Official Document Registration to Foreign Nationals

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INTRODUCTION

It has been related in the culture of international law that: "Citizenship is the legal relationship between the individual and the state. Citizenship provides and government support for individual and entails specific rights and obligations for the person. Bledsoe (2002), in the controversial case of the "Nottelhom" in International Court of Justice, judged that: "Citizenship is a legal link which its base is a fact of social belonging, the true association of existence, interests and feelings with rights and mutual assignments.". Meantime, some authors believe that "Whatever the criterion for the realization of the nation, it is the same criterion for the realization of citizenship, so the citizenship is the relation with which the family of the nation is formed." (Khalilian, 2008). There is controversy in defining citizenship based on the relationship between the individual and the state, and not the nation, and some writers have addressed two different dimensions of internal and international citizenship and have state that: "Citizenship from an international dimension is a means of dividing people between different states, and from the internal dimension is the full assignment the individual's legal right to a certain government." (Muslim, 1999). Some other scholars of international law in their definitions emphasize the legal description of the relationship relation and insist that: "Citizenship is the relationship between the individual and the state that ensures the given citizen that s/he will enjoy the political support of the government, which has been recognized by the international law, in his/her behavior and trade with foreign countries and foreign nationals." (Dshtara, 2009).

THE CONCEPT OF CITIZENSHIP

Citizenship is the political, legal, social and spiritual relationship that exists or has been created between a natural person or a legal person and a state and entails mutual rights and obligations for both the state and individuals (whether real or legal). Citizenship is a legal term that entered into the legal system of Iran within the past two centuries. Although in ancient times there has been a kind of nationality debate, it can be said that the origin of the emergence of nationality...
is international law. Citizenship is proposed when there are multiple and independent states. If there is only one government in place of other states, there is no longer a debate about the affiliation and relation of individuals with states, and there will be only the discussion of the internal dimensions of a country, including the relations between rulers and the ruled. Therefore, according to above discussion, we can say that:

A. "citizenship is original, non-original and transversal to the extent that numerous and independent governments are original and transversal." (Dansh Pazhuh, 2002: 19)

B. As the nationality determines one's relationship with the government, it is considered a rule of public law (Saljugh, 1380: 68), but others believe that the principle of citizenship, due to its relation multiplicity of the states, is related to international law, not a state of civil rights issue (Student, 2002: 19).

C. Even, though the citizenship is a relatively new issue that has been raised in recent centuries, but the existence of principle of nationality dates back to emergence of multiple independent governments. Batiful believes that the government has been around in various forms traditionally, but its current form emerged form of the sixteenth century. Since then, nationalism took a new form, and eventually in the nineteenth century, the concept of nationality emerged in the way known today to the law (Vlagard, 2010). In fact, nationality is a legal bond or in other words, a spiritual and political relationship between the individual and the state according to which the person falls within the scope of the personal jurisdiction of the state. Thus, citizenship is a legal relationship that causes a person to be considered as a member of the government-forming population in a land. For this reason, citizenship can be considered as the political and spiritual relationship that connects a person to a certain state (Nasiri, 2007)

**CONCEPT OF "FOREIGN"**

In international relations and in international conventions words Alien, Foreign and Foreigner in English respectively means coming from a different country, belonging or connected to a country which is not your own, and a person who comes from another country. In law terminology, the word foreigner is defined as " A person who is not a national of a given country is considered a foreigner to the government of that country and its people." (Jafari Langrudi, 1993: 14). Blacks Dictionary in the regard states: "A foreign person is one who belongs to another nation or state or under the jurisdiction of another country." (Black, 1968: 646). So, a foreigner is a person who is not the national of the related country as he has not the citizenship or nationality of any country or is a national of another. (Jafari Langrudi, 1993: 14). In other words, "foreign" in a totally relative concept as the foreignness of an individual depends on his relationship with a particular country.

In other words, the lack of citizenship of a country causes foreignness. For example, a person who is a citizen of the Iranian government, if he travels to France to undertake a scholarly research or study, is considered a foreign in French society. The Law on the Entrance and Exit of Foreign Nationals, approved on May/20/1931, and its subsequent revisions, the Law of the Immovable Property of Foreign Citizens, approved on July/08/1931, the Law of Foreign Nationals Act approved May/10/1932, Law for the Attraction and Protection of Foreign Investments, Foreign Citizens Employment Regulations, and Foreign Nationals Acquisition Regulations are among the other laws and regulations governing the rights and duties of foreign nationals in Iran (Nasiri, 2007).

