OPEN PEER REVIEW

The Legal Position of a Foreign Plaintiff Seeking Recovery of Virtual Currency Against an Iranian Defendant in Relation to Security for Foreign Nationals and Security for Vexatious Claims

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the paragraph asking, “What legal issues and difficulties may arise in such circumstances?”, the research problem is formulated too generally relative to the much narrower doctrinal issue actually examined later. The article principally concerns the interaction between security for vexatious claims and security for foreign nationals when a foreign plaintiff seeks recovery of virtual currency against an Iranian defendant. The authors should reformulate the research question more precisely by identifying the relevant variables: nationality or statelessness of the plaintiff, Iranian nationality of the defendant, applicability of Articles 109 and 144, possible cumulative application of the two securities, and the role of proportionality in selecting between them. A more sharply framed research question would improve the analytical coherence of the entire article.

The paragraph stating that “One of these rights is the right of access to judicial proceedings. The right of access to courts has even been recognized for refugees” requires a more developed legal distinction between the right of access to justice and procedural conditions imposed on litigants. The present formulation may imply that requiring security necessarily constitutes a restriction incompatible with access to justice, which is not always the case. The authors should explain when a security requirement becomes a disproportionate obstacle to judicial access and distinguish permissible procedural regulation from an impermissible denial of access. This distinction is essential because the article later relies heavily on fair-trial considerations to justify limiting the application of security requirements.

The following paragraph argues that “ordering both forms of security would be inconsistent with justice, because a foreign plaintiff may lack the financial capacity to provide both forms of security.” This important claim requires a stronger normative and procedural foundation. Financial burden alone does not automatically make cumulative security unjust. The authors should

examine whether the two securities secure the same heads of loss, whether double recovery is possible, whether one security could be credited against the other, and whether the court could consolidate them into a single proportionate amount. The analysis should demonstrate precisely why cumulative security is legally excessive rather than merely potentially burdensome.

In Section 3-1-2, the paragraph stating that a foreign litigant "may leave Iran and evade the consequences of the adverse judgment" should be revised to avoid an overly generalized assumption about foreign plaintiffs. The procedural rationale should be framed in terms of objectively demonstrable enforcement risk rather than nationality-based suspicion. The authors should discuss whether the relevant concern is absence of attachable property in Iran, lack of habitual residence, difficulties in recognition and enforcement abroad, or absence of reciprocal judicial cooperation. This would also strengthen the proportionality argument by linking the security requirement to actual litigation risk rather than nationality alone.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In the paragraph beginning "The issue becomes particularly significant where, for whatever reason or under whatever legal status, the plaintiff is not a national of any state," the treatment of stateless persons and refugees requires doctrinal separation. Statelessness is a nationality status, whereas refugee status concerns protection from persecution and may exist with or without nationality. The sentence referring to a person who, "because of refugee status, has been deprived of the political and diplomatic protection of the state of origin," risks conflating these categories. The authors should establish separate definitions for stateless persons, refugees who retain nationality, refugees who are stateless, and foreign nationals lacking effective diplomatic protection, and then explain whether Article 144 should apply differently to each category.

The paragraph interpreting Article 144 as establishing "security for foreign nationals" should provide a more exact doctrinal analysis of the statutory conditions for its application. It is not sufficient to state that the plaintiff must be foreign and the defendant Iranian. The article should systematically identify the procedural timing of the request, the identity of the party entitled to request security, statutory exemptions, the nature of recoverable costs, judicial discretion regarding the amount, consequences of non-payment, and any reciprocity- or treaty-based exceptions. Without first establishing the complete legal structure of Article 144, the later proportionality analysis risks resting on an incomplete account of the applicable rule.

The paragraph stating that "where the conditions for both security for a vexatious claim and security for foreign nationals are satisfied, security for foreign nationals should be preferred" presents one of the article's principal conclusions before a sufficiently rigorous test for preference has been established. The authors should formulate explicit criteria for determining priority between the two mechanisms. These criteria might include legislative specificity, purpose, burden on access to justice, recoverable costs, adjustability of the security amount, procedural consequences, nationality status, and the degree of risk faced by the defendant. Presenting these criteria before reaching the preference conclusion would transform the argument from an intuitive proposition into a reproducible legal test.

In Section 2-1, the paragraph stating that "The principle of proportionality is one of the most important general principles of European law and has been recognized and accepted since 1950" should be doctrinally refined. The principle of proportionality has different origins and functions in German public law, European Union law, European human-rights jurisprudence, and procedural law. The authors should avoid presenting it as a unitary principle that simply migrated into civil procedure. More importantly, the article needs to explain why a principle predominantly developed in public-law and rights-review contexts is doctrinally transferable to the interpretation and interaction of Articles 109 and 144 of Iranian civil procedure.

The definition of proportionality in the paragraph stating that it means "establishing balance and coordination between two or more matters arising in civil procedure" is overly broad and insufficiently operationalized. A proportionality analysis ordinarily requires more than generalized "balance." The authors should consider articulating a structured test incorporating suitability, necessity, and proportionality stricto sensu. Applied to the present issue, the analysis should ask whether requiring a particular security is suitable for protecting the defendant, whether a less restrictive mechanism would achieve the same

objective, and whether the burden imposed on the foreign plaintiff is justified by the protection obtained. This would provide the article with a substantially stronger analytical framework.

The paragraph in Section 2-2 concluding that "because the subject matter of both legal institutions is generally identical and proportional, they are, from this perspective, capable of concurrent consideration" requires conceptual clarification. Similarity of subject matter does not necessarily establish legal compatibility or cumulative applicability. Two procedural mechanisms may protect similar interests yet be mutually exclusive, alternatively applicable, or governed by a lex specialis relationship. The authors should distinguish between conceptual overlap, cumulative application, alternative application, and normative priority. This distinction becomes particularly important because the article later argues against imposing both securities simultaneously.

In Section 3-1-1, the statement that "The most important objective pursued by the legislature in establishing the two institutions ... is to prevent unjust potential losses resulting from the institution of unfounded actions" appears to over-assimilate the rationale of Article 144 to that of Article 109. Security for foreign nationals does not necessarily presuppose that the foreign plaintiff's claim is unfounded. Its rationale may instead concern difficulties in recovering litigation costs across borders or from persons lacking sufficient attachable assets within the forum. The authors should therefore distinguish more carefully between the anti-abuse rationale of security for vexatious claims and the enforcement-risk rationale of security for foreign nationals.

Authors revised the manuscript and uploaded the document.

2. Revised

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