

KURDWATCH●Report 6

Decree 49—Dispossession of the Kurdish population?

Commentary on the political implications
and economic consequences of a decree



KurdWatch is a project of the
European Center for Kurdish Studies
Emser Straße 26
12051 Berlin
Germany

Phone: +49 – 30 – 62 60 70 32
Fax: +49 – 721 – 1 51 30 34 61
info@kurdwatch.org

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Decree 49—Dispossession of the Kurdish population?

Commentary on the political implications and economic consequences of a decree

On September 10, 2008, the Syrian president issued Decree 49. The decree amended Statute 41 of October 26, 2004, which regulated the ownership, sale and lease of land in border regions.¹ In Kurdish and pro-Kurdish circles, the decree was almost unanimously described as »anti-Kurdish«. Thus an editorial in *al-Wahdah*, the central organ of the Kurdish Democratic Union Party in Syria (Democratic Yekîti), reads:

»It is no secret that a special project for the Kurdish issue is behind the Articles of Decree 49 from 2008. This project was promoted by numerous security services and Ba’thist institutions on the grounds that there was a plan to establish Kurdish dominance over the real estate markets, particularly in al-Qamishli. It was additionally alleged that foreign investors were investing their money in wholesale trade and construction projects. As a result these institutions are of the opinion that it is a national duty to resist the supposed Kurdish expansion with further special decrees and statutes in order to stop the economic and social development of the Kurds.«²

A pamphlet of the Democratic Yekîti branch in Germany interpreted Decree 49 as a continuation of the »Arab Belt« policy. According to the pamphlet, the decree pursues the goal of expelling the Kurds from al-Hasakah province to other Syrian provinces or to Europe.³ Furthermore a pamphlet of the Kurdish Union Party in Syria (Yekîti) in Germany reads:

1 The complete text of Decree 49 and Statute 41 can be accessed in the original and in translation at <www.kurdwatch.org> under »Documents«. Unless otherwise indicated, the information presented here is drawn from conversations with five attorneys residing in al-Hasakah province and two attorneys from the ‘Afrin region. The conversations took place between December 2009 and June 2010.

2 »Al-Marsûmu 49 giṭa’un ’āḥara li-mašrû’in ‘unşuriyin«, October 11, 2008, accessed at <http://www.amude.net/Beyan_Munteda_deep.php?newsLanguage=Munteda&newsId=6854>.

3 See »Bang ji raya giştî ya Ewropî û Navnetewî re (Derbarê kuştina leşkerên kurd di dema pêkanîna erkê parastina welat de li sûriyê)«, Central and Southern Branch of the Democratic Yekîti in Germany, December 10, 2009.

»[Decree 49] is a decree of ethnic cleansing and demographic change for the people in this region. Moreover it is a systematic policy aimed at ending national Kurdish existence.«⁴

The central organ of Ebdilhekîm Beşar's ('Abdulahkim Bashar) Kurdish Democratic Party in Syria writes:

»One decision after another has been made to sustain the oppression of this people [the Kurds] and to let them starve. This is also the reason why Decree 49 was issued.«⁵

Finally on October 31, 2008, the Society for Threatened Peoples (GfbV) declared:

»The decree questions principally the right of Syrian citizens to hold property in the border areas of the country. There are to be with immediate effect no more entries in the land register. If this decree is complied with completely property can no longer be bought or sold, nor can it be bequeathed to the legal heirs. Those most affected are the Kurdish and the Assyrian Aramaic ethnic groups in the three governorates (Muhafazat) on the Turkish-Syrian border, Hasaka, Ar-Raqah and Aleppo.«⁶

What is the basis for this assessment? What is Decree 49 all about—in particular, how does it differ from the original text of Statute 41? And to what extent do potentially negative consequences primarily affect Kurds? These questions will be discussed in the following article.

The legal changes associated with Decree 49

To answer these questions, it is useful to first take a look at the original version of Statute 41 from 2004. Article 1 reads:

»The establishment, transfer, modification or acquisition of any right to land in a border region or its use for rent or other commercial purpose for a period of more than three years in the name of or for the benefit of an individual or legal entity is prohibited unless prior permission has been given.«

4 »Appeal«, Kurdish Union Party in Syria (Yekîti) in Germany, undated.

5 »Piştî van êrişan çî tê xwestin«, *Dengê Kurd* 417, July 2009: 8.

6 »Kurds in Syria demonstrate against presidential decree: Property in border areas must not be confiscated«, GfbV, October 31, 2008, accessed at <<http://www.gfbv.de/pressemit.php?id=1626&stayInsideTree=1>>.