**THE RIGHTS OF FOREIGN NATIONALS IN IRAN**

While the extent to which the foreigners have the privilege of enjoying public rights in one country is more restrictive than his privilege of enjoying the private in a way, the Iranian legislator has not explicitly made a legislation of this case, however, while legislating has paid attention to this distinction as in Article 961 of the Civil Law, in the determining the right of foreigners in the field of private law, has just mentioned the rights which they are deprived of in Iran, and in his manner has pointed out the principle of their enjoyment of these types of rights, and in the field of public law wherever has recognized that their enjoyment is appropriate Has specified its terms and conditions.

In this way, it can be said that foreigners are entitled to private law in Iran and any exception needs a reason, but they are not entitled to private law in Iran and any exception needs a reason. In Article 7 of the French Civil Law, revised in 1889, the distinction between the two types of right, this expression is evident: "The exercise of civil rights is independent of political rights, and its achievement and preservation is based on the Constitutions and electoral laws." According to Batiful: "If the same standard of human nature, which is always tangible and affirmed with business imperatives, leads to the recognition of the human rights, that is, the right to enjoy the private rights for foreigners, it does not require the same rights as public rights as well.". Since public law regulates public affairs, it is obvious that its inclusion on an individual, first, depends on the scale that he participates in the political organization, which it is not the case for foreigners, if the inhabitants of a country are defined, from the legal point of view, as members of the founding body of the government." (Vlagard, 2010).

- **Public rights of foreign nationals:**

Public rights are those rights whose enjoyment depends on the legal organization of the public rights and have been established to respect for human personality. The basic principle is that the foreigners also be nefit from it. Most of treaties have also recognized such rights for foreigners in Iran. Public law is divided into two main categories: the first category includes the rights related to the administration of the state and the administration of the
country, and the second category includes the natural rights that have been laid down in order to respect human personality, and all human beings, regardless of their nationality, should enjoy them. Here the general means the second category, the natural rights of human beings.

The most important public rights of foreign nationals:

1. Free entrance, crossing, stop and exit:

Overall Iranian law has recognized the freedom of entry into Iranian territory, but this freedom is not unconditional and require a series of formalities and regulations. In the case of foreigners’ passage, the conditions are the same and require special permission. In the case of stop or stays, there should be a difference between temporary and permanent residence, and each of them has its own rules, but generally this right is accepted for foreigners, albeit, there are a series of conditions that are necessary to maintain the order and security of the country. Owners of political immunity and political passports like the government consular agents and their family members living with them, on the base of reciprocity and those entering the country with the consent of the Government of Iran with mission’s passport, are not subject to the law of entry and residence of foreign nationals.

2. The right to protect life and property:

According to Principle 22 of the Iranian Constitution, life and property of all citizens is inviolable and foreigners include the citizens of the country as well. Also, in most of the treaties, the provisions of this principle have been noted. For example, Article 1 of the Residence Agreement between the Government of Iran and Belgium provides: "The nationals of each Contracting Party in the territory of the other Contracting Party shall be recognized According to international public law in respect of individuals and their property and shall be treated in the same manner".

3. The right to personal security:

The principle of individual security in fact, protects a person against arbitrary, unlawful and unlimited incarceration. For the abuse of power, the principle is that no incarceration is possible unless authorized by a competent judicial authority. There are two exceptions in this regard:

a) Significant crimes or crimes against national security
b) Preventive detention without judicial authorization, for a short period (usually 24 hours) if required by law and based on the law

This has been mentioned in Principle 32 of the Iranian constitution. This general principle is not limited to Iranian society, and includes foreign nationals as well.

4. The right to have a residence Place:

In the principle 22 of Iran, the Iranian Constitution has recognized the residence place protection of a person as being inviolable as his life and property. It seems that Iranian legislators do not distinguish between Iranians and foreigners and using the word "persons" considers Iranian and foreign nationals, equal in rights (Arfa'nia, 1996). So, the foreigners’ homes are also respected and an individual’s house as well as a foreigner's house cannot be entered examined and inspected and or the individual him/herself harassed without a warrant and legal permission

5. Freedom of Opinion:

According to Principle 23 of the Iranian Constitution: "Inquisition is forbidden, and nobody can be harassed or punished only by having a belief." An individual has the right for himself to have any belief in ethics, religion, politics and Philosophy, and nobody can reprimand him of his beliefs and endanger his physical and social life. Of course, in many countries, especially in Asia and Africa, freedom of opinion is conditional and some standards have been set to maintain public order. For example, the government will not allow minority religious events to hurt the feelings of the majority of the people. It is a general rule that includes all human beings, including foreigners present in Iran.

