

Syria: Challenges of Judicial Restoration to Lost, Destroyed Real Estate Documents



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The Lack of Independence of the Syrian judiciary threatens the rights of the absent and displaced as it opens the possibility for the government's manipulation of records to the detriment of those viewed as opponents

1. Introduction

The right to property is one of the basic rights stipulated in all constitutions and laws of countries around the world.¹ However, wars, armed conflicts, and disasters may affect this right. That would be due to the damage of public and private property or the destruction or loss of title deeds because of displacement or attacks on official departments that document the rights. Moreover, the continued state of chaos in Syria has weakened the rule of law and thus rights protection.

[Guiding Principles on Internal Displacement](#) states in Principle 21.3,

“Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”

Against the backdrop of devastating several real estate departments across Syria by ongoing hostilities, Syrian President Bashar al-Assad issued Law No. 33 on 23 November 2017. The law regulates the restoration of lost or partially or fully destroyed real estate records via administrative or judicial procedures.²

The Difference Between the Real Estate Documents and the Cadastral Certificate

The Real Estate Documents

The documents contained in the property file at the cadaster, which are; the property record and its complementary documents (the journal, boundary marking, and registering reports, survey maps, aerial imagery, survey charts, and documentary proofs).³

The Cadastral Certificate

Every property has a cadastral certificate in the cadaster called the ownership title (Green Tapo) which is considered the most powerful ownership document. It includes the property's number, the name of the area where the property lies, the property's space and size, the property's description, the property's legal characterization, the name of the property owner, the property's ownership shares,

¹ Including the [2012 Syrian Constitution](#), which stipulates in Article 15, “Collective and individual private ownership shall be protected in accordance with the following basis:

- a. General confiscation of funds shall be prohibited;
- b. Private ownership shall not be removed except in the public interest by a decree and against fair compensation according to the law;
- c. Confiscation of private property shall not be imposed without a final court ruling;
- d. Private property may be confiscated for necessities of war and disasters by law and against fair compensation;
- e. Compensation shall be equivalent to the real value of the property.”

² Article 3 (a) of Law No.33/2017.

³ Article 1 of Resolution No.188/1926—the Law of Cadaster.

and all other relevant rights and obligations. Cadastral certificates in every cadastral area are accumulated in a register called the property register.⁴ Every property has one Cadastral Certificate and a collection of Real Estate documents in the cadaster.

The Administrative Procedure: The law entitles the General Directorate of Real Estate Interests to restore the damaged cadastral certificate should it have the necessary documents. This measure is the subject matter of this report.⁵

The Judicial Procedure: The law warrants this measure when the first is infeasible because necessary documents are lacking. In this case, property owners resort to the judiciary. They submit documents proving their ownership to the court, which works to restore lost records. In this procedure, the Real Estate Judiciary restores the documents at the request of the submitters but marks them as temporary with all the information they contain, until it fully verifies them.⁶

The Difference Between Real Estate Judiciary and Ordinary Judiciary

Real Estate Judiciary (real estate judges) deals with frictions stemming from boundary markings and registrations works.⁷ The Condominium Removal Committees (administratively linked to General Directorate of Real Estate Interests) used to deal with Condominium removing cases related to real estate outside the town's plot until 2014. However, Law No.1/2014 granted ordinary jurisdiction the judiciary to look into Condominium removing cases of properties within the town's plot and those outside it.

Real Estate Judiciary runs under the General Directorate of Real Estate Interests, whereas the ordinary jurisdiction is subject to the Supreme Judicial Council.

Ordinary judges are appointed by decree by the President of the Republic in his capacity as the head of the Supreme Judicial Council, while real estate judges are appointed by decision of the Minister of Justice upon the proposal of the director general of the Directorate of Real Estate Interests.

⁴ Article 1, 3, and 4 of Resolution No. 189/1926—the executive regulation of the Law of Cadaster.

⁵ A Reading of the Real Estate Documents Restoration Law No. 33 of 2017, STJ, 17 January 2023, https://stj-sy.org/en/a-reading-of-the-real-estate-documents-restoration-law-no-33-of-2017/#_ftnref16

⁶ Article 8 (d) (g) of Law No. 33/2017.