In the provisions for the implementation of Statute 41, announced by the Interior Ministry on November 28, 2004, the term »land« is defined as an »agricultural area«. Moreover inner-city areas intended for residential or administrative development in line with a land utilization plan are explicitly exempt from the permission requirement (Article 10).

Statute 41 thus implemented a 1981 court ruling that called for the aforementioned inner-city areas to be exempt from the permission requirement. Due to the ruling, however, no permission was needed for these areas even prior to the passage of the statute. Statute 41 did not therefore constitute a genuine improvement in practice as compared to the previously valid Decree 193 from 1952.

Under Decree 49 regulations for the acquisition of land in border regions tightened considerably. Thus changes to the titles to land in border regions and the long-term leasing of such land now fundamentally require permission, regardless of whether or not the land has been developed⁷ or lies within or outside the area included in a land utilization plan (amended version of Article 1, Statute 41). In other words, according to the aforementioned article any alteration to land titles now requires permission; agricultural areas and urban building sites are equally affected.

In addition, Decree 49 prohibits legal action for the purpose of confirming sales (amended version of Article 4). What exactly does this mean?

Before the implementation of Decree 49 (i.e., under Decree 193) the approval process, at least in al-Hasakah,⁸ could have taken years. Several proceedings were still pending ten years later and a positive outcome was not guaranteed. In light of this, so-called »sham lawsuits« were common, especially in al-Hasakah province: following completion of a sale, the buyer of land who required purchase permission would file a lawsuit against the seller, requesting confirmation of the buying process. Both buyer and seller had to appear before the appropriate civil court, where they confirmed the sale. The seller's entry in the land register was subsequently endorsed as an indication of the sale, while the buyer was prompted to present per-

⁷ Thus the English translation of the decree refers to property, i.e., both developed and undeveloped land.

⁸ Certain discrepancies in practice in 'Afrin will be discussed later.

mission for the sale from the Interior Ministry. Since no such permission existed, the proceedings would be adjourned with the stipulation that the buyer submit the relevant permission at a later date. In fact, neither seller nor buyer ever appeared before the court again in this context. The proceedings were abandoned but the endorsement remained in the land register. Those concerned interpreted this as a form of »guarantee«, in particular for the buyer vis-à-vis the seller. At the same time this guarantee was of an entirely subjective nature: pursuant to Article 6 of Statute 41, entitlement to the use of land was void if the required permission had not been requested within three months.

Be that as it may, the legal process described above is no longer possible under Decree 49. The amended version of Article 4 of Statute 41 explicitly prohibits the courts from registering lawsuits or entering an endorsement into the land register as described above unless the relevant permission has been presented.

Critics of the decree see this as a violation of Article 28 Paragraph 4 of the Syrian Constitution, which includes the right to file a court action. This, however, is true to a certain extent only. If the intention of the amended version of Statute 41 is to prevent the routine filing of »sham lawsuits« that have nothing to do with a genuine conflict between two petitioners and, furthermore, that the latter do not intend to see it through, then, measured against constitutional standards, this is more an attempt to close a legal loophole and prevent misfeasance than to exercise unreasonable severity.

According to another point of critique, Decree 49 violates Article 17 of the General Declaration on Human Rights, which guarantees the right to property. This would only be the case, however, if acquiring the said permission were associated with particular hardship. The key questions are thus: Under what circumstances is permission granted? Who is to request permission? Which regions are included in the term »border region«? And: did the coming into effect of Decree 49 result in any fundamental changes in the practice of granting permission?

The practice of granting permission since the coming into effect of Decree 49

On the question of permission, Article 3 of Statute 41 states that it will be granted by the Interior Ministry on the recommendation of the Ministry of Agriculture and Land Reform and with the approval of the Ministry of Defense. The provisions for the implementation of Statute 41, announced by the Interior Ministry on November 28, 2004 and cited above, outline the exact procedure for obtaining permission. An application for permission is first of all filed with the governor of the relevant province, who passes it on to the Office of Agriculture and Land Reform. There a response is drafted and sent back to the governor. He uses everything at his disposal, including police management assistance, to investigate whether the application for permission might serve purposes that would harm the interests of the Syrian state. The file is then sent for verification to the Ministry for Agricultural and Land Reform in Damascus, which forwards it to the Interior Ministry. The Interior Ministry requests the opinion of the Ministry of Defense⁹ and the Political Security Directorate in Damascus before making a decision on the file. In other words, sales and leases pursuant to Statute 41 will not be validated without the approval of the Political Security Directorate.

With the coming into effect of Decree 49, the approval process has changed insofar as responsibility is said to be now lying with the Ministry for Municipal Affairs and no longer with the Ministry of Agriculture and Land Reform.

