

# The Similarities and Differences between the Arbitration and Judgement Verdicts in Iran's Laws

Amir Mehdi Ghorbanpur<sup>1</sup> & Sara Khakestarian<sup>2</sup>

<sup>1</sup> Department of Law, Takestan Branch, Islamic Azad University, Takestan, Iran

<sup>2</sup> Department of Law, Bandar Anzali Branch, International Islamic Azad University, Bandar Anzali, Iran

Correspondence: Amir Mehdi Ghorbanpur, Department of Law, Takestan Branch, Islamic Azad University, Takestan, Iran. E-mail: reserchhouse@gmail.com

Received: January 15, 2017

Accepted: January 16, 2017

Online Published: February 21, 2017

doi:10.5539/res.v9n1p261

URL: <http://doi.org/10.5539/res.v9n1p261>

## Abstract

The main purpose of current research is to determine the similarities and differences between the arbitration and judgement verdicts in Iran's laws. The results of current research indicate that there are many differences and similarities in the arbitration and judgement field in Iran's laws. General similarities, attributes of judge and arbitrator from religious jurisprudence's view, verdicts in Iran's internal laws, investigation with reasons, and final sentence in the arbitration and judgement verdicts can be mentioned as some of these similarities. Also about the differences, some cases like: observance of the principles and adducing to the legal articles at the time of composing the verdict, observance of the formalities and judgement provisions in issuance of verdict, verdicts in terms of requesting for the revision, ability to appeal to the Supreme Court, rehabilitation, jurisdiction, protestation, issuance of verdict by judges and arbitrators, procedural conditions in composing the verdict, regard to recite the verdict in terms of being revisable or non-revisable, third-party entry ability, attracting the third-party, features of verdicts in terms of the ability to prove, possibility to issue the request for garnishee and temporary commandment, correction of verdict, the features of verdicts in terms of the *res judicata*, competence for issuance of reformatory report, competence for issuance of preliminary (interlocutory) decree, moratorium for objecting about the verdict, the third-party's ability to object about the verdict, having the relative effect, changing the verdict (judge exemption, arbitrator exemption), communication of verdict, the manner of judgement investigation with courts, investigation dependent on provisions of civil judgement rules, investigation dependent on judgement principles (correspondence principle, observance of the defense right of parties), competence for investigation of the legal affairs, start to investigate, the investigation range, the investigation place, being overt or non-overt, investigation and transmission to the another person, difference between arbitration and judgement in the religious jurisprudence and judge and arbitrator positions from the religious jurisprudence are some results obtained at current research.

**Keywords:** arbitration verdict, judicial verdict, similarities, differences, Iran's laws

## 1. Introduction

Judgement is one of the oldest methods to settle the lawsuits and disputes among people and it has been recommended in Islam religion and religious jurisprudence. Arbitration has numerous definitions, kinds, special features and defects. Although in the article 454 of the civil jurisdiction rules, only the condition of the parties competence has been stipulated, but mutual agreement about the arbitration can not be known exempt from other constitutional conditions for correctness of transactions which have been predicted in the articles 190 on ward in civil law. Because, arbitration is contract, it should have the necessary constitutional conditions for correctness of transactions (the subject of articles 190 in civil law) in terms of parties' intent and satisfaction, their competence, determined subject and legitimacy for the contract. The statistics which are presented occasionally by respectful authorities of judicature about procedural litigations and also their entrance are very worrisome quantitatively. In this regard, for solving that problem, different plans and suggestions have been proposed and tested that formation of the disputation settlement council is one of them and despite of vast attempts, unfortunately it hasn't succeeded in improving the situation and solving the mentioned problem. Due to this, we should seek principal and logical works that the society's people refer to them for settlement of their disputes with their desire and without resorting to the governmental authorities and solve their problem. The issue of

referring to the arbitration is one of those solutions. Arbitration as one of the methods of settlement of enmity in all legal systems has been always considered by legislators and lawyers. Since the duration of execution of the verdicts issued by arbitrators has been always agreed by different parties, it is identified under an easy system; therefore the foundation of this investigation is the mutual agreement of the disputation parties which has contractive nature.