⁷ For more info see, Syrian Real Estate Law – Simplified for Everyday Readers, STJ, 18 November 2021, <https://stj-sy.org/en/syrian-real-estate-legal-terms-simplified-for-everyday-readers/>

2. Stages of Judicial Restoration

The real estate judge proceeds to restore the damaged or lost document as soon as he/she receives the submitted information files.⁸ Before that, however, the court must present a list of the documents that are being restored and the properties they belong to.⁹ At this stage, the real estate judge shall issue:

- A. Preparative Resolution;¹⁰ which illustrates the nature of the lost or damaged real estate document and the items that need restoration. It also indicates the real estate's number, location, and all related information that helps the owners recognize it. Thus, the latter shall submit documents supportive of the restoration operation within six months from the date of announcing the interlocutory judgment in the Official Gazette and two local newspapers.¹¹

STJ believes that it may be better – for the interest of the citizens – to publish the preparative resolution in the Directorate General of Real Estate Interests and all centers subordinate to it, the main provincial government building, district center, as well as the municipal center and to inform it to the governor/Mukhtar. This is in addition to announcing it in the Official Gazette and local newspapers. That done, the owners would be inevitably informed. Here, STJ would like to draw attention to the necessity of establishing a website for the Directorate General of Real Estate Interests to announce all real estate-related decisions and laws via it.

- B. The real estate judge issues decisions confirming the initial real estate documents after the end of the objection period, and these decisions are final.¹²
- C. The real estate judge issues decisions on the real estate documents that were objected; he/she confirms or dismisses them.¹³

2.1 Objections

The legislation required the author of the objection to submit documents that support his/her claim. Then, these documents looked into in the deliberation room and the judge decides on them within a maximum period of two months.¹⁴

⁸ Article 8 (a) of Law No.33/2017.

⁹ Article 8 (b) of Law No.33/2017.

¹⁰ The preparative resolution is a decision the court makes during the proceedings, like requesting a report from technical expertise, or asking one of the litigants to present a certain document, or summoning witnesses, etc.

¹¹ Article 8(c) of Law No. 33/2017.

¹² Article 8 (d) of Law No. 33/2017.

¹³ Article 8 (g) of Law No. 33/2017.

¹⁴ Article 8 (e) of Law No. 33/2017.

If it is impossible for the author of the objection to provide proof of his/her claim, a public session shall be held to study the validity of his/her objection. The submitter must attend this session himself/herself or through his/her legal agent, otherwise the objection will be revoked.

STJ believes that an objection to a document indicates a dispute over rights. Therefore, the objection must be studied in a public session in the presence of the conflicting parties, after which the judge shall decide on it.

STJ also believes that justice and equity rules dictate that the restoration session shall be held in accordance with the principles followed in litigation before the real estate judiciary. As such, the judge shall begin the session by announcing the contents of the property, and the records relate to it. Then the judge requests the attendees to present the information and the demands they have and finally asks them to sign the session's report. In the end, the judge announces the property's characterizations, defines it and its borders, and the rights encumbering it. However, the judge's decision can be appealed through channels of appeal available in the real estate judiciary.

2.2 Appeals

Article 8 (g) stipulates that the final restoration decision shall be displayed in the real estate judge's office for 15 days and published in the Official Gazette and local newspapers. This display amounts to a personal notification to stakeholders who can appeal the decision to the Civil Court of Appeal within 15 days starting from the display day.

Article 8 brings about two cases:

The first: The judge implements the restoration decision following the expiry of the time provided for appeal; thus, the new Cadastral Certificate will officially be adopted as the final alternative for that lost or damaged.

The second: Appealing the judge's decision. According to the executive regulation, this appeal will not suspend the validity of the concerned Cadastral Certificate or any in-kind rights thereon.¹⁵ Notably, a note of the appeal must be written on the Cadastral Certificate in the designated place with all its explanations.¹⁶

This means that the judge's decision will be implemented temporarily until the Appeals Court delivers its judgement.

¹⁵ Ministry of Local Administration Issues Executive Instructions for Real Estate Document Restoration law, ¹⁵ Ministry of Local Administration and Environment, 25 March 2018, <http://www.mola.gov.sy/mola/index.php/plans-and-laws-4/item/6374-2018-03-25-08-24-49>

¹⁶ Article 8 (h) of Law No. 33/2017.