6. The right to work in any profession and industry:

In general, foreign nationals can be employed in Iran in any trade, industry or profession, except those which are legally exclusive to Iranian nationals or in the seizure of the Iranian state. Article 120 of the Labor Law states that "foreign nationals cannot work in Iran unless:

a) Have a valid entry visa with a specified work right
b) Receive work permits based on the relevant laws and regulations." Employment of foreign citizens in private businesses require official license from the Ministry of Labor and Social Welfare. Regulations of employment foreign nationals have included some conditions of which it is worth mentioning two important principles:

*Payment of the Iranian nationals should not be less than foreign nationals in equal conditions.
*Foreign nationals are employed in jobs in which the adequate and technically qualified Iranian nationals are not available.

7. Protection of dignity of foreign nationals:

Foreigners as human being should be protected from any insult that ruins his dignity. No one can offend foreigners because they are yellow or black, or subject to a particular country, and for the other reasons. Insulting the foreigners, like the native citizens, is prohibited, even if they are arrested, and imprisoned for legal reasons, such as committing a crime.

8. The right of recourse to the courts:

Recognizing that a foreigner is entitled to enjoy various rights, the prerequisite of these rights is the right of recourse to the judicial authorities. For this reason, in Iranian law, foreigners, like native Iran nationals, has the right to recourse to Iran's judicial authorities According to the rules governing the jurisdiction of courts in Iran. However, to prevent the any possible abuse of foreign nationals from Litigation against the Iranian side then the Iranian side has the right to request from the court under article 144 of the Civil Procedure Act to require the foreign nationals provide an appropriate garnishment. But if the Iranian nationals sue
against foreign citizen, the foreign citizen does not enjoy such a right. Of course, the Iranian legislator has, in some cases, exempted the foreigners from providing garnishment. These cases include:

A. If the Iranian nationals are exempted on the territory of the related government from providing garnishment
B. In claims related to bills of exchange, IOU and check
C. the mutual claims
D. claims documented with the official documents
E. In a lawsuit filed based on the official publication of the advertisements

- Private rights of foreign nationals:
  
  The possibility of enjoying personal rights and establishing relationships with real and legal persons in private domain is permitted for the foreigners except in special cases. Article 961 of the Civil Law of Iran, which is derived from the French Civil Law, grants the right to foreign nationals to enjoy civil rights, except in cases where the law is explicitly restricted to Iranian nationals or explicitly deprived of foreign nationals, such as the right to own agricultural property, as well as a portion of personal rights not accepted by the law of the State of the foreign national like the right to divorce, polygamy and in the case of special rights which have been anticipated by the political conventions and some absolutely defined by the law or based on the treaties or According to the reciprocal conditions. Although personal rights are in the category of private law, but because of the special features of this branch of Private rights and its importance it must be addressed in separate discussion.

ACQUISITION OF FOREIGN NATIONALS AND THEIR CONDITIONS

According to Article 8 of the Civil Law, foreign nationals enjoy the property acquisition right based on the treaties between Iran and their relevant country. An examples of such treaties is the one signed between Iran and Germany on 17 February 1929. Based on this treaty, German nationals can only acquire immovable property for residence, job or industry and their property, and notable to say that their government behavior which has been regarded not only in this treaty but also in other treaties of residence between Iran and other countries. Therefore, in general, foreigners whose government have signed a treaty with Iran on this subject, can acquire an immovable property for their residence and employment in Iran. It is noteworthy that, according to the law of 1931, the acquisition of cadastral properties and related facilities and assets such as aqueducts, springs, gardens, grasslands, and the like, are prohibited for foreign nationals altogether. What remains are the governments who have entered into an agreement with Iran in this relation and they do not seek to acquire any cadastral properties.