## 2. Statement of Problem

The arbitration and judgement discussion is one of the important and vast issues in the laws of each country and also international laws. Perhaps, most of the normal people consider the arbitration and judgement equal to each other, but in the laws science, these two issues can be separated from each other, they have some similarities and differences with each other. About arbitration, the view of the most of the laws in the countries and international conventions is according to this issue that despite of the contract of referring to the arbitration, the courts haven't had the competence of investigation and they should abstain from investigation by referring the affair to the arbitration (Moslehi Araghi & Sadeghi, 2006). In most of the legal systems of the world, the possibility of a kind of judicial control on the procedure of arbitration verdict has been predicted in the frame of possibility to object about the arbitration verdict. Despite of evident bias based on lack of interference of courts in the arbitration investigations and limitation of the cases of governmental courts interference, the contemporary legal systems especially England and Germany haven't submitted the arbitration procedure with complete elimination of this kind of judicial control of courts (Wallis, 1990). This issue isn't hidden on any one that the international system of less interference of courts in arbitration and their more independency is on two factors of the arbitration procedure acceleration in international system; but in the internal and even external affairs, in many cases, it has been seen that after the parties arbitration verdict, one of the parties refers to the judicial trial and proposes a new lawsuit about the same issue in the public prosecutor's offices and judicial tribunals again which can be due to the lack of cognition and awareness of similarities and differences between the arbitration and judgement verdicts, therefore this affair causes that the researchers to do their research with the subject of studying the similarities and differences between arbitration and judgement verdicts in Iran's laws and the main question of the research is this issue that whether there are similarities and differences between the arbitration and judgement verdicts in Iran's laws or not. Is the judicial verdict superior over the arbitration verdict in Iran's laws? This research will be done with the purpose of responding to these questions and also helping to clarify this issue in Iran's legal community more than before.

## 3. The Theoretical Principles of the Research

### 3.1 *The Concept of the Arbitration Jurisdiction Rule*

It seems that we should know the arbitration jurisdiction rule as the tribunals rule on the act method of arbitration authority in investigation of lawsuit, parties' reasons and requests, objections, jurisdiction incidents, the manner of ruling, issuance of verdict and conditions of verdict. And the manner of appointment of arbitrators should be known out of the evidences of this concept. We can mention some legal reasons on both of these words. The article 657 of the civil jurisdiction rules approved in 1939 says: "the arbitrators aren't dependent on the trial principle in investigation and verdict", namely the trial rule includes both of these stages. The article (v) (1) 33 also has known the arbitration combination as an affair separated from jurisdiction rule. Of course, the first paragraph of article 11 in protocol 1923 of Geneva has said that the arbitration rule such as establishment of arbitration court is under the governance of parties' will and law of the arbitration occurrence place.

If the jurisdiction rule in investigation of the conflicts in the courts has the importance to an extent that if the lawsuit is investigated unlike the trials principles and disregard to the mentioned principles is important to an extent that causes the commandment or contract to lose its legal validity, that commandment or decree will be violated by the country's court according to the third clause of article 559 of civil jurisdiction rules and it is almost the same in all countries; also in arbitration that its issue is mainly investigation of the conflicts between the persons with the adversarial method in a manner that guarantees the issuance of verdict in the topical and commandment-based affairs, a method should be applied so that the parties to be informed of the claims and expressions of one party and have sufficient opportunity for studying and defending them; in other words, arbitration also should follow a jurisdiction rule so that during it, a quick, fair and adversarial jurisdiction to be supplied. Due to the assurance to the existence and necessity of regard to such a rule, the parties with signing the arbitration agreement are committed to accept and execute the arbitration verdict since before (Movahhed, 2007).

### 3.2 The Arbitration Advantages and Defects

Some of the arbitration advantages which can be mentioned include: arbitrators' awareness of the quantity and quality of the case and circumstance of the disputes related to the arbitration subject, arbitrators investigation speed, arbitrators secrecy, and expert knowledge and mastery of arbitrators in the subject related to the disputation. Also the arbitration defects include: lack of precision and responsibility sense of arbitrators, complexity of the ways related to complain about the arbitration commandments, lack of reasoning in the arbitration verdict and much cost of arbitration (Mehraban, 2014).

### 3.3 Arbitration Kinds

**Special (case) arbitration:** It is a kind of arbitration in which no organization or institute is used to do the arbitration under its control and the dispute's parties specify and define its investigation rules by formation of their own special arbitration and after investigation of the subject of dispute, the arbitration is disbanded by issuance of arbitration verdict. Therefore, the special (case) arbitration is formed to settle an adversarial and special disputation and after investigation, the commission of arbitrators which is basically determined by the parties is finished. For example, the arbitration subject between Iran and America (arbitration court of USA and Iran's lawsuits) has been from the case arbitrations.

**Institutional (organizational) arbitration:** It is a kind of arbitration in which a special organization is utilized to do the arbitration, namely it is accomplished under the control of special organization or institute which facilitates the arbitration. Organizational arbitration is a necessary phenomenon for management of arbitration and since it has a healthy rule and proper management, can play a more effective role in settling the commercial disputes. The organizational arbitration basically acts in a special frame with contractive nature in which the arbitrator and parties of conflict have some rights and commitments to each other.