Notably, the original records have a probative value, meaning that they cannot be subject to any action whatsoever after the expiration of a period of two years starting from the date on which the approval decision and the decisions of the single real estate judge become enforceable.¹⁷ However, Law No.33/2017 grants anyone who claims a registered right to file to the civil courts within five years from the date the decision of the real estate judge has become final to claim the real property and within fifteen years to claim material compensation.¹⁸

3. Problems Relating to Judicial Restoration

3.1 Flaws in the judiciary' structure and independency

The judiciary suffers from a shortage in the number of judges and the number of judicial employees as well as functional and structural defects. These flaws shall be redressed as soon as possible to deal with restoration cases effectively.

Here, we reiterate the need to ensure the independence and impartiality of judges and the non-interference of the Executive in their work. The Executive's interference not only impacts the processes of restoration of real estate documents but also the rebuilding of confidence in the judiciary and its genuine desire to safeguard the rights of citizens.

3.2 Rights of displaced, absent, marginalized groups could be lost

Requiring the attendance of the property owner or his/her legal agent during the submission of an objection may conflict with the ever-changing procedures of obtaining powers of attorney, which may hinder the access of the displaced and the absent to their rights. As such, we suggest the assignment of a website or an email through which those affected can submit their objections to the decisions of the General Directorate of Real Estate Interests without complications.

Like many other Syrian laws, Law No.33/2017 does not contain special procedures for women and marginalized groups, who face compounded difficulties in accessing their rights.

3.3 Failure to register the rights duly

Keeping the door open for rejections could impede the stability of rights and facilitate manipulating them, especially under the present state of chaos in Syria.

¹⁷ Article 17 of [Resolution No. 188/1926](#)—the Law of Cadaster and its amendments.

¹⁸ Article 9 of Law No. 33/2017.

Furthermore, many properties are not documented in the real estate records for many reasons. There are various reasons for this, including the failure to register sale and purchase contracts duly, the non-transfer-of-title with the aim to evade taxes, and the non-registration of property out of ignorance of the law; for example, some people think that the irrevocable real estate power of attorney can be a substitute for ownership transfer.

After 2011, cases of non-registration of ownership rights increased. The process of ownership transfer has usually been hindered by the pre-requisite requirement of obtaining security clearances imposed on the seller, buyer, and their legal agents, if any. Syrian security services may refrain from issuing clearances for a party to the contract under pretexts of, evading mandatory or reserve military service, evading taxes, being wanted for a security or judicial authority, and other allegations. In addition, it has been almost impossible to define ownership of slums amidst their rapid growth.

3.4 Common ownership issues

Communal land is sold in the form of shares, whose number is determined according to the number of meters purchased. Thereby, the shared ownership of communal land,¹⁹ poses a challenge to proving ownership of residential buildings constructed on it. The legal settlement of such ownership must be through removing the condominium and dividing properties into equal shares (2400 shares) of equal value that can be transferable in the manner specified in the law.

Issues of common ownership are widespread in Syria; especially since the agricultural lands surrounding the main cities are yet to be administratively determined due to the lack of effective implementation of national regulatory schemes. Pursuing their own interests, owners of rural communal land construct illegal residential buildings on it and sell the apartments in the form of shares. In the event, the ownership remains in the form of agricultural shares - ownership of meters of agricultural land, not residential property - it would be almost impossible to prove the ownership of the apartments.

Furthermore, many of those who buy such apartments do not register the preliminary contracts - that are not officially recognized - they concluded with the landowners or the building contractors in the Cadaster; meaning that they do not transfer the ownership duly. It is often due to the high costs and lengthy procedures of removing condominium and dividing properties. The condominium removal proceedings include summoning all of the owners, detecting the land, and assessing its value by technical

¹⁹ Communal land is a (mostly agricultural) territory in possession of a community, rather than an individual or company. According to Article 780 of the Syrian Civil Code, common ownership is when two or more individuals share ownership of one property such that each share is not subdivided, making them co-owners.

teams to determine the tax due to each owner. All of these procedures have fees added to the fees of court, attorney, decision certification, and property transfer.

These extensive and costly proceedings have led to owners' refraining from dividing properties and settling ownership.