In Syria permission from one or more intelligence services is essential for any number of matters, e.g., to hold weddings or register the marriages of stateless people (*ajanib*). Some of these cases require »standard permission«, which, as a rule, is issued without further objection. That this did not apply to the approval of land sales in al-Hasakah—at least prior to Decree 49 taking effect—has already been mentioned above. Here we are concerned with the criteria that were or are relevant for the issue or denial of permission in land matters in the various border regions.

⁹ According to one of our informants, the statement is issued by the Military Intelligence Service.

The question of a concrete definition of »border region« arises in this context. On November 19, 2009, shortly after Decree 49 was issued, the president issued Decree 432, which lists all border regions. Included in the list are all Syrian provinces that have an international external border—in other words, all the provinces except Hama. While along the sparsely settled border with Jordan and Iraq a five kilometer wide strip is defined as a border region, on the Turkish and Lebanese border, cities are listed separately. The provinces of al-Hasakah and al-Qunaytirah constitute an exception—these provinces are defined in their entirety as border regions.

The permission requirement for land sales is therefore not a »Kurdish phenomenon«—Arab regions are also affected. On the one hand, this suggests that the close monitoring (and, if necessary, nonapproval) of land sales in border regions is intended to serve border security in general. On the other hand, the provinces of al-Hasakah and al-Qunaytirah hold a special position. In the case of al-Qunaytirah this is related to the fact that Syrian politicians see the border to »hostile« Israel as an instance for special protection: much of the province—the Golan Heights—was conquered by Israel in the course of the Six-Day War in 1967 and the Yom-Kippur War in 1973.

There is also a political explanation with respect to al-Hasakah: large areas of the province have been settled by Kurds. A substantial Kurdish population not only lives close to the border in the Jazirah but also in cities like al-Hasakah, which is located roughly eighty kilometers from the Turkish border and thus inland. In order to apply the approval process to monitor the population of the city of al-Hasakah, a definition of the category »border region« as being close to the border is not sufficient. Apparently the Syrian government assumes a certain amount of disloyalty among the Kurdish population and therefore seeks to prevent this group of people from indiscriminately gaining ownership of Syrian land—especially if it borders Kurdish areas in Turkey and Iraq or lies in the immediate vicinity.¹⁰ The backdrop to this may be the fear of a supranational »Greater Kurdistan«. The fact that Kurdish political activists are regularly convicted on charges of wanting

10 In the case of Iraq, the area in question is the Sinjar region. This region does not belong to the Kurdish administered region but to the so-called »contested territories«, to which the Kurdistan Regional Government lays claim.

to partition a part of Syrian territory and annex it to another state (Article 267 of the Penal Code) supports this view.

Concerning the definition of border regions, Decree 432 of November 19, 2008 thus has certain anti-Kurdish implications insofar as it not only affects the »real« border regions with a high percentage of Kurdish residents, i.e., 'Afrin (Jabal al-Akrad) and 'Ayn al-'Arab (Kobani)—both in Aleppo province—and the Jazirah, but also the inland areas of al-Hasakah province that are home to numerous Kurds. Admittedly this is not a new phenomenon: Al-Hasakah and al-Qunaytirah provinces were already named in Decree 1360, dated November 11, 1964; here both provinces constituted the border region.¹¹ New is that the definition of border region issued in 2008 also applies to the entire international external Syrian border—including exclusively Arab-settled areas.¹² This leads to the question of concrete approval practices in the various areas defined as border regions.

With the exception of al-Qunaytirah, permission in the non-Kurdish border regions is said to be issued for the most part without further question. According to an attorney from Latakia province, Decree 49 had led to delays in the buying process, but that permission was generally issued within three to four months. In al-Hasakah province, in contrast, a mere twenty permissions are said to have been issued up to June 2010, most of which concerned authorizations for developed property. The majority of beneficiaries are said to have been Arab and Christian, while the number of Kurdish applicants was negligible. In this context it is interesting to note that even in the thirty years prior to Decree 49, the approval process regarding land for agricultural use is said to have been decided primarily to the disadvantage of Kurdish petitioners. On the other hand, applications by Arab or Christian petitioners are said to have been approved for the most part.

Again, in the almost exclusively Kurdish-settled district of 'Afrin, the approval process currently takes about half a year—and a positive outcome is certainly possible. Nevertheless Kurds there primarily have difficulty in obtaining permission if they are considered po-

11 In contrast in Decree 2028, dated June 4, 1956, al-Hasakah province as a whole is not yet named as a part of the border region—but a twenty-five kilometer wide strip along the border to Turkey is.

12 It could not be determined whether these Arab regions were defined as a border region under Decree 432 for the first time or had already been defined as such under another decree.

litically active. Moreover Arabs who want to sell their land must expect problems—at least when the potential buyer is a Kurd. Before Decree 49 came into effect these problems were allegedly nonexistent.