THE GENERAL PRINCIPLES OF PROPERTY ACQUISITION IN IRANIAN LAW

Basically, until 1932, foreigners have gradually acquired a lot of immovable properties in Iran, especially cadastral property, which certainly was not consistent with the political and social demands and interests of the Iranian society. In June of this year, the law on immovable property of foreigners was passed. The law specifically refers to the transfer of cadastral property by foreigners to nationals or the government of Iran. Article 1 of the law provides: "Every foreign national is required within three months from the date of the implementation of this law to receive the status of his or her estate by determining its location and its specifications and Surrender it to the primary court in whose jurisdiction the immovable property is located in return of a receipt, and introduce an assessor officially. "According to the provisions of this law, it was anticipated that the estate of foreigners was assessed by this assessor and another assessor introduced by the Treasury, whenever the agreement on assessment was not achieved, the head of the court and the public prosecutor would determine a person as had assessor to evaluate the property."

After evaluation, according to Article 5 of this law, the property was auctioned to be transferred to the citizens of Iran according to the provisions of the auction. In fact, the law on expropriation of foreigners cadastral observes all interests and regrets of the foreign parties, and is the fairest of its kind in the rules relating to the expropriation. The provisions of this Act the principle properly imply that the purpose of the legislation codified by the Iranian government has just been the fact to secure a major political expediency, which consists of preventing from the infiltration of foreigners who have cadastral properties in Iran. To meet this goal and to facilitate the immediate implementation of this law, some exceptional measures have been predicted.

For example, Article 6 of the law provides: "If the property does not meet any purchaser at a calendar price or higher, it will be possessed by the state at the same calendar price, and will be transferred to the government by the court". And the provisions of seventh and eighth of the law on paying for price of foreign movable property have set very fair rules. Accordingly, if the government pays the price in cash, it will definitely seize the property and, if not, the property will pay remain in the seizure of the holder, or its heirs, he the holder administers the property on his/her expense and will possess its benefits, and until the government pays the prices, the holder of the property have the right to sell and transfer the property to any Iranian nationals at any price or condition with the knowledge of the government.

This transfer will be approved by the government and government will be discharged from its debt to the holder of the property. If the government does not pay the property, then it wants to pay it, each party will have the right to request a recurring calendar, and then the calendar will be
executed and the government will pay the price determined after the re-calendar. By implementing this law, the acquisition of the property for foreigners was generally prohibited, and the right to own other immovable property was limited to restricted cases agreed upon in the bilateral treaties with the government of the foreign national (Nasiri, the same, 279-280).

**THE CONCEPT OF OWNERSHIP DOCUMENT**

Registration, literally, means inserting, establishing and maintaining (Amid, 2012) In English it means "the act of making an official record of sth/sh" (Ja'fari Langrudi, 1993). Although the legal texts do not define the definition of registration, the registration in the legal term is the writing the contracts and transactions, and how the property status in government offices (official). There is no consensus among the jurists about the definition of general and ordinary registration, and each of them has a different definition. Some lawyers have defined the regular registration as a form of registration of properties not required by the owners and a common before the mandatory registration (general). By contrast, the public registration is considered as a mandatory registration by the owners. The difference between a regular registration and a general record can be specified as:

1. Regular registration is the subject of previous laws, while in the recent law only the public register is of interest to the legislator, in other words, according to the current registration law, the current meaning the regular registration has become obsolete. Articles 14, 15, 16, 46 of the regulations and Article 140 of the Registration Act also mean the same.
2. Regular registration was carried out with the applicant's request, that is to say, it was carried out according to the possessor’s claim. For this reason, a regular registration can be called a proprietary registration. However, according to Article 9 of the current law, the public record is the responsibility of the state and it is the duty of the state to do so, even if the applicants have not filed an application.
3. Regular registration was subject to compulsory and sometimes optional statutory registers, but according to the current registration, general registration is mandatory.
4. Regular registration required that for each property, the procedures prescribed for the registration of property, such as the publication of advertisements and re-demarcation advertisement (Notice), and etc. are done independently, which would reduce the speed of the registration process, but in the general registration, the procedure is done generally and collectively, and Article 61 of the regulations of Registration Law affirms this.
5. Regular registration was based on the application, but general registration is based on the declaration (Mirzaie, 2006: 8). The legislator, with the passage of the law of registration of documents and real estate, made it possible for property owners to register their property in the registration offices of the and with receiving the ownership document, strengthen their ownership of their property. According to Article 22 of the law of registration, government also recognizes a person as the owner who has the property registered under his /her name based on the legal terms and conditions. This article indicates the ownership of individuals in relation to their registered properties, even if the property is not under their control.

