must consider verdicts based on "decisive confession at court" as not subject to appeal not any other type of confession even confession about dispute premises.

One of the verdicts issued at the time of the Procedure Principles Law which can be referred to support this reasoning is Verdict No. 309/3246 of the Supreme Court which states that "inference of confession from the statements of parties is explicit and clear" as a confession but it does not waive the right to research". And also Verdict No. 283 issued on January 20th 1929 at the Judges Supreme Court stating that "confession to the issuance of document is not accompanied by confession to the main dispute, and when the nature of dispute is confessed to, then the confession causes the certainty of the issued verdict. Since it is possible that the document's provisions are neglected or invalidated as results of disputes, thus, crime is committed if confession is made and the issued verdict is announced effective and decisive.

That was an explanation of the certainty of verdicts based on confession from which it can be inferred that only verdicts based on decisive and clear confession made at court are considered as decisive and verdicts based on confession to dispute premises must not be considered decisive.

Second discussion: the certainty of verdicts based on experts' perspectives

The Clause of Article 331 states that “verdicts issued based on one or more experts’ perspectives whose decisions are accepted in written form as being decisive and effective by parties cannot be subject to appeal”. Two questions may arise regarding this part of the Clause. The first question is that “are the experts’ verdicts “chosen” by parties decisive or not?”

Firstly, it must be stated that both parties and courts can choose the experts. In the case if chosen through consensual agreement by parties, parties will have the right to appeal, since the agreement does not mean that parties consider their verdict as decisive and denial of the right of a person must be based on knowledge and certainty. Thus, if parties agree on the certainty, the experts must mention that, otherwise the right to appeal is not denied. Similar to the Clause was mentioned in Clause 3 Article 476 of the former Code verdicts issued by one or more experts whose perspectives are accepted in written form by parties cannot be subject to appeal. The difference between the two Codes is that in the former denial of the right to appeal is on condition that experts must be chosen based on consensual agreement of parties; but, since this is currently removed, the condition becomes null and void.

If parties only agree to not object experts’ perspectives and verdicts, it must also be stated that although the principle is non-appeal verdicts and the principle must be followed if in doubt, considering the Clauses of Article 331, there exist some rights for defendants to appeal which are only denied if experts’ perspectives are considered the certain and decisive verdict and have no objection whatsoever to experts’ perspectives, and the rights are only denied if the above case rules (it does not here). If parties have no objection to experts’ perspectives, their right to appeal still remains for which Verdict No. 744 issued at branch one of the Supreme Court on June 20th 1949 can be mentioned stating that “if the verdict is not based on Musadegh’s perspective whom parties agreed to appoint and consider his verdict and perspective decisive, but parties agreed on sole judgment of one person who issues verdicts to

resolve their disputes at a definite time, such a case does not match Clause 3 of Article 476 of Civil Procedure Code (the Clause of Article 331 of the current Code)”.

Another question which arises about this part of the Clause is that by experts we mean formal and official experts or any expert? Some lawyers believe that such experts must be official and formal and infer such meaning from the Article. But it seems that we are not obliged to limit the word experts only to official and formal ones who have permit issued by Official Experts Association or the Executive Board Article 187 of the Third Development Plan; and the parties may ask to accept unofficial experts’ verdicts (experts in the field) as decisive and determining decision for their disputes in which case parties’ will must be respected. For instance, theory No. 1220 on June 11th 1983 at Legal Department of Justice can be mentioned stating that “if experts are chosen based on consensual agreements of parties, their perspectives can be objected to and all parties can object to their perspectives and opinions at a definite time, and respective court must consider the objections and also makes decisions accordingly”. It must be noted that in the theory, the department has mentioned the word “expert” in an absolute manner for both official and unofficial experts. However, some believe that the word “expert” mentioned here does not include unofficial experts unlike Article 268 of the same Code, and if the expert was absolute and decisive in legislator’s mind, an explanation would not be necessary about; and being official means whether there exist official experts in the field or anybody specializing in the matter is referred to if necessary, and our discussion is about that parties consider experts’ perspective as decisive whether the expert is chosen by court or through consensual agreement of parties themselves.

Instead of Conclusion

This study clears two matters:

First; if experts are chosen through consensual agreements of parties, the right to object to them is not denied and only the verdict issued at court is not decisive.

Second; by experts in the Clause, it means both official and unofficial ones.

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