## 4. The Similarities between the Arbitration and Judgement

### 4.1 The Attributes of Judge and Arbitrator from the View of Religious Jurisprudence

Some of the juris-consultants believe that the judge's attributes must exist in arbitrator too. The arbitrator also should have perfection, justice and Ijtihad like judge. Because with mutual agreement of parties in adjudication of arbitrator, he also becomes like judge and therefore, he should have the judge's attributes (Sheikh Toosi). In our topical laws, this view hasn't been accepted with this consideration. Because, judge necessarily must have the judgement permission, namely after passing special courses and having the necessary conditions, the competence and permission of his judgement must have been confirmed by the highest judicial position of the country. And about the arbitrator, no special condition has been predicted in the law of civil jurisdiction rule.

#### 4.1.1 The Peremptory Verdicts

In the internal laws, principally the verdicts will be peremptory unless the legislator stipulates uncertainty of them (Shams, 2006). In Iran, it has been expressed vice versa, but its exceptions are a lot and practically the same general rule is proposed. The article 5 of the civil jurisdiction rule has ordained: the courts' verdicts will be peremptory unless they are violated or revised in the cases ordained in the fourth chapter of this law or in the cases by virtue of other laws. From the appearance of this article and article 330 of civil jurisdiction rule, it is understood that the legislator has founded the principle according to the peremptory and non-revisable verdicts, but the cases excluded from this principle which have been expressed in the articles 331 and 332 of civil jurisdiction rules are a lot to an extent that we should say that practically the principle is according to the revisable verdicts, because the cases which are included in the exceptions are so much more than the cases which are under the principle and this is the same indecency that the followers of the religious rules (Quran, tradition, wisdom and consensus) reminds it in this manner: "The majority allocation is indecent", however according to the appearance of law, the principle is according to the peremptory verdicts and one of the results which is loaded on this principle is this issue that wherever there is doubt on this issue that a verdict is peremptory or not, the principle should be according to the peremptory verdicts (Zeraat, 2012).

#### 4.1.2 The Irrevocability of Verdicts

The arbitrators' verdict is peremptory after issuance of it, except the cases inserted in the article 489 of civil jurisdiction rule, it will have the ability to be executed. The arbitrators' verdict will be irrevocable when the winning party of arbitration verdict has requested for the execution of it and successively the execution commandment has been issued by public-legal court.

In the event that within the legal moratorium, it is not executed by the losing party or the necessary act isn't done by him/her and the preliminaries of execution of arbitrator's commandment aren't provided, in accordance with

the legal provisions for identification, distraint, auction and sale of the losing party's properties in order to vindicate the rights of winning party of arbitration verdict, the necessary act will be done by execution of commandments of Ministry Justice unless the parties of arbitration verdict have compromised and agreed in another manner (Moezzi, 2008).

#### *4.2 Investigation with Reasons*

The arbitrator also like judge issues verdict after investigation of the parties' reasons, namely his verdict is in order to settle a dispute and due to this, it has the *res judicata*. The judge's verdict can not be changed after issuance and communication and it is issued in the special and partial form, namely it is merely controller of the same lawsuit in which arbitrator has been determined. Therefore, the arbitrator settles the enmity and he doesn't seek to issue the commandment, approve the law (Sheikh Ansari, 1994).

#### *4.3 The Verdict Objection Moratorium*

The legislator in the articles 306, 336 and 427 has determined the objection moratorium for the court's verdict equal to 20 days for the residents in Iran and 2 months for the residents out of the country since the date of communication of verdict. This same issue has been also determined for arbitration verdicts according to the articles 490, equal to 20 days for the residents in Iran and 2 months for the residents out of the country since the date of communication of verdict. Each objection should be accomplished in the determined time limit so that as we said before, the door of abuse of that objection right to be closed. Objection about the arbitration verdict isn't also excluded from this general rule (Shams, 2006).

#### *4.4 The Ability of Third-Party to Complain about Verdict*

The principle is according to this issue that all verdicts issued from court should have the ability to be objected unless they have been excluded. According to the definition of article 418 which expresses: "about the former article, the third-party has the right to object about any kind of verdict issued from public, revolution and revision courts and also the persons that their representatives or themselves haven't participated in determining the arbitrator, can object as the third-party about the arbitrator's commandment", therefore it seems that with regard to the phrase of "any kind of verdict", its considerations including verbal and absentee verdicts and also the considerations of the article including the preliminary and preemptory decrees of lawsuit will have the ability of being objected by third-party (Mirzaee, 2010).

#### *4.5 The Investigation Dependent on the Jurisdiction Principles (Correspondence Principle, Observance of the Defense Right of Parties)*

The arbitrators like the courts proceed to investigate judicially and settle the enmity, therefore observing some of these provisions is necessary, the correspondence principle and the principle of observing the defense right of defendant, investigation of reasons in presence of parties, being limited to the arbitration subject are the principles which can not be ignored in jurisdiction.

#### *4.6 Investigation of the Arbitrator's Verdict in the Cases of Invalidity and Decadence of It*

Some subjects like penal cases and also marriage, divorce, bankruptcy, etc. cannot be referred to the arbitration and even if the arbitration contract is concluded about them, again the courts will be competent to investigate the subject.

