

# The Effect of Iranian Land Administration System in Transactions Real Properties' Security: In the Light of Public Confidence Theory

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## Abstract

The issue of security and stability of real properties' legal situation is a political, economic, and social matter in most countries, including Iran. Disputes in this area along with its unpredictable verdicts are among the most complicated matters in each legal system. That is why the legislature is always expected to pass suitable and effective laws, in order to assure stability and security of the owners and transferees of real property rights. This requires the legislation and judicial system of each country to know the expected functions from land registration system as well as legal basics of registration regulations and managing land information. Otherwise, the security and stability of real properties' legal situation will not be ensured which will directly influence both the market of real property transactions and the economic growth.

The paper attempts to explain the legal position of the fundamental theory of land registration system, so called public confidence theory, as well as its position in Iranian land registration system. This answers the question whether deeds and real property registration system in Iran is compatible with above mentioned theory, which provides the expected functions of the registration and manages accuracy of information contained in the system.

In doing so, it examines the historical and theoretical basics of land registration system, showing –in turn– that in order to ensure legal stability and security in land transactions two basic functions are expected from land administration system: firstly it should provide tools to present valid and indefeasible information (information administration) and, secondly it

has to legally protect the owner of registered right.(legal claims administration) Both functions could be realized within the framework of public confidence theory and its consequence.

Reviewing Iranian registration law clearly shows that although this theory along with its results are not known in Iranian legal literature, the legislature has considered it when ratifying this law and the principles of this theory can be seen in different articles of Iranian registration law. However, lawyers and judges' lack of knowledge about the "basic framework of real property registration system" as well as "the independence of real property registration law from civil law system" has caused the relative regulations be practically interpreted in real property disputes without paying any attention to this theory and its principles. This prevents achieving the expected functions of the registration system. However, this paper concludes that through conceptual development of this theory as well as its recognition by the legal system, it becomes possible to achieve such functions.

**Keywords:** Land Administration System, Public Confidence Theory, Iranian Real Property Registration

### **Introduction**

Protecting the profits of parties in real property contract necessitates their ability to identify the "legal situation" of contract's subject matter, know to whom this real property belongs, and detect the real rights, existing in favor of others to the real property.(Jobard-Bachellier & Brémond, 2014) It is realized once there are sources with which all mutations of the real property's legal situation, particularly transfer and mortgage, are known confidently(Wakker, van der Molen, & Lemmen, 2003), in this case it can be said that the legal situation of the real property is stable.

The "stability of the legal situation" for real properties leads to a "legal order" in their transactions, it is mainly because legal order is created by stability and maintenance of what has been established before(Mazeaud, Mazeaud, & CHABAS, 2000). In different legal systems both "Principle of non-retroactivity of law" and "Principle of not twice in the same [thing] (resjudicata or non bis in idem)" are known as two techniques and tools for legal situation stability. Along with these two techniques, one can mention "registration system" as a tool which has been created for the stability of real properties' legal situation. Ignoring this role of registration system as well as the tools to achieve above mentioned goal may result in the insecurity of real properties' legal situation;(Starck, Roland, & Boyer, 1988) therefore, a registration system should be designed and established based on independent principles(independent from accepted principle of private law) which not only can ensure such "stability, confidence and certainty" towards real properties' ownership, but also is able to open up the possibility of giving accurate and indefeasible information about a real property's legal situation and by legally supporting the owners of a land along with the third parties—prevent the possibility of adverse claims and disputes, concerning a real property. It is mainly because dealing with such disputes judicially takes a long time and, in turn, results in insecurity of ownership rights.(Paixao et al., 2015) Studying the historical background of law-making in various countries shows that establishing confidence in ownerships and real properties' legal situation has been the "basic goal of registration systems".

