

# The Possibility of Depositing the Probable Damages from the Seized Property in the Process of Suspending Enforcement Procedures under Iranian Registration Law

Ali Barekat

Master of Private Law, Islamic Azad University, Science and Research Branch, Tehran, Iran.  
 ali.barekat.57@gmail.Com

Fatemeh Tonekaboni Moghadam

Master's Student in Private Law, Islamic Azad University, Science and Research Branch, Tehran, Iran.  
 minamoqadaam@gmail.com

## Abstract

In the Iranian legal system, the deposit of potential damages is considered one of the essential requirements in the process of issuing an order to suspend the enforcement of registration operations. This obligation, mentioned in Article 5 of the Law on Amendments to Certain Provisions of the Registration Law (passed in 1943), lacks explicit clarification regarding its method, nature, and acceptable resources for securing it. This ambiguity has led to conflicts in judicial practice; some courts recognize only the deposit of cash as valid, while others accept the possibility of using the seized property. This study, adopting an analytical-comparative method and utilizing jurisprudential principles such as the rules of "No Harm" (La Darar), "Authority" (Tasallot), and the principle of "Equity," investigates whether the potential damages determined by the court can be secured from the same seized property. The research findings indicate that accepting an additional seizure of the already seized property—provided its value suffices—not only does not contradict religious principles and civil procedural rules but can also prevent adverse consequences such as denial of the right to defense, economic discrimination, and prolongation of legal proceedings. Moreover, a comparative study with French and English law reveals that in advanced legal systems, the acceptance of non-cash guarantees such as real estate collateral or bank guarantees is an established practice. Therefore, it is suggested that the judiciary, through a broad interpretation of the concept of "appropriate security," formally approve the possibility of depositing potential damages from the seized property by issuing a uniform circular.

**Keywords:** Deposit of Potential Damages, Seized Property, Suspension of Registration Operations.

## Introduction

In the Iranian legal system, the enforcement of official enforceable instruments (documents with binding effect) holds substantial significance. This enforcement may be pursued through two primary mechanisms: judicial execution and administrative (registration-based) execution. The latter, governed by the Registration of Deeds and Properties Act and the Bylaw on the Enforcement of Official Instruments (2008), constitutes a binding administrative process and occupies a distinctive position within the country's legal institutions. Nonetheless, due to its generally summary and formalistic structure, the registration-based enforcement process may lead to procedural errors and potential violations of the parties' rights, particularly those of the debtor. Consequently, the legislator has, in certain circumstances, envisaged mechanisms for suspending or annulling the execution process.

Among such mechanisms, one particularly controversial and frequently misunderstood concept is the "order to suspend execution proceedings" (dastoor-e-tavaqof-e-amaliyyat-e-ejraei). Unfortunately, in practice—and even within legal literature, petitions, and administrative correspondences—this term is often conflated with similar but legally distinct concepts such as "interim order" (dastoor-e-movaqqat) or "stay of execution" (tavaqof-e-ejra). Each of these terms, however, has an independent legal meaning, governed by separate procedural rules and falling within the jurisdiction of different authorities.

The order to suspend execution proceedings is an exceptional and specific remedy explicitly established under Article 5 of the Law Amending Certain Provisions of the Registration Act and the Notaries Act (1943). The authority to adjudicate such orders is vested exclusively in courts of law. In contrast to interim orders—which are protective in nature and may be requested in urgent situations even prior to filing the main lawsuit, subject to Articles 310 and subsequent provisions of the Iranian Civil Procedure Code—the suspension of execution lacks institutional independence and may only be requested incidentally alongside a primary action seeking annulment of the enforcement order (ebtāl-e-ejraieh).

Furthermore, what falls within the competence of the head of the registration office is not the issuance of a suspension order per se, but the annulment of administrative execution measures in cases of procedural violations (e.g., irregularities in auctions, asset valuation, or service of notice). If the legal basis of the enforcement order itself is in

question, jurisdiction lies solely with the judiciary, not the registration authority. This leads to the distinct concept of annulment of the enforceable registration order, which can be filed electronically through the Judicial Services System under a designated procedural format. Therefore, accurate conceptual differentiation—in terms of legal basis, competent authority, and practical application—is essential for any theoretical analysis or procedural action in the domain of registration enforcement. Misunderstanding or misapplication of legal terminology, as observed in certain cases, can not only result in rejection of legal petitions but also significantly delay access to justice.

Accordingly, the present paper seeks to clarify the conditions under which a suspension order may be issued, while examining the possibility of providing security for probable damages from seized property, especially in distinction from other protective legal institutions in Iranian registration law. The need for this study arises from the existing ambiguities and divergent practices observed across judicial and administrative bodies concerning whether a portion of seized property may be used to secure probable damages. For instance, in a case handled by the Mashhad Registration Enforcement Division, the applicant requested suspension of the execution proceedings and proposed that part of the seized property be accepted as a substitute for cash deposit, citing financial incapacity. Due to the absence of explicit statutory provisions, the request was denied, and the proceedings continued—potentially violating the applicant's rights (Gharabaghi, 2016, p. 54).

Furthermore, the urgency of addressing this issue was underscored in a real case in which the author, acting as legal counsel, initiated an action for annulment of a registration enforcement order along with a request to suspend execution. Although the attached property was under seizure and its value clearly exceeded the amount of the enforcement order—sufficient to cover any probable damages—the court declined to accept the seized property as a security deposit, insisting instead on a cash guarantee. Given that the client was financially unable to provide such funds, the execution proceeded, ultimately resulting in what appears to be a denial of justice. The case remains under judicial review; should the enforcement order be annulled, all subsequent measures would be deemed void, triggering potentially significant legal and administrative consequences. This experience highlighted the legislative gap and lack

of procedural alternatives, particularly concerning the use of seized assets as collateral for security deposits, and reaffirmed the necessity of a comprehensive legal analysis from both doctrinal and practical perspectives.

These legislative and procedural ambiguities have led to varied interpretations among judicial and administrative authorities, often resulting in infringement of individual rights and inconsistencies in enforcement outcomes. The central research question of the present study, which directly arises from such legal uncertainties, is as follows: Can probable damages be secured from the value of the already seized property?

Answering this question requires a rigorous analysis of statutory provisions, particularly Article 5 of the Amended Registration Law, along with judicial practice and advisory opinions issued by the Legal Department of the Judiciary. Adopting a comparative-analytical methodology, this study investigates the issue through logical interpretation of relevant legal texts, critical evaluation of advisory opinions, and scrutiny of divergent judicial approaches across various jurisdictions.

Empirical data have been drawn primarily from real-world case studies involving differing interpretations by enforcement divisions in various cities, to ensure that the analysis rests upon practical and substantiated foundations. Among the most striking findings is the clear conflict in practice among registration enforcement offices. For example, in Tehran, some branches have permitted securing probable damages through the seized assets themselves, relying on general principles of fair trial and protection of litigants' rights. In contrast, enforcement offices in Karaj and Mashhad have adopted a narrow interpretation of Article 5, rejecting such possibility and requiring cash deposits instead (Adabi, 2021, p. 244).