In some cases and despite of this issue that in the beginning of the affair, the subject has been referred to the arbitration and it is in the arbitrators' competence, meantime the investigation of arbitrators, some subjects are appeared that investigation of them hasn't been in their competence and on the other hand deciding on arbitration depends on determining the result of these subjects; therefore, necessarily the arbitrator or arbitrators should stop the investigation so that the penal case, marriage, divorce, and etc. to be investigated in the court (Shams, 1997).

#### *4.7 The Court's Duty about Communication of the Arbitrator's Verdict*

"The arbitrator's verdict should be communicated after issuance so that the possessors of lawsuit to be informed of its contents and if they have any objection, they should be able to do it" (Sadrzadeh Afshar, 2000). In the event that the lawsuit has been referred to the arbitration at the beginning and before proposing in the court, the arbitrator should give his verdict to a court which is competent to investigate the lawsuit article in order to communicate it to the parties by that court. The provisions of the arbitrator verdict communication are according to the petition communication provisions (from the chapter of absolute cancellation to the reputed person) (Jafari Langroodi, 1996). The article 485 of civil jurisdiction rule about this issue ordains: "if the parties in the arbitration contract don't predict a special way to communicate the arbitrator verdict, the arbitrator will be

obliged to deliver his verdict to the office of court which refers the lawsuit to the arbitrator or a court which is competent to investigate the lawsuit article” (Mohammadzadeh Asl, 2010).

#### *4.8 Arbitration and the Judge Exemption Rule*

“With regard to the similarity in the manner of the arbitrator and judge investigations and with regard to this issue that the commandment issued by arbitrator is also accounted as the adversarial commandments, the arbitrator also after the end of investigation and issuance of verdict is exempt from investigation and he doesn’t have the right to interfere and change; because the arbitrator or arbitrators study the legal conflict or dispute proposed by the side of themselves and after attaining the correctness of claim namely confirmation or lack of confirmation announce the final decision in the frame of verdict which must be acceptable and proved. Therefore, stabilization of the verdict and the precisions of arbitrator or arbitrators in investigation of the arbitration subject necessitate that the judge exemption rule to be also confirmed so that the issued verdicts to have the validity and not to be affected by new changes momentarily” (Vahedi, 1993).

#### *4.9 Guarantee of the Arbitration Verdicts Execution*

In the event that the arbitration verdict isn’t executed optionally, the compulsory execution of it will be supported by the law and it will have the legal execution guarantee. But the arbitration privilege in the stage of execution of verdict isn’t only limited to this issue that any kind of arbitration verdict should be executed instantly and indisputably, but also an important aspect of this privilege is hidden in this reality that the execution of defaced arbitration verdict or a verdict which has been issued unlike the realities or law can be prevented (Mohajeri, 2008). According to the contents of the article 488 of the civil jurisdiction rule after requesting for the execution of the arbitrator’s verdict and issuance of the executive letter, execution of the verdict is equal to the legal provisions. Therefore, the law related to execute the civil commandments and its reforms will be observable in execution of arbitrator’s verdict too (Shams, 2008).

#### *4.10 Stopping the Execution of the Arbitrator’s Verdict*

According to the contents of the article 490 of civil jurisdiction rule, whenever the arbitrator’s verdict is from the cases mentioned in the article 489, each one of the parties can request for the commandment to cancel this verdict from component court within twenty days after communication of the arbitrator’s verdict and therefore, the execution of the arbitrator’s verdict is stopped till the time of investigation of the lawsuit article and certainty in cancellation of the commandment that the judicial procedure for stopping the execution of verdict is also the same.

#### *4.11 Execution of the Arbitrator’s Verdict Despite of Objection*

According to the article 493 of civil jurisdiction rule despite of objection about the arbitrator’s verdict, this verdict can be executed. Because the policy of legislator according to strengthen the arbitration and promote the persons is in order to refer to the arbitration and since the arbitrator’s verdict has been issued according to the parties’ demand, merely due to the objection of one party, its executive effects aren’t cancelled (Mohajeri, 2008). Of course, whenever the objection reasons are strong, the court issues the decree of stopping the execution of arbitration verdict till the end of investigation of objection and issuance of the peremptory commandment and if necessary, it will take a proper garnishee (second part of the article 493 of civil jurisdiction rule).

### **5. The Differences between the Arbitration and Judgement Verdicts**

#### *5.1 The Difference between the Arbitration and Judgement in the Religious Jurisprudence*

The juris-consultants have said in definition of jurisdiction: “The judgement is the formal position of government which is given over by Imam and the head of government in order to issue the commandment in the public interests” (Macci Alameli, 1981). While, arbitration is a position that the lawsuit parties give over it to the person. Arbitrator is the private person and he hasn’t been appointed by the government.

