

Nowhere to turn: legal accountability in occupied Afrin

by Meghan Bodette - 17/11/2018 18:07



The European Court of Human Rights has dismissed several cases filed by victims of Turkey's invasion and occupation of Afrin, Syria on the grounds that the applicants had not yet exhausted all forms of domestic legal recourse, DW News [reported](#) on Friday.

The applicants filed petitions between July 23rd and September 18th, citing [provisions](#) of the European Convention on Human Rights relating to the right to life, the prohibition of torture, and the right to respect for private and family life. The court rejected all the applications in September and October.

As the invasion took place, the EU-Turkey Civic Commission, [established](#) to oversee Turkish compliance with EU accession criteria, [urged](#) the ECHR to take action on Afrin. "Turkey is a member of the Council of Europe and a member of the European Court of Human Rights (ECHR). The court is therefore encouraged to take immediate action in the form of provisional measures – whatever it considers appropriate under

the circumstances – to stop the crimes committed by Turkey on behalf of President Erdogan himself," the statement read.

For a case to be ruled admissible by the ECHR, the court must find that the applicants have exhausted all "domestic remedies." According to the DW report, the cases related to Afrin were rejected because there had been no attempt to resolve the cases within the Turkish legal system. Such a ruling means, notably, that the ECHR recognizes the legal system of Turkey to be the "domestic" legal system of a person living in occupied Afrin. Any further cases coming from Turkish-occupied Syria would have to progress through the Turkish legal system to be ruled admissible— an exceedingly difficult prospect.

Taking this ruling as a starting point, an examination of the domestic and international legal realities that the people of Afrin face shows just how few avenues for accountability they have, despite the severity of the human rights violations they have faced. The status of the war in Syria and the fact that the Democratic Federation of Northern Syria is a non-state entity further complicate the situation.

Turkish courts— the system that the ECHR suggests Afrin residents "exhaust"— have prosecuted hundreds of Turkish citizens for anti-war advocacy related to the invasion of Afrin, often on terror-related charges. Within the first month of the operation alone, at least 449 individuals were [detained](#) on "terrorist propaganda" charges for anti-war posts on social media. Erdogan called an anti-war statement from the Turkish Medical Association 'treason', and forced them to remove the word "Turkish" from their name, [claiming](#) they could no longer represent the country. Nine university students were [detained](#) for holding an anti-war demonstration on their campus.

If individuals living within Turkish borders face a hostile and politicized legal system for showing their opposition to the invasion, residents of occupied Afrin hoping to petition a Turkish court would surely face a dimmer environment— if such a case were even possible. When assessing possible war crimes in Afrin, a United Nations report [described](#) crimes committed by the FSA, but only noted Turkey's role to say that "OHCHR urges the Republic of Turkey to ensure that all armed groups over which it exercises control in Afrin and other areas of Syria strictly adhere to their obligations under international humanitarian law."

Turkish officials, meanwhile, have claimed that they cannot be held accountable for crimes committed by forces they supervise in areas they occupy. Responding to the murder of Rasha Bseis by her brother, an FSA militiaman, AKP human rights chair Leyla Shahin Usta [told](#) The Guardian that "the FSA has their own police force and their own courts. As the observer country, we advise them on the norms of

human rights – but at the end of the day, the FSA is in charge.”

The Fourth Geneva Convention [states](#) that in any occupied territory, "the penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention," and that such changes in the law must "not come into force before they have been published and brought to the knowledge of the inhabitants in their own language."

Turkey did not implement such a process when it invaded Afrin, nor has it made any effort to set up a fair legal system as described by other articles of the Convention. There is one Turkish-supervised FSA-run court in al-Rai, which opened in September. Al-Monitor [reported](#) that the court will have jurisdiction over areas held by Turkey-backed rebels, including Afrin. Cases brought to the ECHR, which challenged earlier violations, could not have been tried under this court at the time they were filed.

It is also likely that it will be as politicized and unfair as other FSA-run justice systems have proven to be. In areas of Syria held by Turkey-backed rebels, individuals have been [arrested](#) for insulting Erdogan, and civilians are often detained for supposed ties to the PYD or YPG on the basis of their Kurdish identity. Survivors of FSA-run prisons near Afrin have described [systemic](#) torture and human rights violations.

Civilians in Afrin, therefore, have no domestic authority to which they can appeal for legal recourse in a way that could guarantee even the possibility on paper of a fair trial— thus forcing them to seek international arbitration. Local authorities in Afrin have documented [hundreds](#) of instances of human rights violations committed by occupying forces. International bodies, including Human Rights Watch and the United Nations, have corroborated many of these accounts— though Kurdish activists note that these institutions have not done as much as they could to investigate crimes in Afrin.

Some notable violations— such as the [targeting](#) of Arvin Hospital, the existence of human trafficking rings and forced prostitution, the targeting of civilians, and ethnic cleansing— are matters that have no "domestic remedies" even under a fair system, and are serious enough to be investigated as war crimes or crimes against humanity by the International Criminal Court. Turkey itself is not a state party to the ICC, and the Democratic Federation of Northern Syria— which is not a state— cannot become one. Any state party that decides to, however, can “refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the

commission of such crimes," according to Article 14 of the [Rome Statute](#). The United Nations Security Council can also [refer](#) a situation to the ICC for judgement and grant it jurisdiction, and has done so in more than one historical case.

This means that, were the people of Afrin to take this route, they would be dependent on reliable international support— something the invasion itself showed they did not have. There was just one United Nations Security Council meeting on Afrin— compared to several held each time Syrian forces advanced on rebel strongholds in Aleppo and Ghouta. The international legal system, developed by state decisions and state practice, has little effective room for those oppressed by the states around them. Accountability for Afrin, invaded for reasons stemming from both the war in Syria and the Turkish war against the Kurdish people, will be most possible when it is free from occupation and when some form of political settlement is underway for both conflicts—a far-off prospect. The most that can be done now, as Erdogan continues his threats against Northeast Syria, is to continue to collect and verify evidence of Turkish human rights violations in Syria, and to ensure that such an invasion cannot be repeated.