This disparity in legal outcomes, despite similar factual contexts, undermines the principles of justice and equality before the law. The significance of this issue is not merely theoretical, but deeply practical. In registration enforcement offices, particularly in the execution of bank collateral cases, applicants often seek urgent relief but lack the financial ability to provide cash guarantees. Similarly, in ordinary real estate disputes, parties facing the imminent sale of seized property require a legal avenue to suspend enforcement and preserve the subject matter of the dispute. However, due to the inability to deposit

cash, they are often forced to allow the enforcement process to continue, sustaining substantial and often irreversible damages (Gharabaghi, 2016, p. 54).

One of the most significant legislative gaps identified in this study lies in the absence of a clear and explicit definition of the manner in which probable damages are to be secured under Article 5. While the statute merely refers to the requirement of depositing security, it fails to specify whether such a deposit must be monetary, non-monetary, or derivable from the seized property itself. This legislative silence has led to conflicting interpretations and contradictory decisions, resulting in legal uncertainty and unequal protection of parties' rights.

In the absence of statutory clarity regarding the form and method of providing security under Article 5, divergent judicial practices have produced confusion among litigants and, in some cases, deprived them of effective legal remedies. The findings underscore an urgent need for statutory reform or authoritative judicial clarification to ensure consistency, fairness, and predictability in the application of this critical procedural mechanism (Adabi, 2021, p. 244).

## **Chapter One: Fundamental Concepts and the Role of Probable Damages in the Suspension of Registration Enforcement Procedures**

In the first chapter, the theoretical foundations and the role of probable damages in the process of suspending registration enforcement operations are analyzed. Initially, in the first section, the concept of probable damages in the context of civil procedure and registration law is defined as a tool to balance the rights of the claimant and the respondent. The foundations and objectives of this mechanism are examined with reference to judicial precedents. In this regard, the distinction between probable damages and similar institutions such as collateral and provisional remedies—each with independent philosophy and function—is clarified. Additionally, the jurisprudential basis for the obligation to deposit probable damages is explored, relying on principles such as *la darar* (no harm), fairness, and the prohibition of abuse of rights. Subsequently, the second section is devoted to examining the order to suspend registration enforcement operations in Iranian law. Legal sources, including Article 5 of the Law Amending Certain Articles of the Registration Law and the related executive regulations, are analyzed. The competent authority to issue this order—namely, the General Civil Court—and the conditions for

accepting a suspension request, particularly the decisive role of probable damages in the process, are investigated. This part also critiques the strict approaches of some courts in accepting probable damages and evaluates the extent to which these practices align with legal standards and the principles of judicial fairness. At the end of the chapter, the position of probable damages within quasi-judicial and extra-procedural mechanisms, such as the registration enforcement process—which, despite lacking a fully judicial nature, is based on enforceable official documents—is explained. The distinction between this process and classical litigation is presented as the basis for the need to conduct a distinct analysis of this legal institution.

### **Section One: Provision of Probable Damages in the Procedural and Registration Law System**

Probable damages are a unique institution in civil procedure, designed to prevent harm to either party during the issuance of temporary and non-final decisions. In Iranian law, this concept has developed based on the fundamental rules of civil procedure and practical considerations of the courts. According to Article 108 of the Code of Civil Procedure (enacted in 2000), the applicant for provisional relief is obligated to provide security for any potential damage that may be inflicted on the opposing party as a result of the provisional measure. Substantively, probable damages serve as a financial guarantee contingent upon the occurrence of a future event (such as the claimant's claim being proven unjustified), thereby preventing or facilitating compensation for potential harm (Katouzian, 2014, Vol. 1, p. 386).

From a foundational perspective, the purpose of requiring probable damages is to uphold the balance and equality between parties in litigation. Civil litigation, as a structure for ensuring judicial justice, demands that procedural tools such as provisional relief not impose undue risk or harm on the opposing party. Thus, the legislator, by requiring such a deposit, aims to strike a balance between the right to effective access to justice and the need to prevent abuse of that right (Shams, 2024, p. 147). Without such guarantees, parties might misuse procedural tools to unjustly cause harm to their opponents.

In judicial practice, courts generally adopt a strict interpretation of the relevant provisions and consider the deposit of probable damages a precondition for granting temporary relief. This is evident in numerous rulings from general and appellate courts, where even in the absence of

explicit legal provisions, courts have mandated the deposit of probable damages based on general principles of fair trial. A clear example is the Legal Department of the Judiciary's Advisory Opinion No. 7/3123 dated August 11, 2009, which considers the deposit of probable damages a prerequisite for issuing temporary orders. The opinion states that Article 319 of the Code of Civil Procedure (2000) requires appropriate security to compensate for probable damages resulting from the enforcement of a temporary order, without limiting the type of security to cash. The type of security is left to the discretion of the issuing court and is determined based on the real value of the property in dispute and the need to compensate for potential damages.

Moreover, probable damages are not only applied in the context of provisional relief but also in certain enforcement processes, such as the suspension of registration enforcement. Under the regulations governing the enforcement of enforceable official documents, the deposit of probable damages is required when objecting to enforcement actions (Article 14 of the 2008 Regulation on Enforcement of Official Documents). This conceptual expansion indicates that probable damages, as a protective mechanism, lie at the intersection of civil procedure and registration enforcement. The legislator emphasizes their preventive function in both domains.

A key discussion in examining probable damages involves comparing them to similar institutions, such as collateral and provisional relief. In Iranian law, provisional relief (*ta'min-e khahasteh*) serves as a tool to preserve the current state of the opposing party until a final judgment is issued. Through this mechanism, the claimant may temporarily request the seizure of the defendant's property by providing a financial guarantee (collateral), so that if judgment is issued in their favor, the seized asset will be available for compensation or enforcement. Unlike provisional relief, which is specifically used to preserve assets and prevent their dissipation, probable damages are applied in limited situations where there is a risk of harm to the opposing party, usually in the context of temporary legal measures. In other words, provisional relief seeks to preserve assets, while probable damages are designed to compensate for future, uncertain harm (Katouzian, 2014, p. 217).

Additionally, collateral serves as a financial guarantee primarily aimed at ensuring enforcement of the final judgment or payment of a debt.

Collateral ensures that if the judgment debtor refuses to comply, the claimant may recover their loss from the secured amount. In contrast, probable damages are typically a temporary requirement intended solely to protect the rights of both parties during the course of litigation and do not constitute a definitive obligation to compensate for the final judgment's outcome. This fundamental distinction in the nature and purpose of each institution significantly affects how they are applied in judicial practice and legal documents.

In fact, probable damages primarily serve a preventive function in temporary legal proceedings, aiming to avoid the violation of either party's rights during litigation, rather than serving as an instrument for enforcement. In contrast, collateral and provisional relief are primarily intended to ensure the enforcement of final judgments and the protection of parties' rights at the later stages of litigation. These differences are reflected in both legislation and judicial practice, significantly influencing the acceptance and implementation of orders concerning provisional relief and collateral (Zarei et al., 2021, pp. 1–16).

In practice, despite the substantive differences between these institutions, courts often apply them through similar procedural mechanisms across various cases, indicating a conceptual overlap and their use in analogous situations. However, it is important to note that although the legislator has introduced these mechanisms to safeguard the parties' rights, the way they are applied in different courts and cases—shaped by judges' discretion and divergent interpretations of legal concepts—has sometimes led to problems, including the infringement of individuals' rights. While provisional relief and collateral directly and definitively affect the opposing party's property, probable damages remain at the level of prediction and temporary precaution.