Also in the religious jurisprudence, the jurist-consultants have distinguished between the arbitration and jurisdiction, for example, they have distinguished semantically between two words of jurisdiction and injunction which have been applied in the holy Quran (Saket, 1992). At the same time, transmission of commanding means to give over the judgement to the person. The verdicts of the trials related to the Ministry of Justice can be revised generally in one court and sometimes in two higher courts and this issue causes to prolong the investigation procedure, while the arbitration verdicts basically are final and non-revisable. Of course in the event that the arbitrators’ verdict is unlike the laws and creator of rights, it can be cancelled in the competent public trials (Mohammadzadeh Asl, 2010).

### *5.2 Observance of the Principles and Adducing the Legal Articles at the Time of Composing the Verdict*

The jurisdiction principles are the rules and provisions that disregard to them defaces the persons' rights, in fact the jurisdiction principles refer to the correspondence principle; therefore, both arbitrators and courts are obliged to observe the jurisdiction principles, although it seems that in the first instance, the arbitrators don't need to adduce the legal articles in their verdicts, but the arbitration verdicts should be acceptable, proved and they shouldn't be according to eliminate the laws which create the rights. The laws which create the rights are the substantive Jus Cogens that the arbitrators can not issue the verdict unlike them, but they are not obliged to adduce the legal articles in their verdicts; unlike the courts' verdicts that according to the principle 166 of constitution and articles 3 and 296 of civil jurisdiction rule, adducing the legal articles has been known necessary at the time of composing the verdict and according to the guarantee of execution of lack of adducing the articles in issuance of verdict based on the clause H of article 384 of civil jurisdiction rule, there will be the possibility to violate the verdict in the revision stage.

### *5.3 Observance of the Formalities and Provisions of Jurisdiction in Issuance of Verdict*

The jurisdiction formalities are the rules and provisions that disregard to them doesn't deface the rights of the lawsuit's possessors, for example, if the communication provisions aren't observed, it will be from the jurisdiction formalities while the communication itself is from the jurisdiction principles. The legislator due to accelerate the investigation hasn't known the observance of the formalities in arbitration investigation as a necessary affair, if the communication formalities aren't accomplished, disregard to the related formalities will not prevent from investigating and making the decision or issuing the verdict, because according to the article 83, all cases in which the letters are communicated to the non-addressee person will have validity if the court is convinced that the addressee has been informed of the letters (Mirzaee, 2010).

### *5.4 The Verdicts in Terms of Requesting for the Revision*

The arbitration verdicts in terms of objecting and requesting for the revision are basically final and non-revisable, the legislator has called the parties' complaint to the arbitrators' verdict in some cases as the objection (articles 490 and 493), in other cases requesting for the issuance of commandment to cancel the arbitrator's verdict (articles 490 and 493) and in some cases requesting for the cancellation of arbitrator's verdict (article 492). But, it seems that complaining about the arbitrator's verdict is possible only through requesting for the cancellation of it and according to the specific cases in the article 489 which has been expressed in the limitative form and after issuance of cancellation of the arbitration verdict, the investigation will be done by giving over the petition to the competent court, although in the article 5 of civil jurisdiction rule, the principle is according to the peremptory verdicts, but according to the articles 330/331/332 of the same law, the verdicts issued by the primary courts will have the ability to be revised (Mirzaee, 2010).

### *5.5 The Evidences of Non-Arbitrable Subjects*

Studying the national legal systems about arbitration indicates that in most of the countries, the arbitration has been prevented in the lawsuits related to some fields like personal conditions, work, recruitment, stocks transactions. According to the topical division, the non-arbitrable disputes from the view of national laws have been divided into two groups of subjects related to the personal conditions and rights related to the industrial and spiritual possessions (Eskini, 1997).

### *5.6 Issuance of Verdict by Judges and Arbitrators*

According to the article 455, the parties can determine their arbitrator or arbitrators before or after the occurrence of dispute. Also, according to the article 460, determining the arbitrator by the lawsuit's possessors may be done in the arbitration concordat or separated mutual concordat and it may be agreed implicitly, finally according to the article 462, determination of arbitrator is accomplished by the court; as it is observed, selection of arbitrators can be accomplished by the lawsuit's possessors and in the special cases like determining the third arbitrator by the court in the event of lack of mutual agreement of parties, it is accomplished by the third arbitrator selection. In fact, according to the legislator's commandment, the lawsuit's possessors have undertaken the duty of selecting the arbitrator or arbitrators. While investigation in the courts is done by the appointed judges. In Germany, according to the clause one of the article 1035 of Germany's arbitration law, the parties are free in determining the rule of appointing the arbitrator or arbitrators.

### *5.7 The Procedural Conditions in Composing the Verdict*

The law of the civil jurisdiction rule has allocated the articles 295-300 to the verdict and for example, the verdict conditions which have been called both as the written judgement in the article 296 and *Ketab al Hakam* in Islam laws have the procedural conditions that should be composed verbally by jurist after announcing the termination of jurisdiction. The Supreme Court of the country has mentioned in the verdict No. 309/2986: “The commandment must be unconditional and explicit and suspension in the commandment causes defect”.