**PEOPLE'S SEIZE IN THEIR PROPERTY**

A. **Material seizure (sensory):**

A seizure that can be understood by one of the five senses, which is conceivable as one of the following:

1. Stewardship: Like living in a residential home
2. Intermediate: such as seizure of a guardian, attorney, tenant or representative. In general, seizure of legal or legal representative authorized on behalf of the owner is ownership seizing.

B. **Spiritual seizure:**

It refers to the seizure of the previous holders that has been succeeded to the current applicant (succeSSION seizure) and this new seizure is considered as registration. For example, seizure of property, seizure of inheritance. According to Article 11 of the registration law: "Registration request is accepted from someone who can prove his ownership or his possession by the title of ownership. " There is no sensory effects in spiritual seizure, but the legal document shows the ownership of the property by the person. In the registration term, the ownership document is also referred to as the booklet which is provided by the Department of Registry with numerous pages, plaited and sealed which was available in three types of 12 pages, 16 pages and 32 pages to the owners. The ownership document is the same as a knitted document in a popular tradition (Asgharzadeh Bonab, 2012).

However, due to the fact that these documents are single-page when they are missing or for reasons such as spillage of ink or burns and for reasons alike, and it cannot be used, according to Article 120 of the regulations of the Registration law, a duplicate is issued and related remarks are inserted in the serial number section and the new document will be stamped with replica sign (Article 8 of the instructions in paragraph (b) of Article 13 of the budget law) and if the transfer section of ownership document is full, then it is replaced with a new one in addition to this based on paragraph "A" of Article 108 and paragraph 4 of Article 145 of the Civil procedure Law, "the official document holder is exempted from paying possible losses to supply the garnishment from the foreign nationals, but ordinary documents do not have such privileges.

Of course, ordinary commercial documents have their own particular status, and the legislator has considered
certain privileges and attributes for it. (Bahrami, 2010).

REAL ESTATE RECORDS

In today's society, whatever happens, there are traces consequences. These effects can be positive or negative, depending on the circumstances. Just as the occurrence of a contract of sale between parties to a transaction leads to the transfer of an ownership of the property to the buyer, the property certificate as the other official documents will be affected as well which is supported by the legislator. Supports that encourages people to take ownership document and ultimately enjoy its benefits and avoid the harm of not possessing the ownership document.

THE MOST IMPORTANT EFFECTS OF THE OWNERSHIP DOCUMENT

1) Positive ownership:

One of the most important effects of obtaining a property certificate is the proving the ownership of the person and the expropriation of the others. Only the one who has registered the property in the registration offices according to legal procedures, will the approved owner by the government. It is explicitly stipulated in Article 22 of the Registration Law. It is noteworthy that the ownership document does not mean using of property. It may be a personal property, while the property is under another's seizure and exploitation. In other words, the seizures of other persons do not contradict the ownership of the property by owner although a seizure with owner's permission.

2) Lack of ownership:

The registration of property in the name of anyone is the expropriation of other persons. In order to register a property, a process must be passed, in which the protesters have the right to protest at the appointed time (90 days from the date of the publication of the first alternative advertisement), if they have any protest on the application for registration. If the protester has to file a complaint if he has filed a lawsuit before the publication of the first advertisement, he must present a certificate stating his objection to the circle that published the advertisement. Otherwise, it must file a notice of objection to the related office within the time limit set and receive its receipt. The related office after issuing the receipt of the objection to the protester is obliged to send the objection to the competent court. Failure to protest at the appointed time will cause the loss of any claim to the property. Article 24 of the Registration Law stipulates: "After the expiration of the term of the protest, a claim that a right has been violated during the registration process will not be accepted, not as a price, nor in any other way, whether it is legal or punitive."

EXAMPLES OF FRAUD IN ACCOUNTING AFFAIRS

According to Articles 105 to 109 of the Law of the Registration of Documents and Real Estate (approved in 1931), cases of fraud in accounting affairs are as follows:

1. A request for registration of a property previously transferred to another
2. A request for registration of a property with the prior knowledge that it has been expropriated from him/her in some way the law
3. If he has the owner when filed a registration, but later his ownership has been expropriated and yet receives the ownership document
4. If he has the owner when filed a registration, but later his ownership has been expropriated and, and after the notice of the registration office does not acknowledge the right of the related party
5. In cases where the heir:
   5.1. with the knowledge of the transfer of property by the devisor, applies for the registration of the property or the issuance of an ownership document for him/herself;
   5.2. with the knowledge that his ownership has been expropriated, with the knowledge that his ownership has been expropriated in some way the law, yet applies for the registration of the property or the issuance of an ownership document for him/herself;
   5.3. after the notice of the registration office specifying that his ownership has been expropriated, does not acknowledge the right of the related party;
6. Anyone who holds property as a trustee (for example holds a property as a tenancy, a residence, for a prescribed period, a residence or a stewardship), apply for a registration document;
7. Appreciate your individual as the owner to a property subject to another and apply for a property registration.