In analyzing the doctrine of probable damages, it is also necessary to explore its jurisprudential (*fiqh*-based) and foundational underpinnings within Iranian law. One of the most important jurisprudential principles invoked in this context is the principle of *La Zarar* ("no harm"). This foundational rule holds that no one may unjustifiably and without cause inflict harm upon another (Sajjadifar, 2023, p. 47). Regarding probable damages, this principle serves as a guiding rule justifying the requirement to deposit security in order to prevent possible harm to one of the parties in litigation. In other words, the claimant's request for provisional relief accompanied by the deposit of probable damages



functions as a precautionary measure to anticipate and financially mitigate any harm caused by an infringement of the other party's rights.

The principle of equity (*insaf*)—a core element in private law, especially in civil disputes—is also of significant importance in analyzing probable damages. This principle requires that neither party abuses their procedural position and that the exercise of legal rights be conducted in accordance with justice and fairness. Within this framework, requiring the deposit of probable damages as a precondition for certain legal actions—especially in enforcement proceedings—serves to ensure fairness in litigation and to prevent outcomes that could lead to unjust deprivation of rights. Such a requirement is particularly important when there is an imbalance in the financial capabilities of the litigants, as it can help prevent the exploitation of the weaker party's rights.

Another fundamental principle related to the institution of probable damages is the prohibition against abuse of rights. This jurisprudential and legal principle is particularly relevant when one party initiates litigation with the intent to deceive or extract unfair advantages from the legal process (Rahpeyk, 2003, p. 239). In such cases, the requirement to deposit probable damages acts as a safeguard against the misuse of procedural tools, playing a crucial role in maintaining balance in judicial proceedings. This is especially important in enforcement-related disputes, where individuals or companies may file baseless objections with the aim of delaying enforcement and exerting pressure on the opposing party. Here, requiring probable damages functions as a tool to counter such abuses.

Given the structure and special importance of these jurisprudential and legal foundations, it can be concluded that the institution of probable damages is justifiable not only from a legal standpoint but also from a jurisprudential perspective. Accordingly, it can be regarded as one of the vital instruments in both judicial and quasi-judicial enforcement proceedings.

## **Section Two: Order for Suspension of Registration Enforcement Procedures in Iranian Law**

In Iranian law, the order to suspend registration enforcement proceedings has gained a solid legal foundation, especially following the enactment of Article 5 of the 1943 Amendment Law to Certain Provisions of the Registration Law and the Law of Notary Public Offices. Since its ratification, this provision has played a critical role in safeguarding

individuals' rights during the enforcement of official documents. Under this Article, the Civil Court of General Jurisdiction is designated as the competent authority to examine requests for suspension of registration enforcement. If the applicant can present strong evidence indicating the risk of irreparable harm, the court may grant the suspension request (Daryaei & Karbalaee Aghazadeh, 2020, p. 42).

The significance of this article becomes more evident considering that, in registration enforcement procedures, there is no direct judicial oversight of executive decisions. Rather, these processes are executed based on the presumed validity of officially registered documents. Article 5 thus serves as a protective instrument for complainants, albeit with interpretative limitations. One major challenge in its implementation lies in the ambiguity of the term "adequate security". The legislator did not clearly define this phrase, and some courts—mistakenly—have construed cash security as the only acceptable form to halt enforcement proceedings. Consequently, judges have occasionally made unilateral decisions solely based on the applicant's financial situation, a practice that can result in inequity, particularly in cases involving financially disadvantaged claimants (Mousavi & Mousavi, 2012, pp. 217–231).

Some legal scholars, such as Ansari and Mirghafouri (2012), advocate for a broader interpretation of "adequate security", specifically suggesting that the seized assets themselves be used as collateral for the probable damages. This proposal seems justified given the complexity of suspension requests and the limited access some applicants may have to liquid assets. In the legal systems of several developed countries, this approach is recognized as an effective tool to ensure executive justice, and it is argued that the Iranian legal system should likewise incorporate such interpretations into judicial practice.

However, opposing opinions exist, emphasizing the need to preserve the stability and credibility of the registration enforcement system. Certain judges argue that allowing seized assets to serve as security might indirectly compromise the enforcement process, especially when such assets are insufficient in value, which may cause additional legal complications (Ansari & Mirghafouri, 2012, pp. 1–18).

Within the Iranian legal framework, the Civil Court of General Jurisdiction is explicitly designated as the competent authority to issue

orders to suspend registration enforcement, under Article 5 of the aforementioned amendment. This judicial exclusivity ensures that individuals can legally and substantively benefit from the protections offered by such suspension orders (Mousavi & Mousavi, 2012, pp. 217–231). The choice of the general civil court as the competent authority serves to streamline litigation procedures and minimize undue legal interference.

It is also important to highlight the distinction between the civil courts of general jurisdiction and other specialized courts, such as commercial courts or arbitral tribunals. In general civil courts, judges tend to approach enforcement matters from a broader, public-interest perspective, rather than from a sector-specific viewpoint. This approach may contribute to reducing corruption and enhancing fairness in judicial decisions (Ansari & Mirghafouri, 2012, pp. 1–18). On the other hand, referring such requests to commercial courts may lead to interpretations influenced by commercial experience, rather than a comprehensive and impartial view of the issue at hand.

Another advantage of assigning the Civil Court of General Jurisdiction as the competent authority is the possibility of holding hearings swiftly and efficiently. Given that these courts typically handle a lower caseload compared to specialized courts, applicants are able to pursue their requests more rapidly, which can positively influence the overall litigation process and promote procedural justice (Pourostad & Sa'adat, 2017, p. 67).

Under Iranian law, the acceptance of a request to suspend the enforcement of registration proceedings is contingent upon demonstrating the existence of probable damage. One of the most essential conditions in this regard is the proof of irreparable harm to the applicant if the enforcement continues. Irreparable harm refers to damage that cannot be compensated through conventional legal remedies, such as monetary damages (Gharebaghi, 2016, p. 54). Therefore, if an individual fails to demonstrate this type of damage, their request for suspension will not be granted.

The concept of probable damage plays a crucial role in the issuance of suspension orders, especially from both judicial and Islamic jurisprudential perspectives. In Iranian law, general principles such as the rule of “La Zarar” (no harm) and the principle of equity hold significant weight, particularly in quasi-judicial proceedings. For example, in cases where financial damage occurs and no legal compensation is available, judges may rely on these principles to justify a suspension of

enforcement (Mafi & Ghamilouei, 2019, pp. 267–293). Nonetheless, in some cases, judges fail to carefully assess probable damage, leading to unjustified suspension orders and unnecessary complications. In situations where the claimant cannot establish irreparable harm, certain judges have exercised excessive discretion, which may result in unfairness and procedural bias.

In some courts—especially those dealing with registration matters—a strict approach is adopted when it comes to accepting financial security for probable damage. Such rigid practices, particularly in cases where applicants seek to suspend registration enforcement, have caused significant difficulties. These courts often require applicants to provide cash deposits as security, which can be impractical or impossible for individuals with limited financial means. This rigid approach not only undermines executive justice but also violates the principle of equal access to legal remedies (Bahrami & Mostafa, 2022, pp. 29–52).

