

Le régime foncier tunisien

Origines et évolution après l'indépendance*

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Abstract

France established its protectorate in Tunisia in 1881. The land law situation (*situation immobilière*) of this widely agricultural country seemed vital to the colonizer, as control (*maîtrise*) over the land lies at the heart of colonization. But the Tunisian land regime (*régime foncier tunisien*) appeared very confusing due to the complexity and diversity of tenures as well as to the absence of uniform land law legislation and the imprecision of land titles (*titres immobiliers*), which lacked adequate publicity. As ownership could not be established with certainty, which was adverse to colonization, it appeared paramount to rapidly reform the regime of land ownership.

The authorities of the protectorate, whose first aim was to develop colonization, set up a land regime (*régime foncier*) based on easily usable ownership rights that were sufficiently secure to attract credit. The land reform introducing the registration of land (*immatriculation des immeubles*) was put into effect by the law of 01 July 1885. It introduced an original regime, which, from the technical point of view, was a compromise between the Australian system (*Torrens Act* introduced by Great Britain in its new colony in 1848), the German system and the French Civil Code. It was also comprised of borrowings from the Algerian law of the 26 July 1873 and from Belgian law (as far as “*hypothèque*” is concerned). This new regime presents the following characteristics: it is based on “real publicity” (“*publicité réelle*”), the land (*immeuble*) and not the owner is named; registration (*immatriculation*) is optional; the registration is carried out by the Mixed Land Tribunal (*Tribunal Mixte Immobilier*), the decision of which fixes the starting point of ownership; the updating of the title is in the hands of the parties who have an interest in registering subsequent changes (but the unregistered act remains valid among the parties); finally, once the registration (*immatriculation*) is pronounced, the land (*immeuble*) comes under the competence of French jurisdiction.

This new land regime is very different from the metropolitan French one and it attempts to take into account various requirements. It is legitimate to work on this land legislation, now over a century old, because it has spread in space and time. It spread in space because the Tunisian land law of 1885 has served as a model for many territorial legislations passed under French influence. The prototype has circulated and has been modified over time by different legislators. These modifications have often corrected and improved the initial text. Despite its imperfections, the 1885 law survived political and economic changes during the twentieth century and was adopted by the legislation of independent Tunisia in 1956.

The law indeed presents a flexible and adaptable frame. Thus, notwithstanding the interruptions that accompanied Tunisian independence in 1956, there are very clear lines of continuity with the legislation promulgated by independent Tunisia in the *Code de droits réels* of 1965. The latter includes most of the legislation of 1885, which was judged globally positive.

The *Code foncier* (Land Law Code) has become an object of national pride for Tunisians as it has been exported to other countries. As far as the special jurisdiction that has been created to apply the new legislation is concerned, the *Tribunal mixte immobilier* continues to exist as the *Tribunal immobilier* since 1956, but it remains unique in its kind – the model has not been appropriated by other countries that have drawn inspiration from the Tunisian land law model. Some countries, like Morocco, have regretted this fact. Others, like Cameroon, still regret it today.

The law of 1885 has survived for over a century with its qualities and its defects. It has allowed Tunisia to enter the modern era of codification and has prepared its entrance into the economy of the twentieth century.

* The Tunisian Land Regime. Its Origins and its Evolution after Independence.

Over the last thirty years, and the trend continues today, a new element has appeared: Tunisia has turned towards tourism and has witnessed extensive urbanization. The stakes are now different: they consist in protecting agricultural land against the space-devouring cities, rather than expanding the surface of agricultural land.

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