

# Reinstating the death penalty in Turkey after the attempted coup?

After the unsuccessful coup attempt in Turkey, both high-level officials and the pro-government public suggest the reinstatement of the death penalty. Unfortunately the question tends to re-surface from time to time in other states as well, but rarely with such political weight. It is important to evaluate the possibility of this step.

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The dubious actions by the Turkish government after the failed coup (massive arrests, a systematic assault on the judicial system by suspending thousands of judges and prosecutors) have drawn strong criticism from many actors, including leaders of the [Council of Europe](#) and the [United Nations](#). The statement by Marina Kaljurand, acting as Chair of the Committee of Ministers of the Council of Europe has reminded the Turkish government “to abide by the constitutional order”, and to respect “democratic institutions and the rule of law” and “right to life, which has to be protected in all circumstances, and the right to a fair trial”. One day later, UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein has called on the Turkish government “to respond to the attempted coup by reinforcing the protection of human rights and by strengthening democratic institutions and checks and balances”, while he put a special emphasis on the protection of independence of the judiciary being the “key to the fair administration of justice”. Similar concerns have been raised earlier [by the president of the Venice Commission](#) as well.

While the statements from the Council of Europe have only referred to this, the High Commissioner has explicitly expressed his regret that even high-level officials have suggested the reinstatement of the death penalty. It is not unusual, that politicians bring up this subject from time to time in states that had already abolished this punishment (especially after crimes that shock the public), but in this very special situation this proposal gains serious political weight.

## **The current international legal framework applicable to the death penalty and Turkey**

Under the current legal circumstance, reinstatement of the death penalty would raise numerous problems regarding Turkey’s international legal obligations, both on universal and on European level.

Turkey has ratified the second optional protocol to the International Covenant on Civil and Political Rights ([OP2-ICCPR](#)) in 2006. This international treaty was adopted in 1989 as an amendment to the United Nations’ fundamental human rights treaty, the International Covenant on Civil and Political Rights of 1966 ([ICCPR](#)), to which Turkey has been a party to since 2003, with the aim to abolish the death penalty. According to its provisions, death penalty shall neither be

executed, nor upheld within the domestic legal system of states party to it. The argument, echoed by some, that this extreme situation may prove to be satisfactory to re-instate the death penalty can be rejected by the fact that the Protocol itself makes it possible to states to uphold the death penalty only for situations of “wartime” and for “a most serious crime of a military nature”, but this can only be done via a formal reservation made by the state at the time of the ratification of or the accession to the Protocol, and has to be communicated it to the Secretary-General of the United Nations, together with all the relevant domestic legal provisions that are applicable during wartime. Turkey had not made any reservations or declarations that could be understood even close to that.

At the same time, Turkey is also party to the first additional protocol to the Covenant ([OP-ICCPR](#)), which gives the [UN Human Rights Committee](#) the option of examination of individual complaints against the country for the violation of the Covenant or the second Protocol. Additionally, the provisions of the Covenant and the Protocol do not permit denouncement or withdrawal to states party to them, which currently does not make it possible for Turkey to get rid of this legal obligation.

On the European level, the legal situation is even tougher for proponents of the death penalty. The European human rights system, which has developed for decades in the framework of the Council of Europe, with Turkey being a founding member, has gradually created a prohibition of absolute nature concerning the death penalty. While the [European Convention of Human Rights](#), the fundamental human rights treaty of the European continent adopted in 1950, had not prohibited the death penalty *per se*, its later amendments have done so. The first step has been [Protocol No. 6](#) to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, adopted in 1983, which has been ratified by Turkey in 2003, without any reservations or declarations. This treaty – similarly to the second protocol, described above – has made it possible to states party to uphold the death penalty for “acts committed in time of war or of imminent threat of war” with the obligation of communicating this to the Secretary General of the Council of Europe, together with the relevant domestic legal provisions. But the prohibition has become complete with [Protocol No. 13](#) to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 2002. Its aim is to abolish the death penalty in all circumstances, and Turkey has ratified it in 2006.

As with other European human rights provisions, the Strasbourg-based [European Court of Human Rights](#) may examine individual complaints against any member state of the Council of Europe in the case of its violation, the right to life (Article 2) being one of the most important of those. Similarly to the UN human rights obligations, the European human rights obligations cannot be escaped by withdrawing from these treaties.

We can conclude, that under the current international legal environment, it is not possible for Turkey to reinstate the death penalty – it would constitute a serious violation of human rights obligations deriving from both UN and Council of Europe membership. And even if these problems would not matter to Turkey, any retroactive application of the death penalty in respect to the current coup attempt would immediately mean a violation of the prohibition of retroactive application of criminal law, the violation of the fundamental principle of *nulla poena sine lege*, leading to obvious claims of violation of right to fair trial under the European Convention.

## **Turkey and the death penalty – and Europe in the past and the future**

One of the most important Turkey-related cases in front of the Strasbourg court has also been in connection with the death penalty, and may offer some explanation towards Turkish policy regarding the death penalty. The case of [Öcalan v. Turkey \(application no. 46221/99\)](#), decided by the Grand Chamber on 12 May 2005, had to evaluate the complaint of Abdullah Öcalan, who had been the leader of the Workers’ Party of Kurdistan (PKK), an illegal organization, often

considered to be a terrorist group. He was sentenced to death in June 1999 for his crimes against the state, but in 2002 his punishment was commuted to life imprisonment, as in August 2002, Turkish law abolished the death penalty in peace time. While the complaint has been built on other alleged violations of Turkey, obviously the violation of right to life seemed to be the most serious one. As the death penalty had been abolished, and the individual punishment had been changed to life imprisonment, the Strasbourg court found no violation of Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment) or Article 14 (prohibition of discrimination) of the Convention only because of the application of the death penalty. At the same time, the Court found that a violation of Article 3 occurred, as the imposition of the death sentence had taken place by an unfair trial (e.g. the court's independence and impartiality was doubtful, the length of the procedure etc.), and this had amounted to inhuman treatment.

The abolishment of the death penalty from the Turkish law in 2002, and the consequent ratification of international treaties with the same goal as guarantees, has been part of an approach process towards human rights standards expected by Europe from the country – as the story above shows. The burning question now is, if Turkey has really decided to make a well-visible turn by seriously considering this step.

Not as if the EU accession would be in realistic distance, but the [Charter of Fundamental Rights of the European Union](#) also applies a clear prohibition on the death penalty, and the human rights record of Turkey does count, not only for the country, but also for the EU and its member states. With the migration crisis constantly re-growing the political weight of Turkey in the eyes of European leaders, the current situation will force these decision-makers to think about its future role. Its rapidly eroding human rights performance may make it legally incapable of cooperating with EU member states: for example the EU-Turkey migration agreement, forged in March of 2016, can be in serious danger, which is criticized quite badly by many actors anyway. The situation is tense enough even without the coup that had happened or any populist communication from leaders in Turkey.

Additionally, irresponsible communication about the death penalty – while Öcalan is still in Turkish prison – may give at the same time the final blow to the Turkish-Kurdish peace process stranded since 2015 as well, making the domestic political situation of Turkey even worse than today.

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