On the other hand, comparative legal studies show that in many advanced legal systems, the acceptance of non-cash securities, such as seized assets, as probable damage guarantees is recognized. This practice aims to prevent the violation of individual rights and to facilitate access to justice. In such systems, there is no absolute requirement for cash deposits, and individuals may rely on other assets as sufficient guarantees (Pourostad & Sa'adat, 2017, p. 67).

Given the challenges posed by overly strict judicial practices in certain Iranian courts, it is recommended that non-cash securities, especially seized assets, be accepted as probable damage guarantees within Iranian judicial procedure. Such reform could streamline enforcement proceedings, preserve litigants' rights, and prevent unjust deprivation of access to legal protections.

## **Chapter Two: Feasibility of Securing Probable Damages from the Seized Property**

In Chapter Two, the feasibility of depositing probable damages from seized assets has been examined within the framework of legal and jurisprudential principles, as well as prevailing judicial practices. In Section One, a legal and Islamic jurisprudential analysis of the sufficiency of seized assets for the purpose of securing probable damages has been conducted, emphasizing this possibility by reference to the principle of asset value sufficiency and drawing upon jurisprudential maxims such as the Rule of Possession (Qa'idat al-Yad), Dominion (Taslit), and No Harm (La Zarar). Furthermore, analogous practices in institutions such as asset freezing (Ta'min Khwasteh) and collateral requirements, along with the advisory opinions of the Legal Department in cases involving instruments such as checks and real estate, have been analyzed. Section Two critiques the courts' requirement of cash deposit for securing probable damages and discusses its detrimental effects, including the denial of effective defense, the economic discrimination in access to justice, delays in proceedings, and violation of the principle of proportionality. This is illustrated through a case study on the judicial practice of Branch 14 of the General Civil Court of Karaj. Section Three presents proposed solutions, including the necessity for a broad interpretation of the term "deposit" in the relevant laws, the possibility of supplementary seizure of the existing assets, a recommendation for the Judiciary to issue a uniform directive, and the obligation of courts to assess the sufficiency of seized assets before demanding cash payments. Finally, Section Four delves deeper into the discussion by analyzing the conflict between registration rules and principles of civil procedure, posing the question of whether civil procedure rules, through broad interpretation, may be applicable to registration enforcement processes. In this regard, the principle of interpretive alignment with the goal of justice, as well as the possibility of invoking unifying judicial precedents or doctrines such as legislative gap-filling based on shared legal principles, has also been considered.

### **Section One: Legal and Jurisprudential Analysis of the Sufficiency of Seized Property for Securing Probable Damages**

In the Iranian legal system, the principle of the sufficiency of seized property refers to the adequacy of the seized asset's value to guarantee

the satisfaction of the claimed debt or damages (Shams, 1403 [2024], p. 45). This principle is emphasized as a fundamental pillar of judgment enforcement and asset attachment procedures, and it is invoked to maintain a balance between the rights of the parties to a dispute (Pourostad & Sa'adat, 1396 [2017], p. 87; Mousavi & Mousavi, 1391 [2012], p. 123).

According to the Code of Civil Procedure, a claimant may request the seizure of the defendant's assets up to the value of the claim, and the court is obligated to determine the value of such assets through expert appraisal. Consequently, if the value of the seized property is equal to or exceeds the amount of the claim, the debt is considered secured; otherwise, supplementary measures must be taken. In practice, following the attachment of property, its market value must be assessed by a licensed expert to determine whether the security is sufficient. Should the asset's value fall short of the claimed amount, the legislator and judicial practice allow for supplementary enforcement actions. Specifically, where it becomes evident that the seized property is insufficient to cover the debt, the claimant may file an additional request for attachment. Pursuant to Article 105 of the Code of Civil Procedure, the court may issue a new order for the seizure of further assets (Shams, 1403 [2024], p. 54). Some scholars assert that any deficiency in the value of the seized assets does not preclude the creditor's right to pursue the claim, and that further attachments may be pursued until full satisfaction of the debt is achieved (Pourostad & Sa'adat, 1396 [2017], p. 135; Qarabaghi, 1395 [2016], p. 59).

Conversely, where the value of the seized property exceeds the required amount, the principle of sufficiency dictates that the surplus be released and returned to the owner. In accordance with the No Harm Rule (Qa'idat La Zarar), excessive seizure beyond the actual debt constitutes an unjustified encroachment on the debtor's rights and is inconsistent with equity (Adabi, 1400 [2021], p. 200; Katouzian, 1393 [2014], p. 150). Based on this, the Civil Procedure Code provides that if the sale of the seized property yields an amount greater than the creditor's entitlement, the surplus must be released from attachment and returned to the debtor. In other words, the continued attachment of surplus assets, under ordinary circumstances, contradicts the spirit of legal justice, and both creditor and debtor rights necessitate the release of such excess (Ansari & Mirghafouri, 1391 [2012], p. 56).

Another critical factor in interpreting and applying the principle of sufficiency is the potential fluctuation in asset values over time. In cases where the value of the seized property drops significantly due to market volatility or inflation, the court may order additional attachment or a replacement of collateral to preserve the value of the underlying debt (Mousavi & Mousavi, 1391 [2012], p. 114). Conversely, if the value of the seized property rises substantially, only the portion necessary to secure the debt shall remain under attachment, and the excess shall be released (Katouzian, 1393 [2014], p. 165). Thus, when market or external conditions lead to significant shifts in collateral value, the enforcement of the principle of sufficiency requires judicial reassessment and possible corrective action.

It may be concluded that the principle of the sufficiency of seized assets—both from the standpoint of legal regulation and jurisprudential reasoning—serves as a guarantee of fair and equitable enforcement. Under this principle, any judicial action regarding the seizure or liquidation of assets must be conducted in such a way that neither excessive security is imposed nor the debtor's rights are unjustly infringed (Ansari & Mirghafouri, 1391 [2012], p. 112). In essence, the imperative of this principle is to maintain a proportionate and just equilibrium in the mechanism of securing damages, thereby upholding the rights of both parties during the enforcement process.

In Islamic jurisprudence, principles such as the *Qa'idat al-Yad* (principle of possession) are grounded in the legitimacy of a person's legal holding of property. In other words, an individual who lawfully possesses a property or a right is presumed to be its rightful owner in the absence of a valid contrary proof. From this perspective, the judicial seizure of a defendant's property is interpreted as the creditor having obtained legitimate possession (*yad mashrū'*) over said asset up to the amount of the debt (Ansari & Mirghafouri, 1391 [2012], p. 85). In other words, once an attachment order is issued, the creditor's right to benefit from the asset becomes consolidated, justifiable under the rubric of legal possession. This jurisprudential interpretation affirms that the seizure of the debtor's property rests partly on the debtor's own legal responsibility and derives its legitimacy from *shar'ī* authority.

