

Law n° 2008 - 67 dated 3 November 2008, amending and completing certain provisions of the real rights code (1).

In the name of the People,

The Chamber of Deputies and the Chamber of Advisors having adopted,

The President of the Republic enacts the following law:

Article one - The provisions of articles 319, 332, 343 paragraph 2 and 351 of the real rights code are repealed and superseded as follows:

Article 319 (new) : The right to a lawyer is compulsory in the matter of optional land registration.

The requisition includes the following:

1- The full name of the person on whose behalf the registration is required, his occupation, nationality, real residence and his residence chosen in Tunisia,

2- The right to be registered,

3- The description of the real estate and the indication of:

a- the name under which it is known,

b- The name under which it will be registered,

c- Its location, the cantonal court, the governorate, the district, the commune or the Imada and when it deals with an urban real estate, the street and number,

d- Its area,

e- Its ins and outs with specifying the full names and addresses of all the actual residents,

f- Constructions, plants, shafts and basins found in it,

g- The crossing railways, roads or public tracks.

If the real estate is composed of many separate parcels, the indications mentioned above shall be provided for each parcel.

4- The detail of the real rights on the real estate and the indication of the eligible parties.

Article 332 (new): The decisions of the real estate court ruling on the registration after registration decision are delivered without appeal and the case may be taken to the court de cassation.

Taking the case to the court de cassation suspends the enforcement of the contested judgment.

Article 343 (paragraph 2 new): After the report drawn up on the case by a member of the court, the parties may exhibit their written or oral objections through a lawyer.

(1) Preparatory works :

Discussion and adoption by the Chamber of Deputies during its session held on 21 October 2008.

Discussion and adoption by the Chamber of Advisors during its session held on 28 October 2008.

Article 351 (new): When the case is not taken to the court de cassation and when the deadline of the said proceedings expires, the file is sent to the land property preservative who proceeds to the establishment of a title for the registered real estate on the basis of the expedition delivered by the clerk of the court after being countersigned by the presiding judge of the real estate court.

Art. 2 - A chapter VI including articles 357 bis and 357 quater is inserted in the real rights code as follows:

CHAPTER VI

Cassation of the land registration decisions

Article 357 bis: The decisions of the real estate court ruling on the registration after a registration decision may be taken to the court de cassation in the following cases:

1- if the judgment infringes the law or if it was delivered after a mistake in the implementation or the interpretation of the law,

2- if the court was incompetent,

3- if there is action without authority,

4- if the forms in the proceedings of the judgment which the law prescribed their nullity or expiry in case of their violence, were not respected,

5- if two or more judgments ruled on the registration of the same real estate,

6- if a parson with disabilities was sentenced without being normally represented, if he was apparently ill-defended and this was the main or the only reason of the judgment such delivered, taking into consideration the provisions of articles 329 and 330 of the code herein.

7- if the contested judgment is based on the proofs the forgery of which was criminally established by a final judgment. The case taken to the court of cassation is inadmissible if it was established that a third party acquired the real estate in good faith.

Article 357 ter: The persons who were parties to the contested judgments or their legal successors may take the case to the court de cassation.

The one who intends taking the case to the court of cassation shall make his recourse within no more than sixty days as of the date of delivering the judgment.

The public prosecutor may, in the fifth case mentioned in the previous article, take the case to the court of cassation after a request addressed by the office of topography and cartography or by the interested party without delay.

Any interested person may in the seventh case mentioned in the previous article take the case to the court of cassation within sixty days as of the date of delivering the final sentence.

The case is taken to the court of cassation by a written demand indicating the claimant's occupation, the date, number and portion of the contested judgment containing the decision of the case and the demands. The petition is presented by a lawyer attached to the court of cassation to the record office of the principal or auxiliary headquarter of the real estate court which delivered the contested judgment. The clerk of the court who receives the petition shall sign it, mention the reception date and immediately register it in a special register kept for the purpose. He issues a receipt indicating the reception date and informs the clerk of the court of cassation by any means leaving a written trace.

The clerk of the court shall not accept the petition unless it is accompanied by a receipt worth thirty dinars from the registration office for the fine of which the claimant would have been sentenced if his petition was dismissed. The state and the beneficiaries of the legal aid are exempted from this consignment.

If the claimant withdraws, the court will exempt him from the fine which will be restituted to him.

The clerk of the court shall convene the claimant's lawyer in accordance with articles 342 and 343 of the code herein and give a copy of the contested judgment against a receipt indicating the date of delivery, a copy of which is enclosed to the file of the case which is transmitted to the court of cassation.

If the claimant's lawyer is not present to receive a copy of the judgment within one month as of the date of his convening, the recourse is declared inadmissible.

The acts of the procedure after receiving the petition are done in the registration office of the court of cassation which registers the case in a special register kept for the purpose.

The appellant to the court of cassation shall submit to the registration office of the court of cassation within no more than thirty days as of the date of delivering a copy of the judgment of the real estate court according to the forms previously mentioned as follows:

- a copy of the contested judgment with a copy of the receipt delivered by the registration office of the principal or auxiliary headquarter of the real estate court,

- a legal brief written by his lawyer indicating the causes of the complaint, and specifying the irregularities, as well as the claims with all the exhibits,

The documents testifying that the appellant to the court of cassation notifies the defendant for the benefit of whom the registration was ordered or his legal successors by a registered letter with acknowledgement of receipt or by a bailiff.

The defendant shall within the thirty days following the notification date of the petition and the causes of the complaint submit by a lawyer attached to the court of cassation a legal brief as an answer he will lodge with all the exhibits to the registration office after communicating it to his opponent's lawyer.

Article 357 quater: The court of cassation rules within the limits of the raised issues. It decides the admission or the refusal of the appeal to the court of cassation.

If the appeal to the court of cassation is admitted, the court quashes the contested sentence wholly or in part and refers, at all events, the case to the principal or auxiliary headquarter of the real estate court which delivered the contested judgment for a new examination within the limit of the provisions taken to the court of cassation, the said court is composed differently.

The decision of the court of cassation puts back the parties to their previous status, and this, within the limit of the admitted issues.

If the referral jurisdiction does not comply with the decision of the court of cassation and if there is a second referral raising the same issue, the court of cassation, all sitting en banc, settles the dispute opposing it to the referral jurisdiction.

If the sitting en banc decides the reversal, it refers the case to the referral jurisdiction and its decision is imperative.

If a case is taken to the court of cassation and if the court decides the reversal with transfer of the matter, the clerk of the court of cassation informs the presiding judge of the real estate court of the decision that will be transmitted to the referral jurisdiction for reexamination, the said court is composed differently.

If the case taken to the court of cassation is dismissed, the clerk of the court informs the presiding judge of real estate court of the said decision that will be submitted with the registration judgment to the land property preservation for the establishment of a security for the registered real estate.

The provisions provided for by the code of civil and commercial procedure relating to the proceedings before the court of cassation are applicable to the cases taken to the court of cassation dealing with the judgments delivered in the matter of real estate registration, as long as they are not contrary to the provisions of chapter VI of the code herein.

Art.3 - The procedures provided for by the law herein relating to the appeal to the court of cassation are applicable to the appeals against the judgments delivered after the law herein enters into effect.

However, the sitting en banc of the real estate court inspect the current requests for revision before the law herein enters into effect, as well as the decisions delivered before the law herein enters into effect.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the state.

Tunis, 3 November 2008.

Zine El Abidine Ben Ali