For example, the final report by the reviewing committee of civil law in Quebec, presented to the national parliament in 1978, indicated the necessity of establishing "absolute confidence" in ownerships and reviewing the guidelines of registration. The advices of this report were considered in 1986 Bill, concerning rights' registration and was eventually included in Article

2962 and Article 2944 (paragraph 2) of civil law. According to this report all people should be able to trust the recorded information in register books, so that one can imagine that all the mentioned information are real and nothing else than the contents of register books is applicable against them. (François Brochu, 1999) Regarding one of the basics of Switzerland real property registration system Gampert mentioned "with regards to real properties, what is expected from good law-making, is that the laws could give absolute and certain guarantees to:

- The owners and transferees of the real property concerning the stability of their ownership rights
- The lenders concerning the collateral
- And the owners of real rights concerning non-existence of other rights, restrictions, and obligations to the real property.

Also, the laws should assure them that their rights are respected and will not be violated for any unexpected reason". (GAMPERT, 1896)

This necessity has been taken into consideration when regulating Iranian registration laws. Article 1 of Iran's Registration Act 1923 acknowledges that one of the important aims of this law is determining and protecting the owners' ownership and the rights of the titular.

Although researches (François Brochu, 1999) and the historical background of law-makings show that ensuring legal stability and security had been the basic goal of real property registration systems all over the world, including Iran, ensuring security and stability of real properties' legal situation faces much practical problems. The point here is that none of the former researches in the area of land registration system, especially in Iran, have not elicited a theory or fundamental principle in order to provide such legal stability and security, a theory which becomes the basis for enacting, correcting, and interpreting the dominant regulations of land registration system in the country, ensuring the ideal level of security.

Although land registration in Iran has deep root, the new form of the registration system is a modern phenomenon in the country. (Mohammadi, 2004) When registration in a modern method began with the registration act, adopted in 1911, various laws were ratified accordingly, thus eventually the registration act, adopted in 1932, was passed which is currently enforceable in Iran with numerous reforms in different articles.

This paper firstly **examines** the legal tools and functions, necessary to ensure real properties' security, it then analyzes the (none) compatibility of the later law with the principles, needed to both provide the security and stability of real properties' legal situation in Iran and control the real property transactions' risk. It starts with a review of historical evolution of the concept of contract and its effect on the tendency towards formalism in the area of real properties, then to study the position of this theory and its effects in Iranian land registration system, while considering these basics along with the concept of the basic theory of land registration system, called the "Theory of public confidence".

## **The Necessity of Formalism in Real Property system**

### **Historical Causes: Evolution of the Concept of Contract**

In old laws such as the Roman law, in order to create and transfer the real rights some specific formalities had to be followed such as uttering some words, doing some actions such as the religious rituals or interference of some people other than the contract parties; therefore, identifying the legal situation of the properties was easy, for through such formalities the transactions became public and all people could know about it. As such, the presence of a land register system did not seem necessary as ownership right did not transfer with the

agreement of the (contract) parties. Such an agreement or contract merely made the transferee the creditor. This means these contracts merely created personal rights for transferee nothing else. On the contrary, following some specific formalities like the presence of a witness or judge transferred the ownership right and in this way the society knew the real owner. Although these formalities had not come into being with the aim of informing the third parties (Picod, 1999) and public knowledge of the land owners was not the main goal of Roman law (Chen, 2007), it practically led to public information and prevented secrecy, making the third parties able to identify land ownership transfer among the contract parties, as the religious rituals and rites of transfer occurred in public. (Picod, 1999)

In the Classic Era, as trade developed attempts were made to reduce the formalities of transferring the ownership right. In most customs as feudality diminished, above mentioned formalities became obsolete, which resulted in secrecy and concealment of real properties' "ownership mutation", causing a big danger for third parties. However, Roman lawyers never considered systematizing "land register system" which could make up the problems, arising from the decline and fall of formalism, (Gruen & Diosdi, 1971; Picod, 1999; Piedelièvre, 2000) even though they had faced 1- dangers which led to situation in which the third parties often did not know the real owner and 2- damages which had been imposed to the treasury and the tax income by hidden land transfer. (Picod, 1999) In most law systems such as that of France (since 1804) ownership transfer only happened with the agreement of wills (formation of a contract) and without any formality.