The principle of authority (*qa'idat al-tasallut*) further permits the creditor to utilize the debtor's property until full satisfaction of the debt is achieved. According to this principle, when a

debtor lawfully transfers property to the court or creditor—for instance, as collateral—he effectively permits the creditor to act in enforcement of their right. That is, by legally delivering the property as collateral, the debtor voluntarily grants the creditor *shar'ī* authority of disposal over the asset to the extent of the debt (Mafi & Ghamilouei, 1398 [2019], p. 45). Accordingly, the legal attachment of property without the debtor's explicit consent can be justified within the framework of *shar'ī* obligations, so long as it remains strictly proportional to the amount of debt and does not exceed the scope of legitimate disposal.

From a *fiqhī* perspective, this degree of *tasallut* (control) reflects the debtor's obligation to settle his liability and operates within the bounds of what is deemed *wājib* (obligatory). The principle of no-harm (*qa'idat lā ḍarar*) also plays a pivotal role in this context, holding that any attachment which imposes unnecessary hardship upon the debtor is unlawful. As noted by Adabi (1400 [2021]), the excessive seizure of assets beyond the amount of debt—absent legitimate reason—inflicts undue harm on the owner and must be terminated following debt settlement. Similarly, if the attachment is insufficient, depriving the creditor of effective recourse, such an inadequacy is also deemed impermissible under *lā ḍarar*, as it causes compensable harm to the creditor. This deficiency must be remedied through attachment of additional assets or alternate measures (Adabi, 1400 [2021], p. 179).

Overall, the *lā ḍarar* doctrine mandates that judicial discretion in asset seizure be confined strictly to what is necessary for the protection of a legitimate right, and no more. Furthermore, the principles of equity and fairness in *fiqh*—embodied in the concept of balanced rights (*ta'ādul al-ḥuqūq*)—require that neither party be unfairly harmed. According to Zarei et al. (1400 [2021]), disproportionate attachment of property in relation to the debt contradicts the spirit of Islamic justice. For this reason, the principle of asset sufficiency is confirmed within the juristic framework as a standard for resolving conflicting interests. This *fiqh*-based view necessitates equitable enforcement of seizure: neither may the creditor unjustly benefit from surplus value, nor should the debtor bear a burden exceeding the actual debt (Sajjadifar, 1402 [2023], p. 104).

These foundational doctrines collectively affirm that attachment of property must only continue to the extent necessary and serve solely to uphold the enforcement of legitimate claims. Moreover, some



contemporary legal scholars have emphasized the importance of interpretive flexibility in applying jurisprudential rules under exigent circumstances. Daryaei and Karbalaei (1399 [2020]) argue that in situations where rigid application of the law leads to the denial of justice, *fiqhī* principles themselves dictate that enforcement be modified accordingly. These modern legal readings support the conclusion that the principle of sufficiency is well-grounded in Islamic jurisprudence and may function as a legitimate guarantor of conflicting rights.

In general, the aforementioned doctrines ensure that the principle of sufficiency of seized assets is firmly embedded in Islamic legal theory. These teachings emphasize the need for balance between creditor and debtor interests, serving as an ethical and jurisprudential underpinning for civil legal norms. On this basis, the legitimacy of property attachment—conditional upon proportionality and fairness—has an unequivocal foundation in both *fiqh* and statutory law.

The principle of sufficiency is not limited to asset attachment but extends to other mechanisms of securing legal rights. One example is the provisional seizure (*ta'min-e khāwasteh*) in civil litigation. Under Article 105 of the Code of Civil Procedure, the court may, upon the claimant's request, seize the defendant's assets up to the claimed amount. Thus, the value of attached property must equal the amount of the claim, and in case of deficiency, the claimant may pursue additional seizures (Pourostad & Sa'adat, 1396 [2017], p. 102).

Another relevant area is the relation between the principle of sufficiency and interim injunctions (*dastūr-e movaqqat*). Pursuant to Article 123 of the Civil Procedure Code, the court is required to take adequate security from the claimant before issuing an injunction. That is, the enforcement officer must obtain a deposit equivalent to the anticipated damages. Since the aim of an interim injunction is to preserve the status quo until final judgment, the deposit must be proportionate to the claimed amount (Bahrami & Alsan, 1401 [2022], p. 65). Any excess must be returned to the claimant. Similarly, the principle manifests in collateral and contractual obligations. For instance, Article 269 of the Civil Code explicitly states that guarantees are valid only to the extent of the principal debt. Therefore, in civil or commercial collateral, any value beyond the debt is not legally enforceable (Katouzian, 1393 [2014], p. 30). Conversely, if the collateral is initially insufficient, the creditor may

continue ordinary proceedings to recover the outstanding amount (Mousavi & Mousavi, 1391 [2012], p. 127).

Accordingly, across all these mechanisms, the proportionality between the guarantee and the obligation plays a central role, and any lack of such balance may be subject to judicial adjustment or restitution. Furthermore, Iran's Commercial Law also upholds this principle. For example, Bahrami and Alsan (1401 [2022]) have stressed that in check recovery litigation, the seizure of property in excess of the check amount is impermissible; any excess must be released and returned to its rightful owner. This pragmatic legal view underscores the universality of the principle of sufficiency across all forms of judicial security measures, including within the modern context of commercial obligations and financial law.

In conclusion to this section, it can be stated that multiple practices in the domains of securing the claim (*ta'min-e khāwasteh*), interim injunctions (*dastūr-e movaqqat*), collateral (*vathīqeh*), and contractual guarantees all converge upon a single principle: the ultimate security for an obligation must not exceed the principal debt. This conclusion, consistent with the general jurisprudential principles of justice and balance, is prominently reflected in various laws and regulations, indicating that the judiciary itself deems the realization of this standard essential.

One of the important sources for judicial interpretation regarding security matters is the consultative opinions of the Legal Department of the Judiciary (*Edāre-ye Koll-e Hoqūqī-ye Qove-ye Qadā'eh*), which facilitate judges' orientation in complex cases. In one such consultative opinion concerning the enforcement of a check payment via property attachment, it is stated that the seizure of an entire property whose value significantly exceeds the amount of the check is not permissible. For instance, the opinion explains that if ownership of a property valued at 100 million tomans is presented as collateral for a 50 million toman check, the complete attachment of the property would guarantee double the claim and thus contradict justice. Consequently, it is ruled that following an expert appraisal, only the amount equivalent to the check should be recovered from the property's sale, and the surplus value must be released and returned to the owner. The practical method of implementing this opinion is that an official expert first determines the current market value of the property. Then, the check amount (or the secured damages) is deducted from the property's value, and the remainder is returned to

the owner. In this way, execution of the judgment is limited strictly to the debt amount, preventing excessive seizure. This procedure aligns with the principle of “authority and lawful possession (tasallut wa yad mashrū’),” because ultimately the core asset remains under the debtor’s control and the creditor’s right of use is limited to the debt amount (Adabi, 1400 [2021], p. 210).

