OPEN PEER REVIEW

Retrial Based on an Error of Law Under the Principle of Legality in Criminal Procedure

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the first paragraph, the legislative chronology requires careful correction and verification. The manuscript states that retrial was introduced in 1911 through the Temporary Law on the Principles of Criminal Trials, but subsequently refers to “the 1911 Criminal Procedure Code” and elsewhere appears to confuse the years 1911 and 2011. The sentence “the 1999 Criminal Procedure Code for Public and Revolutionary Courts retained the grounds contained in the 1911 legislation” should be revised to identify the exact title, enactment date, and relevant articles of each statute. The authors should consistently provide both the Iranian Solar Hijri year and the Gregorian equivalent, at least upon first mention, to avoid ambiguity in an international legal journal.

The terminology used in the introductory paragraph—“reopening of criminal proceedings,” “reopening of trial,” “retrial,” and “revision”—needs greater doctrinal discipline. The sentence referring to “a procedure initially known as the reopening of trial and later designated as retrial or revision” suggests that these expressions are historically and legally interchangeable, although they may refer to distinct institutions in Iranian and French law. The authors should define the selected English equivalents at the outset and explain whether révision, réexamen, réouverture du procès pénal, and Iranian e‘ādeh-ye dādrasi are functionally equivalent. Thereafter, one principal term should be used consistently, with foreign-language expressions retained only where analytically necessary.

The paragraph listing the historical grounds for retrial is predominantly descriptive and presently lacks sufficient primary-source support. Each historical assertion, particularly the wording attributed to Article 466 and the claim that the grounds were modeled on French criminal procedure, should be supported by citation to the relevant statutory text rather than relying only on secondary literature. The authors should also explain whether the quoted provisions are reproduced verbatim, translated, or

paraphrased. If translated by the authors, this should be expressly stated in a methodological note, because slight differences in legal terminology may materially affect the analysis of the scope of the grounds for retrial.

The comparative-law paragraph beginning with “By contrast, most foreign legislation, including the French Criminal Procedure Code” makes a broad generalization that is insufficiently demonstrated. The expression “most foreign legislation” should either be supported through a broader comparative sample or replaced with a narrower claim limited to the French system. Moreover, the manuscript should verify the precise numbering and current wording of the cited French provision, because the reference to “Article 596 of the new French Criminal Procedure Code” may not correspond to the current codification of revision and re-examination procedures. The authors should cite the official French statutory text and specify the version and date consulted.

The paragraph explaining the alleged policy reasons for Iran’s broader grounds for retrial contains a significant unsupported inference. The sentence “This approach may reflect the Iranian legislature’s realistic assessment of the judicial system, particularly the relatively high probability of error resulting from the extraordinary accumulation of cases” attributes a specific motivation to the legislature without citing legislative history, parliamentary debates, explanatory notes, empirical judicial statistics, or official policy documents. The authors should either provide evidence for this claim or clearly identify it as their own hypothesis. The phrase “relatively high probability of error” is particularly sensitive and should not be asserted without reliable empirical support.

The final paragraph of the Introduction identifies the article’s subject but does not articulate a sufficiently precise research problem, research question, or original contribution. The sentence “this article explains the legal concept of an error of law and distinguishes it from an error of fact” describes the content rather than the research gap. The authors should explicitly formulate the central question, such as whether Article 474(g) permits retrial for every erroneous legal characterization or only for errors that undermine the legal existence of the offense. They should also state the article’s principal thesis and explain how the proposed structural approach differs from existing doctrinal and judicial interpretations.

In the paragraph defining judicial truth, the manuscript combines philosophical, epistemological, and doctrinal propositions without adequately distinguishing them. The sentence “Judicial truth resulting from criminal proceedings is produced through the interaction between law and fact in the analysis of the three constituent elements of a criminal offense” is too compressed and may be conceptually inaccurate because judicial truth also depends on evidentiary rules, burdens and standards of proof, procedural exclusions, presumptions, and institutional limitations. The authors should provide a more rigorous account of judicial truth and explain its relationship to factual truth, procedural truth, legal truth, and finality. The foreign expressions should also be checked for linguistic and conceptual accuracy.

The distinction between an “error of fact” and an “error of law” in Section 1 is presented as binary, although many retrial cases involve mixed questions of law and fact. The sentence “where the error concerns the incorrect application of a legal rule in issuing a conviction, it constitutes an error of law” requires refinement. The authors should discuss errors in legal characterization, errors in subsumption, errors concerning the existence of a statutory element, errors in evidentiary evaluation, and mixed errors involving the application of legal standards to established facts. This distinction is central to the article and should be supported by a clear analytical framework and representative examples.

