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A Comparative- Critical Approach to Measuring the Compatibility of "Ship Registration" with the Components of "Movable Registration System"

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Abstract

The description of the opposability of the real rights on the public, raises the publicity principle as a fundamental principle in the property law s system of countries. Although the registration mechanism has been considered by legal systems as a method of securing the principle, this issue has generally been considered in the field of real estates and has not been considered much in the field of movable properties. Regarding the reason, it can be noted that, in general, movable property, compared to real estate, is more the subject of commercial transactions and plays a major role in trade. The large volume of transactions in the field of movable properties, makes them inevitable to expedite these transactions and non- intervention of government in the transfer of these properties by mechanism such as registration. Accordingly, the principle of unnecessary of registration of movable assets is one of the desirable principles of progressive economic systems. However, this statement does not mean the absolute negation of the movable registration system. Due to the fundamental role they play in trade, transactions in movable property are always subject to the legal regime that creates the least obstacle to the rule of will. Therefore, in order to establish information symmetry and play the role of informing third parties, the field of movable property has been receptive to the registration system under the title of the theory of the "Minimum role of registration". The aforementioned theory, with its five main components of: "Minimal substantive effect", "Optionality of registration", "focused on the mortgage registration", "Specialized administration of the registration system" and "Passive role of registration authority"; has been implemented in the field of movable property both in the domestic laws of many countries and in the international conventions.

Ship registration, as a system that comprehensively identifies the status of ship title (private law dimension) along with granting

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citizenship (public law dimension), although is included in the category of movable property in the classifications presented regarding types of property, from the perspective of the registration regime, whether in the public law dimension or the private law dimension, it has not fundamentally sought to establish the "minimum role of registration" and has essentially separated itself from the model of the movable registration system by implementing the five components of "Constitutive effect of registration", "Mandatory ship registration", "Comprehensiveness of registration database", "Quasi-specialization of ship registration system", and "Active role of the registration authority in the ship registration".

Therefore, regarding the issue of whether the ship registration system is an example of the movable property registration system and should be subject to its principles and rules or requires a different registration system, it should be said that although the Iranian legislator has specified in Articles 21 of the Civil Code and 42 of the Maritime Code that ships are movable, in cases such as seizure and mortgage of ships, it has made them subject to special provisions that are different from movable property. In this regard, in order to harmonize the Iranian ship registration with the components of this registration system, it is proposed:

First, given that the compulsory registration system is implemented with the function of constitutive effect, it is necessary that the paragraph iv of the Article 1 of the Executive Regulations of Article 7 of the Maritime Code approved by the Council of Ministers in 2018 regarding the concept of ship owner be included in the Maritime Code, with the same predication.

For this purpose, it is necessary to amend the last part of paragraph iii of the Article 80 bis (1) of the Maritime Code, which defines the owner as "any natural or legal person whose name is registered as the owner in the ship registry at the Ports and Maritime Organization(PMO), unless proven otherwise," in order to emphasize the constitutive function of the ship registration system regarding property rights, remove the ambiguity regarding the compulsory or non-compulsory nature of the ship registration system in the function of private law through the substantive link between registration and the creation of the aforementioned rights.

In addition, in the public law function, in order to remove ambiguity regarding the necessity to register the ship, the provision of paragraph one of Article 1 of the Maritime Code should be amended as follows: "Every seagoing ship (whether its construction is completed or under construction) with a registered gross tonnage of at least 25 tons and meeting the following conditions must be registered in accordance with the provisions of this Code in order to acquire Iranian citizenship and obtain the right to fly the flag of the Islamic Republic of Iran."

Secondly, in view of international conventions such as UNCCROS, the ship registration database, which, according to the Ship and Vessel Registration Regulations 1965, only includes title

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	information, needs to be amended. In this context, it is necessary to expand the ship registration database in its private law function based on international conventions as well as maritime law regulations - such as Article 24, paragraph iv of Maritime Code - and expand its scope to other real rights regarding ships, such as maritime mortgages and ship leases.
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