Since then, unlike Roman law and old law, mere contract did not create obligation but did transfer the ownership right. Such a concept of contract role, though philosophically seems more satisfactory, is full of danger for third parties, whom nothing could inform about the mutation of real properties' legal situation henceforth. (Picod, 1999) Especially when the transacted property remained in the hands of the seller (for instance until paying the price) and allowed him to transfer it to another transferee, who was a third party concerning the first transaction, and this second transaction got in contrast to the first one. (Delestraint, 1982; Jobard-Bachelier & Brémond, 2014)

Concerning personal properties, this problem have been solved by considering "possession" criterion; however, in terms of real properties, possession never determines the owner. Therefore, it is necessary that people, who cannot trust possession, get to know the real properties' legal situation with a more accurate tool. As such, the necessity of individuals' information, concerning real properties' legal situation, calls for a registration system which has effective enforcements. In the absence of such a system, people will reject sale or getting collateral-based loans. In fact, good systematization of the market imposes the presence of effective land register systems with enforcement (Picod, 1999)

Therefore, the concept and role of contracts regarding "transferring the ownership" has been evolved, which was as a result of two things:

- A) Decline of formalism
- B) Legal systems' tendency towards the principle of "consensualism" of the contracts.

Both propose the necessity of new methods to protect the third party in transactions, which have happened previously to the real property in question. Therefore land register systems in their modern form are relatively novel in all legal systems. For instance in France "land register system" began with its modern form with the by-law 4 in January 1866.

Land register system in its modern form began in 1830 in Quebec. With the establishment of land register system, the government of Quebec in fact tried to finish secrecy and fraud in the field of real properties. It wanted to increase the validity of real property rights; therefore,

systematic legal and official basics to protect rights of citizen towards the real property were established in order to assure citizen that the information, concerning their ownership rights has been reflected in land register system clearly.(Boudreau & Tremblay, 2006)

The modern land register system began in Iran by enacting the registration act in 1911, which will be explained in detail later.

### **Theoretical Causes: Position of Registering Formalism in Consensual Legal System**

With the dominance of consensual principle (willing agreement) in making contracts in 18th and 19th centuries mere agreement of the contract parties became obligatory. It sped up the transaction itself, decreased the costs, and wiped out the causes of nullity of contract as a result of not following the form. However, freedom from these formalities caused some problems, paving the way for many dangers in legal and social relations. For one, it raised doubt in the existence or the contents of a contract, posing some problems to prove the contract itself. In addition, it caused a lack of legal security for the third parties, who might be unaware of the contract, itself.(Guerrero, 1975) Therefore, searching for a solution in the field of real properties seemed necessary so that the establishment and transfer of the real rights of the real property could become valid or applicable “under essential and specific conditions” and as a result everyone could be able to know the legal situation of the real properties.

Therefore in the modern era in order to solve the above-mentioned problems in the area of real properties, formalism has been taken into consideration in a wide concept with the intention of protecting both private and public interest.(Guerrero, 1975) Registration formalism imposes the necessity of specific form in real properties’ transactions, on which the full effect of contract depends on it and its enforcement in different legal systems varies in accordance to the adopted basis of that registration system, and not following it might result in the “nullification” of that contract or its “non-applicability” in some cases.(Cabrillac, 2012) Yet one should notice that following the specific form within the land register system is not important by itself. In contrast the expected functions of this formalism are of account.(Ho, 2014) Historical evolutions in the area of real properties transactions show that the necessity of “informing the owner as well as the third parties” and “protecting the registered ownership rights” are the expected functions of the registration formalism which stabilizes the legal situation of real properties transactions. This is possible only if land register system is equipped with “informing tools” so that it can give valid and uncontroversial information to its visitors prior to the transaction(Palmer, 1998) and by establishing an infrastructure for spatial and geographical, legal information about rights, restrictions, and responsibilities along with providing public access,(Paixao et al., 2015) enables anyone to know the legal situation of the real property. For example it opens up the possibility of seeing whether there is a mortgage right of another to the real property or not. In case of having a chance for getting access to the information, asymmetry of information among the contract parties and the possibility of fraud in real property transactions decrease. Additionally the fact that transferring the real property between two parties should be identifiable for the third parties, logically causes the latter avoid any transaction, adverse to the first one.(Raynaud, 1999) Moreover, as the second function, a registration system must be equipped with “supporting tool” of the registered right and by supporting this right in the disputes, it should determine the legal situation of the real property in terms of detecting the owner’s identity.(Raynaud, 1999) As a matter of fact, this system should be able to ward off any risk, threatening the registered ownership right, giving some sort of legal certainty to the