This legal viewpoint also conforms with the new Check Law (enacted 2003 and amended 2018), which emphasizes that claiming the amount of a check should not entail excessive utilization of the drawer’s assets. Bahrami and Alsan (1401 [2022]) also stress that in check recovery, only the amount specified in the check is enforceable, and seizure of excess assets contravenes the legislator’s intent. On the other hand, this opinion alleviates concerns about potential infringement of the debtor’s rights and is consistent with the *lā ɗarar* principle, as only a portion of the property is attached proportional to the debt, and the remainder is released without harm. In other words, the consultative opinion of the Judiciary’s Legal Department explicitly underscores that the principle of “proportionality” in asset seizure must be observed, and attachment beyond the claimant’s demand lacks authorization. Therefore, the examination of this consultative opinion exemplifies that even in specific issues such as check recovery through property seizure, the principle of sufficiency of attached assets holds a clear and incontrovertible foundation. This viewpoint, consistent with the other discussions presented in this analysis, affirms that in cases of dispute, one must refer back to jurisprudential and legal sources to prevent infringement upon the rights of any party.

## **Section Two: Critique of the Requirement for Cash Deposit of Probable Damages and Its Legal Consequences**

One of the direct consequences of the obligation to pay cash damages at the preliminary stages of litigation is the deprivation of the defendant’s possibility of effective defense. This obligation, which usually arises in the form of payment of probable damages or a cash deposit to exercise certain judicial rights (such as appealing a judgment or requesting reconsideration), in some cases becomes a fundamental barrier to the enforcement of rights (Shams, 1403 [2024], p. 122). While Article 34 of the Constitution of the Islamic Republic of Iran guarantees the right of access to courts for all, the obligation to pay cash may constitute an implicit prohibition from entering the defense process. In cases where the

defendant or appellant lacks the financial capacity to promptly pay cash damages, they are effectively prevented from exercising their rights. This situation is contrary to the philosophy of a fair trial. According to Mafi and Ghamiloui (1398 [2019]), the judiciary cannot be open only to the wealthy but must also provide the possibility of self-defense for those lacking financial means. Therefore, if the judicial system, by imposing financial requirements, prevents the accused or defendant from defending themselves in court, a clear violation of the principles of fair trial has occurred. From a jurisprudential perspective as well, the principle of justice in trial requires that a person should not be deprived of their legitimate defense due to financial poverty. The rule “*lā yaqtā’ al-ḥaqq bi-al-ta’adhur*” (rights are not extinguished due to inability) implies that if one is unable to perform an act, the right is not lost (Sajadi-Far, 1402 [2023], p. 87). Therefore, if defense of a right is conditional upon payment of an amount and the debtor is unable to pay, both reason and Sharia deem such an obligation illogical. This issue is also reflected in the principles underlying the rule of “*raf’ al-ḥaraj*” (removal of hardship), since imposing a financial obligation in cases of incapacity results in intolerable hardship upon the person. Another point is that in some special cases, the defendant must necessarily deposit probable damages or a deposit in the judiciary’s fund in order to appeal the issued judgment. In practice, it has been observed that inability to pay this amount leads to the finality of an unjust judgment and the loss of the opportunity for appeal (Ansari & Mirghafouri, 1391 [2012], p. 109). Such cases contradict the philosophy of establishing a two-tier trial system, and even the Administrative Justice Court’s practice considers such conditions legally ineffective in similar cases. Consequently, it can be asserted that the obligation to pay cash damages, especially without examining the financial status of the litigant, in many cases constitutes an obstacle to the effective administration of justice. While fundamental principles of procedure, such as impartiality, equality of parties, and the right to defense, must be prioritized by legislators and judges, such an obligation may result in violation of fundamental defense rights (Bahrami & Alsan, 1401 [2022], p. 78).

The obligation to pay cash damages or financial guarantees at the outset of judicial processes practically results in a form of economic discrimination between solvent individuals and those without financial means in exercising

procedural rights. Although such obligation is ostensibly justified by securing the opposing party's rights or preventing frivolous claims, in practice it may lead to the deprivation of low-income groups from access to justice. This phenomenon is contrary to the fundamental principles of the judicial system, including the principle of equality before the law and courts (Mafi & Ghamiloui, 1398 [2019], p. 91). According to Article 20 of the Constitution, all are equal before the law and equally entitled to legal protection. Nevertheless, when the condition for exercising procedural rights, such as filing a counterclaim or appeal, is the payment of a substantial amount, individuals lacking financial capacity are practically deprived of these rights. According to Zarei et al. (1400 [2021]), such circumstances transform judicial justice into a commodity accessible only to affluent groups, which is incompatible with the spirit of justice in Islamic law and the Islamic Republic's system.

From a jurisprudential viewpoint as well, the rule of *tasallut* (control or authority), based on respect for individuals' financial rights, must be balanced with principles such as *raf' al-haraj* and *la darar* (no harm). Imposing a financial burden without consideration of individuals' actual circumstances contradicts this balance. Numerous recent Shiite fatwas emphasize the necessity of considering individuals' conditions in transactions and lawsuits, as bearing extra-legal financial duties contradicts rational foundations and reason-based rules (Sajadi-Far, 1402 [2023], p. 94).

Furthermore, comparative experiences indicate that in advanced legal systems, mechanisms exist to grant financial exemptions to indigent individuals. In the French judiciary system, based on the principle of universal access to justice (*accès universel à la justice*), the state is obligated in certain cases to bear court costs for indigent persons. Similarly, in English law under the Legal Aid system, financial assistance for litigation costs is provided to eligible individuals to enable exercise of their right to defense and complaint. In contrast, the absence of such protective mechanisms in the Iranian legal system, especially at the stage of cash security deposit, has practically created a class barrier to accessing justice. More precisely, the security rule has become a tool for economic screening of litigants, occasionally disregarding its objective of guaranteeing the just execution of judgments (Daryaei & Karbala'i-Aghazadeh, 1399 [2020], p. 77). Additionally, some judicial practices have unfortunately reinforced this economic discrimination. In cases

filed before certain court branches, even when plaintiffs or appellants have officially documented their lack of financial capacity, the obligation to pay damages or deposit has not been waived, resulting in dismissal of their claim. This pattern, especially in general courts of major cities such as Tehran, Karaj, and Mashhad, has precedents. Consequently, continuation of such obligations without protective balance has become a major corrupt consequence in the judicial system, which not only violates social justice but also negatively impacts the legitimacy of the judiciary. It is recommended that the legislator reconsider provisions related to security deposits and devise solutions to relieve or mitigate financial burdens on low-income groups.

One of the consequences of mandating cash payment of probable damages before examining the merits of the case is unjustified delay in judicial proceedings; a delay that is in stark conflict with the spirit of civil procedure law and its fundamental principles, including the principle of proportionality. According to proportionality, procedural instruments must be balanced with the intended goals; this means that to prevent frivolous claims or protect defendants' rights, claimants cannot be confronted with conditions that effectively suspend their right of access to justice (Pourastad & Saadat, 1396 [2017], p. 125). In operational processes, collecting cash security without regard to the case's circumstances or claimant's financial ability may prolong proceedings, since the case remains at the admission stage until the required amount is secured. This suspension has, in numerous instances, resulted in loss of urgency or changes in the legal status of parties, which is contrary to justice implementation requirements (Shams, 1403 [2024], p. 254). For example, in cases involving interim injunctions or requests to halt enforcement actions, such delays effectively negate the purpose of expedited proceedings. From a jurisprudential perspective, the principle of non-suspension of rights, a well-established rule in Ja'fari jurisprudence, requires that any procedural condition should accelerate, not suspend or disable, rights enforcement. Faqihs such as *Shāhib Jawāhir* have emphasized that no financial excuse should justify ignoring legitimate rights (Najafi, *Jawahir al-Kalam*, vol. 38, p. 45). Correspondingly, doctrinal opinions confirm that proportionality, as a fundamental civil procedure principle, necessitates case-by-case review before imposing security. For instance, Mafi and Ghamiloui (1398 [2019]) assert that the financial



security obligation must be proportionate to actual risks stemming from the dispute, not mere hypothetical or unfounded possibilities; otherwise, procedural injustice is inevitable. Alongside theoretical effects, court practices confirm this issue. In a case before Branch 27 of Tehran General Court, the plaintiff was prevented from continuing due to inability to secure the amount ordered by the court. Examination of the case showed urgency and possibility of rights violation; nonetheless, the court suspended proceedings until security was provided. The result was a default judgment against the plaintiff, entailing irreparable consequences.