But, the legislator with the purpose of acceleration in the investigation hasn't obliged the arbitrators to observe the procedural conditions in composing the verdict, but with regard to the article 482, he expresses: “The arbitrator's verdict must be acceptable and proved and it must not be opposed with the laws which create rights”. Therefore, with regard to this article, the arbitrator or arbitrators at the time of composing the verdict don't need to observe the procedural conditions in issuance of it, but their verdict in addition to the summary of claims, merit aspects, parties' demands and their reasons must contain the legal rules of the verdict basis (Hayati, 2013).

### *5.8 The Third-Party Entry Ability and Attraction of the Third-Party*

The termination of jurisdiction will be realized if the court is able to issue the verdict and doing such an affair doesn't need any kind of investigation or another act, therefore, in the event that the verdict of primary court has been issued in the peremptory form or it has become peremptory in the event of the possibility to request for revision or expiry of the moratorium of requesting for revision and lack of objection. The third party in the frame of the article 130 hasn't had the possibility to propose the lawsuit, rather his/her rights will be studied in the frame of the third-party's objection (Mohajeri, 2003). In the arbitration, the third-party entry has been predicted only through mutual consent with the parties of the main lawsuit in referring the affair to the arbitration or determining the arbitrator or arbitrators and according to the uttered issues in the article 475 of the civil jurisdiction rule, a concept that the third-party can enter to the arbitration procedure either in the “main” or “subordinate” forms isn't inferred, because according to the recent part of the same article which expresses “if the agreement isn't achieved, his/her lawsuit will be investigated according to the provisions independently”, it is found out that the third party entry in the arbitration discussion can have mutual consent with the conflict's parties only in referring the lawsuit or determining the arbitrator.

### *5.9 Lack of the Possibility to Issue the Request for Garnishee and Temporary Commandment by Arbitrator*

In the current provisions of the law related to the civil jurisdiction rule, the court is competent exclusively for issuance of the garnishee decree and temporary commandment; and in the court procedure, also if the contract has the arbitration condition, the courts will prevent from accepting the lawsuit proposed by the side of them and they know the investigation in the competence of arbitrator or arbitration board and in the new law, the possibility to issue the garnishee and temporary commandment hasn't been also predicted by arbitrator or arbitrators. Therefore, it seems with regard to this issue that the courts prevent from accepting the lawsuits in which there are the arbitration conditions, the arbitrators also don't have the permission for issuance of the garnishee decree and temporary commandment for the lawsuit's parties and this itself is one of the large defects in the arbitration investigation which hasn't been considered by legislator.

### *5.10 Changing the Verdict (Jurist Exemption, Arbitrator Exemption)*

In the current law of the civil jurisdiction rule, no explicit text which predicts the jurist exemption rule is seen. Of course, about this issue, we can refer to the article 8 of mentioned law that changing the court's commandment by a court which issues the commandment has been announced permissible only in the cases which have been predicted in the law and this article can denote the jurist exemption rule. Of course, some exceptions have been mentioned for the jurist exemption rule, for example, in the article 309, the verdict may need to be interpreted due to the pen error and correction of verdict or in the event of brevity or ambiguity or about the objection on behalf of the absentee losing party, third party objection or jurisdiction rehabilitation under some conditions, the verdict may be permitted to be investigated. But, the arbitrators according to the article 487 don't have the right to change it after issuance of verdict and they will not have this right and only according to the mentioned article, they have the right to correct it (Mirzaee, 2010).

### *5.11 Communication of the Verdict*

After writing the fair copy of the court's commandment and peremptory decrees of lawsuit in the written judgement letter and signing it by the jurist or jurists, according to the intended case, they should be communicated to the lawsuit's possessors, lawyers or their representatives. About this issue, the office's manager after signing the written judgement should provide its copy in a sufficient number and after certifying the copy with the origin letter, if the lawsuit's possessors, lawyers or their representatives are present in the

court's office, it should be communicated to them, otherwise according to the article 300 of the law related to the civil jurisdiction rule, the communication of the written judgement is done by the communication officer.

About the arbitration concordat, the parties meantime the intended concordat can predict a special way to communicate the arbitrator's verdict, but in the event of lack of mutual agreement for communication, according to the article 485, the arbitrator or arbitrators are obliged that according to the intended case to deliver their verdict to the office of the court which refers the lawsuit to the arbitration or a court which has the competence for investigation of the lawsuit principle.