registered right. It should be able to support the real property's transferee against the risk of creation or transfer of the right outside the register framework (the risk of established right by means of traditional law of transactions and custom). (O'Connor, 2003) Since ensuring the security of ownership right is necessity for better economic growth of a nation (Ho, 2014) and the greatest economic investment of people occurs in real property sector, it is natural that they are against any kind of risk in this area. (Haegel, 2004)

In order to counter such risks, land registration system should include a kind of "government's commitment to support and guarantee" the registered rights, (Barlowe, 1990) which provides public interest as well, since it decreases disputes and, consequently, generates the motivation for long-term investment in real properties as well as the background for active real property market, leading to economic and social development, (Arruñada et al., 2014; Stanfield, 1990) as identifying the ownership right and ensuring "secure ownership rights" is necessary for the economic development of any society. (Dekker, 2006)

Such functions of registration system could be realized in light of public confidence theory.

### **Public confidence Theory and Its Position in Iranian Land administration System**

In order to achieve security and stability of real properties' legal situation, the registration system should be designed in a way which by playing the role of informing the real properties' legal situation to the parties of the transaction, it prevents disputes and legal conflicts; and in case of this goal's failure, by offering a legal solution, it supports the owner of registered rights and prioritize his claim among all adverse claims to the real property. (Raynaud, 1999)

Therefore registration system is effective and clears off the problems arising from the decline of formalism in the area of real property when it has above mentioned functions. Providing these two functions in land register system is possible with the presumption of the validity of the registered information in register books along with considering them indefeasible. (Tabbah, 1947) It is also possible only in light of accepting a basic principle or theory, which is known as "Public confidence Theory".

### **The Concept of Public Confidence Theory**

The interests in land are so many and so varied "that there can be, without any intention to defraud, quite genuine misunderstanding or ignorance of what the true position is" (Simpson, 1976). Nowadays there is this tendency that the registration system can give valid and reliable information to all parties and that it can ascertain the registered owner that his rights are indefeasible. However, one cannot design a control mechanism in land register system that erases all humankind mistakes within the process of registering the rights in register books. As a result, one cannot claim that all recorded information in register books always accord with legal facts and are valid. Here a "restorative principle" is necessary within a land register system, based on what one can trust the information included in register books, whether it accords with legal facts or not. Such a restorative principle can be called "public confidence principle" in land register system. Based on this principle "the content of register books" has priority over "legal facts". Consequently the content of register books, save for some exceptions, have an absolute and indefeasible implication on facts. Since registration system should ensure the security of third parties, visiting register books to gather information, this theory often protects the transferee with good faith against the "vices and mistakes arising from the apparent situation, offered by register books' contents". It also guarantees the legal validity of the registered information. (Hunter, 1963) Moreover, it ensures the security of the



registered owner in terms of stability and indefeasibility of his rights. Performing this theory prioritizes the social function of ownership as well as the security insurance of transactions in the society over individual rights.(Tabbah, 1947) In fact the need for security in real property transactions along with providing social justice necessitates that a party, registered in register books, should be protected and be considered as an owner, even though based on contract law principles another party is regarded as the real property's owner.