From a comparative law perspective, advanced judicial systems such as those in England, Germany, and France permit exemptions or reductions in security where delays would cause rights violations and even issue interim orders without security. This approach prioritizes the principle of protection from immediate harm over the security rule. In summary, mandating cash damages or financial guarantees before entering the merits, without proportionality and urgency assessment, not only violates proportionality but also causes delays and loss of legitimate interests of litigants. Therefore, it is essential that legislators, inspired by jurisprudential principles and comparative legal doctrine, redefine the concept of proportionality and limit mandatory security cases in procedural law.

### **Section Three: Proposed Solutions within the Framework of Legal Principles and Judicial Rationality**

One of the significant challenges in the process of securing claims (provisional remedies) is the requirement for the plaintiff to deposit a cash bond for potential damages even in cases where the defendant's assets have already been seized and their value may be sufficient to compensate for possible damages. This approach can result in imposing an additional financial burden on the plaintiff and cause delays in the adjudication of the dispute. Pursuant to Article 108 of the Civil Procedure Code, the court may condition the issuance of a provisional remedy order on the deposit of potential damages. However, the legislator has not explicitly mandated the assessment of the sufficiency of the seized assets as a substitute for the cash deposit. Nevertheless, based on general legal and jurisprudential principles, it can be inferred that if there are seized assets with sufficient value, requiring a cash deposit may be unnecessary and even contrary to justice. From a jurisprudential perspective, the rule of "no harm" (*lā ḍarar*) and the principle of "control" (*taslīt*) over property dictate that no harm or loss should be imposed on individuals without justified cause. If the seized assets can compensate for potential damages, imposing

an additional cash deposit may constitute unjust harm. Additionally, the principle of proportionality in civil procedure mandates that provisional measures must be proportional to the intended purpose and avoid imposing excessive costs. In judicial practice, some courts, relying on the aforementioned principles, have refrained from demanding a cash bond from the plaintiff where the value of the seized assets was adequate. This approach can serve as a model for other courts to prevent the imposition of unnecessary expenses on the parties to the dispute. In comparative law, advanced judicial systems such as those of France and England do not require the plaintiff to deposit cash when seized assets have sufficient value to cover potential damages. This approach is grounded in the principles of justice and efficiency within the judicial process and may serve as an appropriate model for reforming the existing procedures in the Iranian legal system. Consequently, it is recommended that the legislator amend Article 108 of the Civil Procedure Code to explicitly require the assessment of the sufficiency of seized assets as a substitute for the cash deposit of potential damages. Furthermore, the judiciary may issue a directive obligating courts to evaluate the value of seized assets before demanding a cash deposit to prevent imposing unnecessary financial burdens on the plaintiff.

### **Section Four: Analysis of the Conflict between Registration Rules and the Principles of Civil Procedure**

The processes of registration of documents and real estate in Iran are conducted according to specific laws and regulations, which may sometimes conflict with the principles of the Civil Procedure Code. For instance, in cases where there is a conflict between ownership documents, the Registration Supervisory Board is recognized as the competent authority to resolve such disputes. However, in some instances, courts also address these conflicts, which may result in jurisdictional overlaps and disregard for the principles of civil procedure (Judgment No. 9409970908200251, 01/31/2016).

On the other hand, the Supreme Court's General Board ruling No. 845 emphasizes that in cases of significant violations during the auction process, courts are obligated to adjudicate lawsuits filed by interested parties. This ruling highlights the importance of applying the principles of civil procedure in registration and enforcement processes (Supreme Court General Board Ruling No. 845, 10/23/1977).

The principle of "interpretation consistent with the purpose of justice" requires that the interpretation of laws and regulations should be made in a manner that achieves justice. In cases of conflict between registration rules and civil procedure principles, interpretation must be conducted so that individuals' rights are preserved and justice is upheld. For example, when conflicting ownership documents exist, the interpretation of laws should ensure the proper



determination of ownership rights and prevent the infringement of such rights.

In cases where explicit laws or regulations do not exist to resolve conflicts between registration rules and civil procedure principles, the use of general policies such as the Supreme Court's general board rulings or doctrines like "filling legislative gaps through common principles" is permissible. These doctrines empower courts to rely on general legal and justice principles to fill legislative voids and render decisions aligned with justice-oriented objectives. For instance, in General Board Ruling No. 845, the Supreme Court stresses that courts must consider claims related to effective violations in auction procedures, even if there are no explicit laws on the matter (Supreme Court General Board Ruling No. 845, 10/23/1977).

The conflict between registration rules and the principles of civil procedure can lead to disregard of individuals' rights and the failure to realize justice. To resolve these conflicts, the principles of civil procedure must be broadly applied within registration processes, and the interpretation of laws should be aligned with the purpose of justice. Additionally, where legislative gaps exist, reliance on general board rulings or doctrines such as "filling legislative gaps through common principles" can help render decisions that protect individuals' rights and uphold justice.

### **Chapter Three: Comparative Study**

In Chapter Three, a comparative approach to the issue of securing potential damages from seized assets is addressed. In the first section, existing practices in the legal systems of France and England are examined, and the status of analogous concepts in securing potential damages is analyzed. In this context, methods of compensation or securing damages without requiring cash payment—such as institutions like security for costs in English law, which permit securing from seized assets—are studied. Specific judicial examples from these legal systems demonstrate that, from a comparative perspective, attention to the practical function of security and effective protection of the parties supersedes a merely formalistic approach to the concept of deposit. In the second section, a comparative analysis with Iranian law is conducted, examining similarities and differences regarding the adequacy criteria for seized assets. Additionally, the degree of judicial flexibility and the judge's role in assessing the possibility of securing damages without mandating cash payment are clarified. Finally, the potential to utilize comparative experiences for reforming domestic practices and enhancing the efficiency of mechanisms protecting parties' rights in the process of suspending enforcement of registration operations is analyzed.

### **Section One: Existing Practices in the Legal Systems of France and England**

In English law, security for costs is a procedural tool that allows the court to require the plaintiff to provide a guarantee for the payment of legal costs, in cases where there is a risk that the plaintiff may be unable to cover these costs if the claim fails. This security can take the form of a cash deposit, a bank guarantee, or collateral from available assets. For example, courts may accept bank guarantees or undertakings from reputable companies as security (Kambanou & Sakao, 2020, p. 155).