All of these are examples of fraudulent acts (Bari, 1391: 165).

THE SELLING THE MOVABLE AND IMMOVABLE PROPERTIES IN CIVIL LAW

According to civil law materials, including the articles 190, 191, 339, the related law concludes that the difference between the sale of movable and immovable property does not exist in civil law. In civil law, sale of immovable property as well as movable property sales is a consensual contract which, in order to fulfill it, no certain procedures are necessary, and only the conditions set forth in Article 190 of the Civil Law, which the most important one the consent of the parties, are sufficient.

Article 339 of the Civil Law also provides that after the agreement between the seller and the client on the merchandise and its price, then contract is subject to offer and acceptance and may be subject to trading. As it is well clear, in the article, the conditions of the validity of the sale contract, movable or immovable property, are the agreement of both parties on the merchandise, price and then the offer and acceptance. Therefore, from the perspective of the Civil Law, the contract of engagement is completely consensual. And it is not important whether the merchandise is a movable or immovable property.
This view has been followed in all Civil Law and generally no trace of the legal proceedings regarding the sale of immovable property cannot be obtained. None of the jurists who believe in the certainty of legal proceedings in the sale of immovable property have not invoked Civil Law to prove their claim.

**Consensual Contract**

The consensual contracts are those contracts for which the mutual agreement of both sides and expression of offer and acceptances sufficient and they do not need to do anything else. It is apparent from Article 190 of the Civil Law that, in principle, the agreement of two equal wills is necessary and sufficient for the conclusion of the contract, and there is no need for special proceedings. Induction in the laws also confirms this inference because, except in rare cases. So, it can be assumed that in our law, the principle is that the contract is carried out without consensus.

The above rule, which is one of the results of the principle of the sovereignty of will, also confirms the principle of the reciprocity of the transaction, and it is used wherever necessity of a condition or a special proceeding is suspected, it is applied. Article 191 of the Civil Law also stipulates that an agreement must be made for the purpose of writing on the condition of being affordable to what it implies. From the term of "the intention to compose a contract, provided that it is accompanied by an intention", it is clear that for the purpose of forming a contract, the intention to create and the basic conditions laid down in Article 190 of the Civil Law is sufficient and no other formalities are required. From the point of view of the judiciary, also the transfers and transactions in the contracts are without formalities and they are reciprocal; that is, in civil law, the principle is the reciprocity of the contracts and transactions. The examination of Civil Law shows that in a reciprocal contract, a mere consensus can lead to the formation of a contract. affairs such as the surrender of the merchandise or formal transaction proceedings in the registration offices, are among the effects of the mentioned contract.

On the other hand, Article 10 of the Civil Law stipulates that contracts and agreements between individuals are valid if they are not explicitly oppose the law. Therefore, considering the reciprocity of the contract, Article 48 of the Registration Law cannot be considered inconsistent with Article 10 of the Civil Law, irrespective of the fact that Article 10 of the Civil Law is late. On the other hand, according to the principle of prima facie validity of contracts, as stated in Article 223 of the Civil Law, the principle is based on the authenticity of legal transfers. In this regard, the review of Article 48 of the Registration Law indicates that the legislator, in the expression of the word "document", specifies that the contracts must be registered according to the above articles if not they will not be accepted in any of the departments and courts. Therefore, there is no reference to "documentary"; in other words, the legislator has not sought to explicitly annul the provisions of unregistered documents because they have been documentary verdicts and just not registered. Thus, this silence shows that here should be another incentive for the enactment of Article 48 of the Registration Law and, it not, with the competency that the legislator has explicitly states the legal transfer of the documents has to be registered, if not they do not have any legal effects. So, the legislator's purpose is to refuse ordinary documents, which are presented in defense or otherwise in courts, and the owner of the document wishes to prove that the provisions of the document are legally binding.