This principle is close to the theory, called "Apparent Property" in France, based on which some effects occur on a fictitious and imaginative right which is in full accord with the apparent and external fact, while it might not be so with legal facts and musts.(François Brochu, 1999) The theory allows that an individual, who has been considered as owner by the third party, is perceived as the real owner of a property. In fact, based on apparent property theory, false notion of the existence of a legal situation results in some effects of this appearance become prior to legal facts.(Terré & Simler, 2014)

Public confidence theory is the base of any social system of ownership and land registration system can be considered as a tool at the service of this principle, ignoring which causes much chaos and nobody can be certain about the security of his own ownership right.(Tabbah, 1947)

Under Islamic law, which is the basis for Iranian laws as the case study for this research, there are many regulations, whose application could open doors to public confidence principle, established based on appearance. One of these regulations is "We decree on the appearance and Allah is aware of mysteries", i.e. religion judges on the basis of the appearance.(Saghari, 2006)

### **Results of Public Confidence Theory and Its Position in Iranian Land administration System**

"Legal security" of real properties' ownership right is ensured only when there is no risk of claiming any rights, other than what is reflected in register books. What is claimed as "mirror principle", "curtain principle", and "insurance principle" by some researches(Cooke, 2004; Dixon, 2013) to ensure legal security in land register system, is in fact the resulting principles of the basic and fundamental principle of "public confidence" with the above-mentioned concept.

#### **Mirror Principle**

In a system, generated based on public confidence theory, a registration system is like a mirror which is assumed to reflect all existing facts of real properties' rights correctly and completely, letting people with good faith trust the content of real properties' legal situation, reflected by register books. Therefore, one can imagine that all these information are real and there is nothing else than register books' contents.(Cursley & Davys, 2011) Such a confidence in register books results from the fact that at least the applicability of a contract, resulting in a transfer or establishment of real rights, depends on registration and it is only after registration that it becomes valid, non-voidable, or applicable.( mirror principle or the certainty of ownership rights).(Arruñada & Garoupa, 2005; Francois Brochu, 2001; Dixon, 2013; Gray & Gray, 2005) As a matter of fact, a goal of registration, based on the mentioned principle, is to secure ownership right, which invalidates unrecorded ownership rights and becomes necessary for recognizing a unique form for ownership right.(Cooke, 2004) Based on Report 271 of legal commission of England one of the main goals of land register law 2002 of this country is to fully and correctly reflect the situation of ownership right, advance mirror principle by making an electronic system of giving online access to recorded

information,(Murphy, Roberts, & Flessas, 2004) and decrease the need for physical review of the real properties.

Reviewing Iranian registration regulations shows that the legislature considers the contents of the mirror principle when passing the registration act. Article 22 of Iranian registration act says that “once a real property is recorded in register book in accordance with law, the government considers as the owner the one in whose name the real property is registered or the one to whom the real property in question has been transferred, where the conveyance has been recorded in a register book, or has inherited the mentioned real property from the recorded owner...”. In this article, the lawmaker tries to pose the registration system as a mirror, reflecting all existing facts about the rights of registered-real-property.(Tabatabai Hesari, 2014) Accordingly Article 103 of executory by-law of real property registration law necessitates the registration of all information, concerning a real property and its real rights, in the same way, Article 46 of registration law does the same for transactions of the related rights of registered real property. Otherwise, it is unacceptable in the courts and offices (Article 48).