In French law, the concept of cautionnement serves as a type of security for potential damages. This guarantee may be provided through bank guarantees, real estate collateral, or other forms of non-cash security. Article 2288 of the French Civil Code addresses this issue, allowing the use of non-cash guarantees (II & des Belges, 2008).

Where the plaintiff is unable to provide a cash payment, courts may accept collateral from the plaintiff's existing assets as security. This approach is especially applied when the plaintiff possesses seizable assets.

The use of non-cash securities such as bank guarantees or real estate collateral is common in French law. Courts, depending on the specific circumstances of each case, may require the plaintiff to provide such guarantees, particularly when the plaintiff lacks the capacity to pay cash or has seizable assets (Kambanou & Sakao, 2020, p. 155).

In cases like *Cukurova Finance International Ltd v Alfa Telecom Turkey Ltd*, courts have examined the possibility of using non-cash guarantees to secure potential damages. In this case, the court held that non-cash guarantees could, in some circumstances, be more appropriate than cash payments.

Overall, in both the French and English legal systems, security for potential damages is approached with a duty-oriented and flexible perspective. Courts can require non-cash guarantees depending on case-specific factors. This approach could serve as a model for the Iranian legal system to prevent unnecessary financial burdens on plaintiffs and promote justice in the judicial process.

Considering the existing practices in France and England, it can be concluded that security for potential damages should not be strictly limited to mandatory cash deposits. Rather, the possibility of providing non-cash guarantees such as bank guarantees or real estate collateral should be

allowed. This model could be adopted in Iran to avoid imposing unnecessary costs on plaintiffs and to realize fairness in judicial proceedings.

## **Section Two: Comparative Analysis with Iranian Law**

In this section, a comparative analysis of security for potential damages in Iranian law was conducted, focusing on three main axes: the criterion for sufficiency of the seized asset, the judge's role in the security process, and the possibility of utilizing comparative experiences to reform domestic practices.

In Iranian law, security for potential damages is provided to prevent the infringement of the parties' rights. Pursuant to Article 108 of the Civil Procedure Code, the plaintiff may request security for the claim before or during the proceedings. The proviso of this article explicitly states that the amount of potential damages is determined by the court accepting the security request, and the issuance of a security order is conditional upon the deposit of the security. Accordingly, the sufficiency of the seized asset is assessed based on the asset's value and the possible damages that may be incurred by the defendant. The court, considering the type and value of the seized asset, as well as the duration of the security order's enforcement, determines the amount of potential damages. In cases where the plaintiff is unable to pay in cash, the court may accept collateral from the plaintiff's existing assets as a guarantee. This approach is particularly employed when the plaintiff possesses seizable assets.

In comparison with other legal systems, such as France and England, the use of non-cash guarantees—like bank guarantees or real estate collateral—is common. Courts may, based on the specific circumstances of each case, require the plaintiff to provide such guarantees. Therefore, it can be concluded that the possibility of using non-cash guarantees also exists in Iranian law, but there is a need to develop clear guidelines to determine the criteria for sufficiency of the seized asset and the types of acceptable guarantees.

Within the Iranian legal system, the judge plays an important role in determining the amount of potential damages and the type of guarantee. The court may require the plaintiff to provide a non-cash guarantee depending on the circumstances of each case. This approach is especially used when the plaintiff lacks the ability to pay cash or has seizable assets. According to Article 319 of the Civil Procedure Code, the appropriateness of the security is at the court's discretion. The judge may

accept assets other than cash, such as real estate, but is not obliged to do so. This flexibility allows the judge to make an appropriate decision considering the plaintiff's economic and social conditions. However, the absence of specific guidelines may result in inconsistent rulings in similar cases. In other legal systems, such as France and England, there are explicit guidelines regarding the type and amount of security, which assist the judge in making more consistent decisions. Hence, developing clear guidelines in Iranian law can help increase coherence and justice in the process of securing potential damages.

Based on existing practices in the French and English legal systems, it can be concluded that security for potential damages should not be mandatorily limited to cash deposits. Instead, the possibility of providing non-cash guarantees such as bank guarantees or real estate collateral should be available. In French law, the use of non-cash guarantees like bank guarantees or real estate collateral is widespread. Courts may request such guarantees from the plaintiff depending on the specific circumstances of each case.

Similarly, in English law, security for costs is a mechanism by which the court may require the plaintiff to provide a guarantee for the payment of litigation costs, where there is a likelihood that the plaintiff may be unable to pay such costs if the claim fails. This security can be in the form of a cash deposit, a bank guarantee, or collateral from available assets. Considering these experiences, it is proposed that in Iranian law the possibility of using non-cash guarantees be expanded. This could reduce the financial burden on plaintiffs and increase access to justice. Consequently, leveraging comparative experiences and flexibility in determining the type and amount of security can improve the process of securing potential damages in the Iranian legal system. This requires a revision of existing regulations and the formulation of new guidelines by the Judiciary to fully realize justice and efficiency in civil proceedings.

## Conclusion

The institution of “provision of probable damages” serves as a balancing mechanism within provisional judicial procedures, particularly in the context of suspending registration enforcement operations, and holds a central position in the Iranian legal system. Despite its provision in Article 5 of the Amendment to Certain Articles of the Registration Law, serious legislative gaps—most notably the lack of explicit regulation concerning the type and method of deposit—have led to contradictory judicial practices and the potential violation of litigants’ rights. Legal, jurisprudential, and comparative analyses presented in this study confirm that the strict requirement of cash payment for probable damages, without considering the applicant’s financial situation or the possibility of securing damages from the seized property, runs counter to the principles of fairness, justice, the rule of *la darar* (no harm), and the principle of proportionality in procedural law.

From a jurisprudential perspective, principles such as control (*tasallot*), possession (*yad*), non-harm (*la darar*), and the prohibition of abuse of rights not only validate but necessitate the legitimate use of seized property as a source for securing probable damages, provided that the value of the seized asset exceeds the amount of debt or damage and that additional seizure can be applied to ensure compensation. This interpretation is further reinforced by advisory opinions from the Legal Department of the Judiciary, which have repeatedly confirmed the sufficiency of seized property to cover probable damages. Judicial practice, however, remains divided; while some courts persist in a narrow interpretation of “adequate security” and accept only cash deposits, there is a significant trend toward recognizing the possibility of securing damages through seized assets. This highlights the urgent need for judicial intervention through binding guidelines or unified judicial precedents to broaden the interpretation of security, in accordance with justice principles and to eliminate economic discrimination in access to justice.

Finally, comparative experiences from advanced legal systems such as France and England, which widely accept non-cash guarantees like real estate mortgages and bank guarantees in damage securing procedures, provide a suitable model for reforming Iran’s legal framework in this field. Such reforms will not only enhance judicial fairness but also ensure the efficiency of

registration enforcement processes and protect litigants’ rights, especially amid unstable economic conditions. Accordingly, it is recommended that the interpretation of the term “adequate security” in Article 5 of the Registration Law be expanded to recognize additional seizure of the seized property as a legitimate and effective method of depositing probable damages. This change would represent not merely a procedural amendment but a substantive guarantee for procedural justice and effective enforcement of defendants’ defense rights.

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