Then, with comparison it can be argued that the official documents, because of the way in which they are adjusted in an official authority and approved by an official, have the ability to prove their legal relationship. As a result, the ordinary document can be denied and claimed to be a forgery. While the claim of denial and doubt about the official documents is not relevant, and only it is possible to claim the forgery. Therefore, it appears that, if the matter of the case is proving the legal event in the document, the courts cannot refuse to accept the lawsuit on the pretext of Article 48 of the Registration Law to consequently to refuse to accept the claim.

**Formal Contracts**

In such contracts, whose examples can be seen in our low, the agreement of two wills is insufficient alone on the occurrence of an agreement, but the will of the wills is valid if it is specified in a special form and in formal formality. The form of the contract is the base of its correctness in formal contracts, and the agreement that does not have the special form is null and void, even if the both sides acknowledge it (Katuzian, 2014). It is said that the transfer of registered property must be done by an official document and registered in the Real estate office, and before the formalities, the transfer does not even affect the relationship between the parties. However, the accuracy of this article in the present study will be examined in detail. Of course, it should be added that in all contracts not specified in the law of special formalities, the two parties can make it formal consensually, that is, the occurrence of the contract is conditional on the adjustment of the document or payment of the price.

**Examples of Formal Contracts**

In addition to objective contracts which the bill necessity has included that among the formal contracts, there are other examples of formal contracts in Iranian law. The following are referred to as formal contracts:

2. Contract for transferring the qualification share in a limited liability company with an official document (Article 103 of the Commercial Law)
3. The insurance contract is also concluded by setting the document (letter) (indirect quotation from Article 2 and 3 of the insurance law approved in 1937)
4. Real estate purchase and sale contract is not registered without formal registration (indirect quotation from Article 22 of the Registration Law)

5. Sale of seized property for the enforcement of sentences which must be performed through auctions (Article 14 of the Civil Procedure Act)

Some lawyers, with the exception of the objective contracts, have failed to provide an example for a formal contract in Iranian law. It seems that the criteria for recognizing the formal contract and the formalities of considering things such as the need for a formal document (formal or ordinary), and the auction, is the order that the legislator seeks to find and when these formalities are available and the contract is not signed without it, the desired order of the legislator is created, otherwise, public order will be damaged. Courts and commentators should, in interpreting the law, respect the will of the legislator. In general, there are three different theories regarding the reciprocity and formality of the of immovable property sale as follows.

1. The immovable property regarding the registered or even unregistered real estate transactions is a perfectly formal.

2. The immovable property sale regarding the registered real estate transactions is formal, but, regarding the registered real estate transaction is a reciprocal agreement.

3. The sale of immovable property is generally a reciprocal contract and the transfer of the document and registration in the Real Estate Office is a way to prove the occurred reciprocal contract.

Dr. Katouzian's theories and books are dominant in the universities and his ideas are the dominant ideas. Based on his ideas one of the most obvious examples of a formal contract is the immovable property purchase contract. Accordingly if the assumption that the intention of the parties to the transaction to establish the normal document lead to the occurrence of the purchase contract, then fulfillment of the mentioned contract about the registries properties is in contrary to the law; Because Article 22 of the Registration Law explicitly declares that once the property was registered the law recognizes only the person who the property is registered in his name or the person who transferred the property to him and this and the fact that this transfer is also filed at the Real Estate Office or the fact that owner inherits the property from its official owner. Therefore, it must be accepted that the contract for the registered immovable property is in the form of a formal contract and the arrangements of the official document and the presence in the Document Registration Office is a prerequisite of the transfer registration in the Real Estate Office. Therefore, it must be admitted that the property acquisition can only be made in this office and should not be considered a late condition of the agreement signed by the normal document.

**EFFECTS OF FORMALITY AND REASONS BEHIND THE RECIPROCITY OF IMMOVABLE PROPERTY SALE**

It seems that because of the custom of the community, the immovable property contract is regulated by the formalization of the official document. If this custom is changed, it will provide an opportunity for the profitiers who will violate the individuals’ right based on the formal nature of the contract for the purchase of immovable property for abusive purposes. The conclusion method of the immovable property sales is one of the objections to the formality of these contracts. Once a contract can be regarded as a formal which it is concluded based on certain formalities if not it has not properly executed. A typical example of this is the legal practice of divorce. At the time of divorce, certain procedures must be followed, such as while divorcing the woman should not be pregnant, or two fair witnesses are present at the time of divorce. If this is not the case then divorce is not correct; however, at the time of concluding a sale contract, no special procedures are required. Even the Mute Sale Contract has been accepted in Iranian law according to Article 339 of the Civil Law. Therefore, it cannot be assumed that the Immovable property sale is not a formal contract in terms of its formalization, but it is completely reciprocal.