### **Curtain Principle**

In addition, based on public confidence theory, registration system is a curtain, made of certainty, which firstly becomes a barrier against unregistered real property rights - established based on civil rule, custom, or justice- not letting them affect or contradict the recorded rights; and secondly, it becomes a barrier among “the defects related to the transactions chain of the origin of the right” and “the recorded right”, not allowing such defects influence the recorded right as well as its validity, i.e. registration is like a barrier between the defects of the recorded rights of ownership and the appearance (or the content), reflected by register books, implying that registration is the only information source for those who want to know the legal situation of the real properties (curtain principle).(Dixon, 2013; Green & Cursley, 2004)

In Iranian law, once a real property is recorded with accord to legal formalities, no claim of ownership for that real property is accepted from others and the ownership deed cannot be nullified and merely damages can be awarded (article 24 of registration law). Therefore, if somebody unjustly but with respect to all legal real property regulations registers a real property, which does not belong to him, in his own name, nobody can ask for nullification of his real property registration as the real owner (based on civil law regulations) and no dispute is heard in this matter. Articles 22 and 24 of registration law confirm this issue, which accords with the good of the society and clarity of real properties’ legal situation, as well, because if land registration is not considered a decisive reason of ownership, it will not have any benefit and added value any more (Shahri, 2002)

Nevertheless, in some cases that some individuals act against the owner with deception, fraud, or misuse of his confidence, registering the real property in their own names, according to registration law, it renders them criminally prosecutable and punishable and makes them compensate or satisfy the plaintiff.

Although Article 24 of Iranian registration law rejects hearing any dispute about the initial registration of a real property, its basis along with the contents of curtain principle could be used in later transaction registrations, assuming recorded real property transactions to be true, especially when such registration of “the rights from these transactions” becomes the basis for later transfers to individuals with good faith.



With the presumption of accuracy of information, which has been recorded in registration system, and rejection of adverse disputes, public confidence theory, in form of both mirror and curtain principles, has made registration the direct cause of establishing a right to a real property, giving some sort of “abstractive description” to the recorded right; thus it clears off the possibility of infringement of individuals’ rights, who have trusted information recorded in registration system (Hesari, 2014)

### **Insurance principle**

Based on public confidence theory in order to provide the maximum certainty of and trust in the registration system, the real owners and possessors of rights (in sight of civil law), who have lost their right as a matter of following the two previous principles, and those, who as a result of registration system’s problems or mistakes have undergone some damages, should be recompensed (insurance principle). In a nutshell, since it has been assumed that registration gives an absolutely correct information of ownership right, if due to some causes such as the weakness of human system, a mistake appears, anyone suffering a damage from the registration system, should be compensated as much as possible. Hence the insurance principle says that if after registration a claim appears, the claiming person can ask the compensation of his loss from a public treasury, the budget of which is supplied from registration fees, while the person in whose name the real property is registered, keeps the real property, itself. (Miceli, Sirmans, & Turnbull, 1998)

Although what was mentioned above completes the public confidence theory, in Iranian law there is no regulation, based on insurance principle, which required the government to compensate. Also the regulations, giving some responsibilities to notaries (Article 68 of real properties and deeds law as well as article 22 of notary law), requiring them to offer insurances (Article 17 of notary law along with article 9 of its executive regulations) merely covers fault, negligence, or violation of the notary as a part of the country’s registration system body, where the compensation is upon the notary, himself, not the government. An issue which causes the damaged person faces somebody who might not be able to compensate his loss. It is something different with insurance principle.

The practical procedure of early years after passing the current Iranian registration law shows the conceptual expansion of public confidence theory and the principles, among some judges of the Supreme Court and other relative courts. The impact of this theory, in the beginning, was so great that not only the disputes, related to nullification recorded transaction, were accepted, but also the disputes, pertaining to later rescission of the recorded transaction could not be heard at the court. For instance, the Iranian Ministry of Justice published the Circular No. 34322, and absolutely favored rejecting to hear the dispute against ownership deed.

Following the dominance of this theory, in accordance with Circular 1093/25126 land register office obliged notaries to cancel all rescission rights in transactions.

However, the practical procedure of later years shows in some cases the evolutions in the courts practice, unlike what the legislature meant. Unfortunately this goes on to such an extent that the official ownership deed of current owner of a real property has been voided on the ground of some mistakes or nullification reasons in transactions chain. This is regarded as ignoring “public confidence theory” as the foundation of land register system.