The practice of granting permission has proved to be somewhat more liberal in ‘Afrin than in al-Hasakah. This may be linked to the fact that Syria views al-Hasakah province as the center of Kurdish resistance. It is indeed a stronghold of the Syrian-Kurdish parties; only the Democratic Union Party (PYD) with its close ties to the PKK (also) has its center in ‘Afrin.

To conclude, we must take from this that although the definition of what constitutes a border region has certain anti-Kurdish aspects, it cannot be reduced to these. The practice of granting permission presents a similar situation. The key argument here is that politically motivated or simply arbitrary denials of permission are preventing people from acquiring (new) property. Nevertheless we cannot speak of outright dispossession, as is suggested in the declaration by the Society for Threatened Peoples cited above. The fact that the decree left Article 7 Paragraph B of Statute 41 practically unaltered makes this abundantly clear: There it is stipulated that people who inherit property in a border region are merely obliged to notify the proper authorities of this, but do not require permission.

More crucial than the restriction of opportunities to acquire property seem to be the indirect economic consequences of Decree 49—once again particularly in al-Hasakah province.

The economic effects of Decree 49

Decree 49 resulted in significant economic losses for two professional groups in particular: attorneys, on the one hand, and the construction industry, on the other.

A large percentage of the jobs for attorneys in al-Hasakah are related to real estate, in particular, the legal process described above. With the passage of Decree 49 they have lost a substantial source of income. This is distinctly relevant insofar as an attorney who represents fewer than fifteen cases annually before the court loses his pension of the bar association for that

year. Moreover, the respective year is not accepted as a year of employment. According to one of our informants, the al-Hasakah bar association estimates that more than eighty percent of all attorneys in the province will not reach this decisive target in 2009 as a result of Decree 49.¹³

Numerically of far more importance, however, are the effects on the construction industry. Not only are architects and engineers affected—similar to attorneys, a small »elite«—but also »armies« of craftsmen, construction workers and unskilled laborers. The construction industry constitutes, not only in the province of al-Hasakah, a major source of income for young men with little or no formal education, especially stateless Kurds. What counts in the construction industry is whether there is movement in the market for residential and commercial plots—in other words, where building actually occurs rather than the amount of agricultural land sold. The introduction of a permission requirement for inner-city land led to a significant reduction in sales in this area and, as a result, a dramatic scaling-down in construction projects. Moreover, the ban on lawsuits is described as the decisive »brake on sales«: on-site interviews make clear that from the point of view of many potential buyers, there is a crucial difference between entering into a private contract with a stranger, a neighbor or a relative that is null and void and obtaining an endorsement in the land register before a Syrian court with the help of an attorney. It is and was common knowledge, of course, that the previously obtainable endorsement in the land register had no legal binding. At the same time, the population had been accustomed to precisely this procedure for decades and the practice contributed an »official« touch to the selling process.

Both Arab and Kurdish civil engineers complain that they have lost numerous contracts due to Decree 49.¹⁴ One of the people we talked to, an attorney from al-Qamishli, estimated in June 2010 that inner-city building activity in this city, the largest in al-Hasakah province, had declined by approximately two-thirds. In a city where the construction industry and the real estate market are/were two major economic factors, this is an alarming development.

13 Interview with an attorney in al-Qamishli, summer 2009.

14 Interviews in al-Qamishli, summer 2009. Current estimates anticipate a similar situation for 2010.

In addition, Decree 49 affected the population of al-Hasakah at a time when the economy was already under severe strain as a result of weather-related agricultural losses. After years of drought the situation of large portions of the population—already poor compared to the rest of the country—was so precarious that the loss of work and income prompted by Decree 49 seriously threatened not only the existence of many unskilled laborers and craftsmen, but also that of engineers and attorneys. From the point of view of the population, the decree affected the region at a time when hopes were high for support from the government. Instead, a decree was issued that significantly weakened, after agriculture, yet another important economic sector and hence another basis of existence in the region. Consequently, it can be assumed that Decree 49 has brought about an increase in internal migration—this is entirely plausible, but in the absence of statistics cannot be confirmed. Neither can it be confirmed that this »flight« from al-Hasakah and the economic decline of the region was a stated government aim.

The extent to which Decree 49 has affected the population of al-Hasakah is evident from the contents of a letter from Arab and Kurdish residents to the Syrian president indicating the consequences of Decree 49. Approximately 46,000 people are said to have signed this petition.¹⁵ Such collective campaigns by sections of the Arab and Kurdish population are far from typical and point to the particular urgency of the problem. Thus far, there has been no visible reaction to the letter.

15 Interview with a journalist in Damascus, summer 2009.