**DOCUMENT REGULATION OUTSIDE AND INSIDE THE COUNTRY**

1. **How to set the document abroad:**

   Article 1295 of the Civil Law regarding the obligation of the courts in dealing with documents regulated abroad states, "Iranian courts will credit documents regulated in foreign countries to the extent the laws of the related country credit them provided that, first, they are not discredited due to some reasons. Secondary, their contents are not in contrary to the morals codes of Iran. Third, countries where the documents are set there recognize their credits as well based on its regulation or the related treaties. Fourth, the Iranian consular and political representative or that of the related countries approve that the documents are consistent with the regulations of the related country. As stated According to Article 1295 of the Civil Law Iranian courts will credit documents regulated in foreign countries to the extent the laws of the related country credit them. In addition, the document regulated abroad is a normal regulated document for the official agents and lacks any specific. But compliance with Articles 1295 and 1296 of the Law is mandatory.

2. **How to set up a document for foreigners:**

   In cases where it is set up for abroad use, a head notary's signature must be signed on a sample basis and be certified by the head of registration office (notary office) of the related place, and the head notaries must inform the beneficiary that the document must be certificated by the General Office of Documents Affairs. On the other hand,
according to Article 115 of the Settlement Records of contracts and transactions, wills and death deals of the foreign nationals in Iran based on Article 30 of the official registration offices should be based on the procedures of document registration established in the laws of Iran and the refusal to register the document without legal excuse is the violation of law. It is notable to say that, substantively compliance with Articles 7, 967 and 968 of the Civil Law and other similar items is necessary.

Of course, it is necessary to note that foreign nationals residing in Iran will be liable to the related to the rule and regulations of their related country within the limits of treaties for issues related to their personal status and their properties, as well as their inheritance rights. In addition, the movable and immobile heritage of foreign nationals located in Iran, only regarding the original laws such as inheritance assessment rules and the amount of their inheritance, and the determination of the part that the deceased could have acquired in accordance with the will be subject to deceased relevant country. In addition to this, the obligations arising from the contract are subject to the law of the place of the contract, unless the sides of the contract are foreign nationals and explicitly or implicitly subject it to another law.

**CONCLUSION**

Certainly, the issue of registration of the property and obtaining an ownership document and validity of a regulated document is some of the important issues of the Registration Law, which has been legislated to protect and safeguard the people's property and order and organize their transactions. In this regard, Article 22 of the law recognizes only the one as the owner whom the property has been registered in his name through a legal formality. In the meantime, a number of people when transferring their wealth ignore the significant benefits of official transfer documents and deal with ordinary documents. The legislator has resolved the problem by enacting laws such as Articles 147 and 148 of the Registration Law and, and recently by enacting the law on determination of landslide and buildings without a formal document, so that people can register their immovable property using the related law. To achieve this law has determined the circumstances such as the death of the formal owner and at least one of the heirs and lack of access to formal owner in the case of his death, lack of access to at least one of the heirs, as well as lack of access to the owners of any shared properties, for the applicants, and has set a number of lands as national lands, wastelands, the governmental and public among the exceptions, noting that there is no possibility of issuing certificates for them.

The demands and complaints of the applicants will be investigated by the Dispute Resolution Tribunal, which is predicted by the law, which will be examined and pronounced by the Secretariat of the Board following the provision of the proceedings. Opinions issued by the registry office will be communicated through a newspaper that is widely advertised and through the instalments in the villages, so that they can protest if there is a protest. If a lawsuit is filed, the lawsuit will be passed to the court for a definite ruling, and if no objection is received registration office, according to the Board's opinion, issues the document. This will not prevent affected clients to refer to the court. The important point in this regard is that, law has been recognized the sale of immovable property using the ordinary document, and the legislator considers these documents to be a useful to transfer the property. On the other hand, in order to regulate the document of immovable property of foreign nationals in Iran, it is necessary for official bureaus to comply with all stages of the admission and registration of the document regarding the residence card and the credentials of the foreign person, since without the necessary documents mentioned in the Circulars, the documents set for foreign nationals will be void.

**REFERENCES**