As a matter of fact, although the legislature in Iranian registration law wanted to protect those who trust information in register books and titular of recorded rights, many courts void official deeds in favor of informal deeds of the third party. This has caused some problems especially

for the banks, because in several cases courts void the collateral, the bank has received for giving credit, on this basis that before mortgaging the owner had sold his real property with an informal deed; therefore, he had no ownership to mortgage it to the bank for the loan (Verdict No. 1238, dated 27/1/2011, general legal court of Bandar Abbas), while this transaction had concluded with an informal deed and was not reflected in land register system and register books. As a result, based on public confidence theory and mirror and curtain principles it should not effect anyone who has made a transaction based on information in register books and has recorded this transaction. Security in transactions necessitates the transferee should not have any worries, especially when the transaction concludes officially and under absolutely strict legal conditions, in a way that in custom everyone trusts it and the law considers it applicable for all.

Additionally, reviewing registration law in Iran shows that in Iranian legal system, once registration started in its modern form, the system used as the basis for registration was "Title Registration System" or "Torrens", which has become common in Iran as an adaptation of law in countries such as Germany (Jobard-Bachellier & Brémond, 2014) and Switzerland. (Delebecque & Simler, 2012) Therefore, land register in Iran has always been based on ownership right of the real property and recording the related information of each real property in its file. Never have the owner and right possessor (Deeds Registration System) been the basis for registration. Moreover, the legislature have smartly tried to generate certainty and absolute trust in the information, hidden in registration system, unite ownership rights, and ward off all risks of buyer's facing unrecorded rights. For so doing, in article 22 of registration law, he has identified the person, for whom the mentioned real property is recorded or transferred in a real estate, as the owner while in articles 46, 48 of registration law he does not accept unregistered transactions. In order to collect uniform information, with regards to adjunct article 156, issued on 6/2/1973, Iranian land registration law has obliged registration organization to prepare and perform Cadaster Plan.

Cadaster which complements land registration, so that some have called it "integrated land registration system", or "land administration system", (Zevenbergen, 2004) makes two sets of information accessible: one, geographical maps that show the size and position of all land parcels and the other, a recorded text that includes the legal situation of any land parcel. (Lemmen, van Oosterom, & Bennett, 2015; Paixao et al., 2015) Comprehensive Cadaster law of Iran was ratified in 1/2/2015, in addition to abolish article 156, above-mentioned, designed a comprehensive registration system, and in combination with Cadaster has called the registration system as the "comprehensive system of real properties' information (Cadaster)" (Paragraph 3, Article 1). This law has predicted the collection of both sets of above mentioned information in comprehensive system of real properties' information and Cadaster (Articles 3, 4, and 5).

Therefore, Iranian registration system as an information tool and collecting the necessary information for real properties' transactions is one of the most perfect registration systems of the world and the way information is kept in them is based on "title registration system" as well as Cadaster (comprehensive system of real property management), which causes a faster information recovery. This speed in information recovery is important and is able to provide informative function of registration system only if the beneficiaries could get access to such information. Based on article 8 of deeds and real properties registration law, the beneficiaries can access "real property book", the most important existing book in registration system in which every right about a real property is recorded. By-law which was enacted in accordance with this law in 1933, had clarified the formality of such a access (article

6), but this by-law has been replaced with by-law of register law, ratified in 1939 and in the recent regulation as well as the next amendments, the rules concerning the beneficiaries' access of "real properties book" have not been included. Currently beneficiaries' access to information is only limited to the rules of articles 212 and 213 of civil procedure law, which is very confined and is possible only when the legal action made and the courts deem it necessary. This is useless and inadequate within the informative function of registration system, because this function will be effective only if parties access to the information prior to concluding of contract. What is more none of these regulations provide proper definition of beneficiaries which cause a lot of problems.