### *5.12 The Difference between the Arbitration and Courts Investigations*

Unlike the investigation in the courts that according to the article 1 of the law related to the civil jurisdiction rule, they are obliged to observe the provisions of jurisdiction rule, the legislator with the purpose of acceleration in investigation hasn't known the arbitrators dependent on observing the provisions of civil jurisdiction rule according to the article 477, but it seems that observance of some provisions of civil jurisdiction rule is significant and important to an extent that lack of observance of them is never permitted, because anyway, the arbitration is a kind of investigation for settlement of enmity and as we know, the arbitration has the *res judicata*, therefore observance of some rules such as the correspondence principle and principle of observance of defense right of defendant which should be investigated in the session and presence of parties is necessary (Mirzaee, 2010).

#### *5.12.1 Start to Investigate*

According to the article 48 of civil jurisdiction rule, start to investigate in the courts is done by delivering the petition. In the arbitration, start to investigate is with arbitration concordat, the arbitration concordat will be either in the form of independent concordat or condition meantime the concordat. Therefore, the significant element of start to investigate in the arbitration is the existence of arbitration concordat. According to the article 1443 of France's arbitration law, it is expressed that: "The arbitration condition will be valid if it is included in the written form in contract or any document which refers to it and moreover, guarantees the appointment of arbitrator or arbitrators or determines the method of appointment of them" (Mirzaee, 2010).

#### *5.12.2 The Investigation Range*

The range of investigation in the courts is specified due to determine the claims in the petition while in the arbitration, the investigation range is determined in terms of the arbitration concordat. The person who refers to the arbitration proposes his/her claim and requests for investigation, but this request doesn't need to be proposed in the special forms like petition, unlike the range of investigation in the courts which is done due to determine the claim in the petition by claimant.

#### *5.12.3 The Investigation Place*

The investigation place about the court is in the place and domicile of the court, but in the arbitration, it is in a place that the parties have agreed mutually and if there is not the arbitration concordat, it will be in the court domicile. Referring the affair to the arbitration may be done by the court and sometimes the parties out of the court refer to the arbitration that if referring is done by the court, it can be in the court domicile or out of the court, but according to the arbitration concordat, the investigation place can be determined meantime it (Mirzaee, 2010).

#### *5.12.4 Public and Non-Public Jurisdiction and Its Juridical Reasons*

The people's right to be informed of the function of governmental agencies has caused that the principle of being public to be predicted as a necessary principle in the constitutions. In the arbitration investigations, the intended subject is typically done in non-public and secret form and investigation in arbitration has the private aspect and only the lawsuit's parties receive some copies of the arbitration verdicts unlike the governmental judgement which is basically the investigation of public and non-secret lawsuits. And the presence of persons except the lawsuit's possessors in the court's sessions and their awareness of the lawsuit's subject and jurisdiction procedure are permitted.

### *5.13 The Manner of Investigation and Transmission of the Litigations in the Arbitration and Governmental Judgement*

Investigation of the lawsuits is accomplished by the arbitrator or arbitration board selected by the parties since the beginning till the end, in other words, the unity system of the lawsuit investigator is governing and this same affair may increase the qualitative and comprehensive investigation of the dispute subject but in the governmental judgement, during the jurisdiction, different judges may undertake the procedure of investigation



of the dispute due to the displacement, leave of absence, retirement, transmission. And sometimes the decisions that different judges have made in a litigation may be different and opposed with each other, consequently, this issue may cause to disrupt the manner and quality of investigation of the litigation (Sarvi, 2011).

#### *5.14 Optional Execution of the Arbitrator's Verdict*

The losing party usually executes the arbitration verdict optionally. The legislator has given moratorium to the losing party according to the intended case equal to twenty days or two months since the date of the communication of verdict to execute the arbitration verdict optionally; otherwise, the compulsory execution of the verdict against him/her is possible (Shams, 2008). The legislator for execution of the arbitrator's verdict has considered more power than the court's verdict; because about the courts' verdicts, the execution of the verdict is stopped to execute and moreover, there is no legal article which has obliged the losing party to execute the courts' verdict within twenty days after communication; but there is such a duty about the arbitrators' verdict (Mohajeri, 2008). In other words, duty of execution of the arbitrator's verdict by the losing party unlike the courts' commandments doesn't need the issuance and communication of the execution commandment, rather, this duty is created as soon as the verdict is communicated (Zeraat, 2007).

### **6. Conclusion**

The main similarities between the arbitration and judgement can include the following cases:

In both of them, a person proceeds to issue the verdict, also both arbitrator and judge remark judicially, there is complete similarity between the arbitration and judgement verdicts in terms of being binding, namely the arbitrator's verdict also like the judge's verdict must be executed, from the view of jurist-consultants, the arbitrator like judge should have perfection, justice and Ijtihad; the arbitration and judgement verdict is preemptory in the event of silence and it is not preemptory merely when the parties have stipulated its uncertainty; the arbitrator also like the judge after investigation of the parties' reasons issues the verdict, the legislator has determined the verdict of court and arbitration equal to 20 days for the residents in Iran and 2 months for the residents out of the country since the date of communication of verdict; the correspondence principle, principle of observing the defense rights of defendant, investigation of reasons in the presence of the parties, being limited to the arbitration subject are from the principles which cannot be ignored in jurisdiction and both arbitrators and courts are obliged to observe the jurisdiction principles.