In Section 2, the manuscript treats the two components of Article 474(g)—“the act does not constitute a criminal offense” and “the punishment imposed exceeds the statutory limit”—as part of one ground but analyzes almost exclusively the first component. The sentence introducing the provision should be followed by an explanation of whether these are conceptually distinct forms of legal error and whether they are subject to the same admissibility standard. The omission of the excessive-punishment component leaves the analysis incomplete. The authors should either incorporate a separate discussion of that component or expressly delimit the article’s scope to the absence of criminality of the act.

In Section 3, the classification of ordinary and extraordinary remedies should be reconsidered. The sentence “under this structural classification, an objection to a default judgment, an appeal, and a cassation appeal fall within ordinary remedies” appears inconsistent with widely recognized classifications in comparative procedural law and with the manuscript’s later characterization of French cassation as extraordinary. The authors should distinguish classification under Iranian law from classification under French law and avoid presenting a universal categorization. They should also explain whether suspensive effect, devolutive effect, statutory limitation of grounds, or the finality of the challenged decision constitutes the decisive criterion.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph under “The Objective Nature of the Error” relies on hypothetical examples but does not provide a principled test for determining when conduct is legally noncriminal. The example concerning a newly developed narcotic or psychotropic substance is useful, but the authors should distinguish analogy prohibited by the principle of legality from permissible interpretation of an existing statutory category. They should identify whether Article 474(g) applies only where no statutory offense exists, or also where an offense exists but one legal element, condition of liability, jurisdictional requirement, or statutory exception is absent. A multi-part doctrinal test would make the analysis more operational for courts and practitioners.

The discussion of the draft amendment to Article 474(g) requires fuller documentation and critical analysis. The quoted formulation—“the matter is civil in nature or the conditions required for the realization of the offense have not been properly established”—potentially expands the ground from absence of the legal element to deficiencies in the material or mental elements. The authors should identify the official source, date, status, and legislative history of the draft and explain whether it remains pending, has been amended, or has been abandoned. They should also analyze whether the phrase “conditions required for the realization of the offense” risks converting retrial into a broad reconsideration of the merits.

The paragraph concerning doubt as to the validity of the final judgment introduces a promising criterion, but the proposed threshold remains underdeveloped. The sentence “the ground relied upon in the application must be capable of creating doubt regarding the validity of that final judgment” does not specify the degree or nature of doubt required. The authors should clarify whether the standard is reasonable doubt, serious doubt, manifest legal error, probable miscarriage of justice, or a prima facie showing sufficient to justify reopening. The distinction between the admissibility stage before the Supreme Court and the merits stage before the court of equal jurisdiction must also be expressly addressed.

The analogy between a final judgment and a legal person in the paragraph beginning “Once this stage has passed and the judgment has acquired finality” is intellectually interesting but doctrinally unclear. Comparing factual and legal matters to natural persons and the judgment to an independent legal person may obscure rather than clarify the legal effect of finality. The authors should either substantially develop this analogy by explaining its precise analytical function or remove it. A more conventional explanation based on the transformation of adjudicative reasoning into an authoritative and enforceable legal act would be clearer and more appropriate for a criminal procedure article.

The reliance on judicial decisions and advisory opinions requires a transparent methodological explanation. Several paragraphs quote individual Supreme Court judgments, including Judgment No. 9209987712600545 and Judgment No. 940997925101298, but the manuscript does not explain how these decisions were selected, whether they are representative, how many decisions were reviewed, or whether contradictory judgments were systematically identified. The authors should add a methodology section describing the databases searched, keywords used, time period covered, inclusion criteria, number of decisions analyzed, and method of doctrinal classification. Without such information, the conclusions regarding inconsistency in judicial practice are difficult to evaluate.

The paragraph discussing the advisory opinion concerning the three constituent elements of an offense appears to blur the boundary between “the act does not constitute a criminal offense” and failure to prove the offense. The quoted opinion interprets the provision as encompassing the absence of any legal, material, or mental element. The authors should critically examine whether absence of proof of the material or mental element is genuinely an error of law or instead a factual or evidentiary error. This issue is central to the tension between restrictive and broad interpretations and should not be presented merely as an institutional opinion without doctrinal evaluation.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.