Once the law of "Publication of and free access to information" was passed and came into force in 2009, people has right to access to public information, unless the law forbids it. According to article 1 of this law, public information includes rules, regulations, national and official statistics, and administrative deeds. Official deeds of ownership, prepared by registration and notaries offices, are in fact administrative deeds, to which any Iranian should have access. Thus in order to clear off the existing gap in the registration law and its by-law, one can turn to this law and consider the beneficiaries among all Iranians (Tabatabai Hesari, 2014). However, this regulation, owing to different interpretations, cannot completely solve the existing gap.

It seems that the legislature, when passing the comprehensive law of Cadaster, should have determined the beneficiaries in order to gain information and should have predicted their access to the information in this system in the stage prior to concluding of contract so that this registration system tool could correctly play its function. Article 5 of above mentioned law required notaries to inquire recorded information about real property from land registration office. However, it cannot reach the goal of access to information by contract parties, since it usually occurs after the formation of the initial contract. Therefore Iranian registration system is quite capable of providing this function of registration system, yet enforcing the right of access to information requires more accurate rules and regulations in this area.

## **Conclusion**

The paper shows that there exists common ground among all land register systems in the world, which is to establish legal stability and security in real properties' transactions. What ensures security and stability of real properties' legal situation is not the formalities of real properties' transactions or registration system; it is the expected function of registration formalism that guarantees such stability and security. By conducting historical and theoretical studies, the present paper showed that "providing valid and indefeasible information" along with "legally protecting the recorded rights" in land register system are two expected functions of this system. Any system, ensuring these two functions, can guarantee the stability of real properties' legal situation; therefore, designing a land register system should be based on principles which can secure these two functions; otherwise, it will become a registration system without legal and economic effects and merely a bureaucratic step. Public confidence theory is a fundamental theory that by resulting in three principles of mirror, curtain, and insurance gives some sort of abstractive description to the recorded rights, thus paving the way towards the two aforementioned functions. Therefore when establishing, correcting, and interpreting all registration regulations this theory should be taken into consideration to make the possibility of registration system's access to the intended functions.

Although public confidence theory along with mirror and curtain principles, deriving from it, are not much known in legal literature of Iran and have not been directly indicated, the contents of these principles exist in the articles of Iranian registration law (for instance articles 22, 24, 46, 48 ... .) and fortunately, the legislature had considered the basic principles of registration systems, which are the guarantee for stability and security of real properties' legal situation, when passing the articles of this law. In addition, the procedure of the early years after passing the registration law demonstrate mirror and curtain principles in Iranian registration law.

However lawyers and law interpreters' ignorance of the public confidence theory has caused some misinterpretations of the Iranian registration regulations, which sometimes resulted in violation of this theory and its principles. In addition, the Iranian judicial procedure, while ignoring this theory, misinterprets registration regulations to such an extent that owner's security violated and has jeopardized the rights of the third party by voiding the official deeds in favor of the informal ones.

Therefore developing the concept of public confidence theory and its resulting principles can generate a common understanding in the field of land register system within the Iranian judicial and legal system, drawing Iranian lawyers' and judges' attention to this fascinating fact that the numerous articles of Iranian registration law have been regulated based on public confidence theory, which makes a kind of "abstractive description" of registration. Thus it is proposed, by conceptually developing the "public confidence theory", establishment, correction, and interpretation of registration regulations in Iranian registration system should be done based on the mentioned theory and the registration system is always considered as a system, independent from civil law system, which has its own specific principles and regulations. It is only by this way that the stability and security, expected in the field of real properties transactions can be ensured and the registration system's functions ("providing valid and indefeasible information" and "legally protecting the recorded rights") can be achieved. Yet such valid and indefeasible information, the validity of which is guaranteed based on public confidence theory, should be available to public; therefore, in order to fulfill the informative function of the registration system, access to the recorded information should be granted to the beneficiaries. As a result, it is necessary that some actions should be done to pass a law, concerning the accessibility of information and determining the beneficiaries who can access to it. Obviously such a law should accurately determine the extent of accessible information so that both the "right of having access to the information" and the "right to privacy" are ensured.

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