Also, the following cases can be mentioned as the differences between the judgement and arbitration verdicts: The legislator due to accelerate the investigation, has known the observance of the formalities in arbitration investigation as a necessary affair, according to his commandment, the selection of arbitrator or arbitrators is undertaken by the lawsuit's possessors while investigation in the courts is done by the appointed judges. The legislator with the purpose of acceleration in investigation unlike the judges hasn't obliged the arbitrators to observe the procedural conditions in composing the verdict; in arbitration, the third-party entry has been predicted only through mutual consent with the parties of the main conflict in referring the affair to the arbitration or determining the arbitrator or arbitrators; the arbitrator's verdict with regard to the article 1287 of the civil law cannot be known as the formal document and only we can claim to deny, doubt and forge it. Therefore, it doesn't have the special proving power of formal documents like the courts' commandments; the pen error also may occur in regulating and writing the arbitrator's verdict or some mistakes may be accomplished in the calculation; in this event, the arbitrator or arbitrators proceed to correct it directly in the range of the article 309 till before the end of the time span of arbitration; in arbitration, some lawsuits like: bankruptcy, marriage principle, annulment of it, divorce and parentage aren't referable to the arbitration, but they can be investigated in the court; in the arbitration, start to investigate is with the arbitration concordat, but start to investigate in the courts is done by delivering the petition, the range of investigation in the courts is specified due to determine the claims in the petition, while in the arbitration, the investigation range is determined in terms of the arbitration concordat; in the court, it is done in the place and domicile of the court but in the arbitration, it is in a place that the parties have agreed mutually and if there isn't the arbitration concordat, it will be in the domicile of the court; in the arbitration investigations, the intended subject is topically done in the non-public and secret form unlike the governmental judgement that the investigation is basically public and non-secret and investigation of the lawsuits is accomplished by the arbitrator or arbitration board selected by the parties since the beginning till the end, but in the governmental judgement, during the jurisdiction, different judges may undertake the investigation of dispute due to the displacement, leave of absence, retirement, transmission.

## References

- Amir Moezzi, A. (2008). *The international arbitration in the commercial lawsuits*. Tehran: Dadgostar publication.
- Eskini, R. (1989). The opposition of laws in the international commercial arbitration. *Journal of the Legal Services Office*.
- Hayati, A. A. (2013). *Civil jurisdiction rule in the current legal order*. Tehran: Mizan publication.
- Jafari, L., & Mohammad, J. (1996). *Legal encyclopedia* (4th ed., Vol. 1). Tehran: Amir Kabir publication.
- Mehrabian, M. (2014). *International commercial arbitration*. Taken from Mavi site.
- Mirzaee, A. R. (2010). *The arbitration rules from comparative view*. Tehran: Jungle publication.
- Mohajeri, A. (2003). *Explanation of the law related to the civil jurisdiction rule of public and revolution courts* (Vol. 1). Tehran.
- Mohajeri, A. (2008). *Detailed in the civil jurisdiction rule* (1st ed., Vol. 4). Tehran, Fekrsazan.
- Mohammadzadeh, A. H. (2010). Studying the juridical-legal analysis of the articles 787 and 788 of Iran's civil law. *The Journal of Laws*.
- Moslehi, A., Hossein, A., & Sadeghi, M. (2006). Studying the procedure of investigation in the substitute methods of settlement of disputes. *The Comparative Legal Journal*.
- Movahhed, M. A. (2007). *Some lessons of the oil arbitrations of governing law*. Tehran: Karnameh publication.
- Saket, M. H. (1992). *Jurisprudence* (1st ed.). Tehran: Nakhost publication.
- Sarvi, M. B. (2011). Studying the place of arbitration in the building forward sale law. *Journal of Judgement*.
- Shams, A. (1997). Civil jurisdiction rule. In *Fundamental period* (Vol. 3). Tehran: Derak publication.
- Shams, A. (2006). *The civil jurisdiction rule of advanced period* (15th ed., Vol. 3). Tehran: Derak publication.
- Shams, A. (2008). *Civil jurisdiction rule: Advanced period* (12th ed., Vol. 3). Tehran: Derak.
- Sheikh, A. (1994). *Jurisdiction and evidence* (witness). Qom: Bagheri publication.
- Vahedi, J. (1993). Communication of the arbitrator's verdict. *Journal of the Faculty of Laws and Political Sciences*.
- Zeraat, A. (2007). *Explanation of the law related to the civil jurisdiction rule* (1st ed.). Tehran: Ghoghnoos.
- Zeraat, A. (2012). *Explanation of the civil jurisdiction rule*. Tehran: Ghoghnoos publication.

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).