4. Shortcomings of Law No.33/2017 in Terms of Recognizing Unregistered Rights

Law No.33/2017 prevents the real estate judge from considering any objection to the restoration of a document regarding a property right that is not registered in the Cadaster.

Unexecuted real estate powers of attorney and unofficial sale contracts concluded between the seller and the buyer are considered unregistered rights. Notably, documents related to unregistered rights can be recognized by presenting them to the court, which will either ratifies them and decides to transfer the ownership or rejects them.

It should be recalled that even registered rights have been lost, as some courts in Syria were destroyed by the ongoing conflict.

In the same context, in Syria, there are also rights that cannot be registered since it related to a form of ownership considered illegal. Among the forms of illegal ownership, owning real estate constructed on state-owned land, such as Mezzeh 86 neighborhood in Damascus, where property ownership is proved through electricity or water connection (meters).

The law left it to the ordinary judiciary to decide on the unregistered rights based on the original document to be restored. However, proving rights through the ordinary judiciary requires the presence of the parties to the case who shall submit much evidence and pay high costs throughout prolonged proceedings.

To sum up;

Proving a registered right will be easy in case its related records are safe, but if damaged, the owner shall file to the ordinary judiciary to prove his/her property right.

Proving an unregistered right shall be through providing relevant proof documents to the court, which, if satisfied, will issue an ownership transfer decision.

5. The Lack of Independence of Syrian judiciary

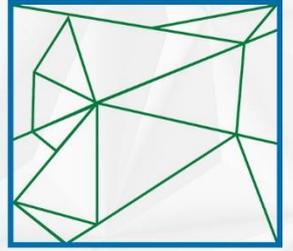
The Syrian judiciary in general does not enjoy the independence required to carry out the tasks entrusted to it. This is due to having powerful Executive members in its structure, who often make the decisions. We should not forget that the Supreme Judicial Council is chaired by the President of the Republic and deputized by the Minister of Justice.²⁰

The lack of independence and impartiality of real estate judges is evident in the [Real Estate Judges Law No. 16/2014](#) which stipulates that the real estate judges shall be appointed by decision of the Minister of Justice upon the proposal of the director general of the Directorate of Real Estate Interests. Syrian real estate judges report to the Minister of Justice, who makes the absolute determination of their appointment, transfer, and dismissal without referring to the Supreme Judicial Council, as they do not affiliate with it but with the Directorate of Real Estate Interests. The Director of the Directorate of Real Estate Interests is charged with granting leaves of all kinds to the real estate judges are granted in accordance with Basic Law on State Employees No. 50/2004 and its amendments,²¹ as they do not come under [Judicial Authority Law issued by Decree No. 98/1961](#).

The lack of independence of the judiciary responsible for the restoration of real estate documents threatens the rights of Syrians, especially the absent and the displaced. This opens the possibility for the Syrian government's manipulation of records to the detriment of displaced persons viewed as supporters of opposition forces, with the displaced having little practical recourse to challenge the results.

²⁰ Syria: The Power of the Executive Branch and its Security Organs Make Judicial Immunity Ineffective, STJ, 28 July 2022, <https://stj-sy.org/en/syria-the-power-of-the-executive-branch-and-its-security-organs-make-judicial-immunity-ineffective/>

²¹ Articles 1, 2, 4, 8, and 9 of the Real Estate Judges Law No. 16/2014.



About Us:

Syrians for Truth and Justice (STJ) is a nonprofit, nongovernmental organization monitoring human rights violations in Syria. Founded in 2015, STJ has been based in France since 2019.

STJ is an impartial and independent Syrian human rights organization operating across Syria. Our network of field researchers monitor and report human rights violations occurring on the ground in Syria, while our international team of human rights experts, lawyers, and journalists gather evidence, examine emerging patterns of violations, and analyze how violations break domestic Syrian and international law.

We are committed to documenting violations of human rights committed by all parties in the Syrian conflict and elevating the voices of all Syrians victimized by human rights violations, regardless of their ethnicity, religion, political affiliation, class, and/or gender. Our commitment to human rights monitoring is founded on the idea that professional human rights documentation meeting international standards is the first step to uncovering the truth and achieving justice in Syria.



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