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İNSAN HAKLARI DERNEĞİ HUMAN RIGHTS ASSOCIATION

Necatibey Cad. 82/11-12,
06430 Demirtepe-Ankara
TURKEY
Tel: +90 312 230 35 67-68-69
Fax: +90 312 230 17 07
E-mail: ihd@ihd.org.tr,
<http://www.ihd.org.tr>

Death Penalty Cannot be Reinstated in Turkey

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10 October marks the **World Day Against the Death Penalty**. İHD would once again like to underline that death penalty cannot be restored in Turkey.

İHD is astounded by the fact that representatives of the political power or leaders of nationalist parties are keen on putting the death penalty back on the agenda of the country when socially significant events take place or heinous murders that draw the reaction of the public are committed. Recent statements by Mr. Mustafa Şentop, the Speaker of the Grand National Assembly of Turkey, indicating that the death penalty could be restored for some offenses have further astounded us.

Statements by the president, who claims to be a political follower of the late Prime Minister Adnan Menderes who had been executed in 1961 after having been sentenced to death penalty, lend credit to controversies about the death penalty which in the end are quite alarming. Moreover the fact that some politicians, encouraged by these remarks, keep on making similar statements is an indicator of the ways in which this issue will further be instrumentalized as a matter of political football.

In a country where prime ministers, revolutionary student leaders and so many others had been executed after having been sentenced to death, all should be able to foresee that attempts at restoring the death penalty will have severe legal and political consequences in both domestic and international fora. İHD would also like to stress that it is not possible for Turkey to withdraw from ratified conventions and protocols.

The death penalty is, first and foremost, state violence that infringes on a person's right to life, in other words, it is murder in the first degree committed by the state. The right to life should be protected as it is of top priority because the "right to life is the prerequisite for the enjoyment of all other human rights."¹ The termination of the right to life as punishment by the states leads to irreversible and irreparable damages resulting in the disregard of values of humanity, therefore, it can never be endorsed by human rights defenders. Indeed the UN Human Rights Committee clearly stated in its 1982 General Comment that:

[Right to life] is the supreme right from which **no derogation is permitted** even in situations of armed conflict and other public emergencies which threatens the life of the nation. No one shall be arbitrarily deprived of his life and that the right shall be protected by law. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal

¹ Yuval Shany. Chair of the Human Rights Committee. 1 November 2018. Also see the Committee's new general comment on the "right to life."

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23809&LangID=E>>

Human Rights Association (İnsan Hakları Derneği-İHD) is a non-governmental, independent, and voluntary body. The association, which was founded in 1986 by 98 human rights defenders, today has 28 branches, 5 representative offices, and 7,945 members. İHD is the oldest and largest human rights organization in Turkey and its "sole and specific goal is to promote 'human rights and freedoms.'"

acts, but also to prevent arbitrary killing by their own security forces. **The deprivation of life by the authorities of the state is a matter of the utmost gravity.**² (emphasis added)

Turkey abolished the death penalty through Law No. 5170 on 7 May 2004 following a long period of struggle removing it all together from its legislation including Articles 17 and 38 of its Constitution.

Further, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the death penalty was signed by Turkey on 15 January 2003 and ratified on 12 November 2003. It went into effect on 1 December 2003 following the deposition of the protocol ratification document to the General Secretariat of the Council of Europe.

Turkey is also a party to Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, including for crimes committed in times of war and imminent threat of war which allows no derogations or reservations. Turkey signed the protocol on 9 January 2004, ratified it on 20 February 2006, and it went into force on 1 June 2006. Article 1 of the protocol reads:

Article 1. Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

On 3 February 2004, Turkey, in addition to the above-mentioned protocols, also signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty which was adopted and proclaimed by the UN General Assembly resolution 44/128 of 15 December 1989. The protocol went into effect in Turkey on 24 October 2006.

For a country that had ratified the most fundamental protocols of the United Nations and Council of Europe human rights systems, to derogate from these protocols will mean stepping out of the human rights system and becoming a poor example on the international scene. *Pacta sunt servanda* (agreements must be kept) is a fundamental principle in international law. No derogations from this principle can be allowed.

Derogation from the abolition of death penalty, which is one of the most fundamental requirements of the European Union, will have severe political, economic, legal, cultural and sociological consequences for Turkey.

Consequently, Turkey has already removed the death penalty from its domestic legislation and can never reinstate it ever again.

All those concerned need to keep in mind that those who have been fighting for human rights and democracy in Turkey will decisively oppose the reinstatement of the death penalty.

Human Rights Association

² UN Human Rights Committee. General Comment. UN Doc. A/37/40, 1982.