

The ECBA, whose objects under its constitution include promoting “(...) the administration of justice and human rights under the rule of law within the member states of the Council of Europe and among the peoples of the world” is alarmed by reports that following an attempted coup d’état Turkey is considering the restoration of the death penalty in order to execute the ringleaders of the coup if not others as well.

Turkey is a member of the Council of Europe and a signatory of the European Convention on Human Rights. Consequently Turkey is bound by Protocols 6 and 13 of the ECHR which abolish the death penalty. Any law adopted by the Turkish Parliament to restore the death penalty would automatically infringe these Protocols and in this regard no derogation under Article 15 of the Convention would be available.

Since according to the Turkish Constitution the Convention prevails over domestic law in the case of conflict, restoring the death penalty would also be unconstitutional.

In addition, using the death penalty as a punishment for taking part in or leading the coup would require the law restoring capital punishment to be applied retroactively. This would be a flagrant violation of Article 7 of the Convention which expressly forbids the imposition of a heavier penalty than the one applicable at the time the offence was committed.

Under these circumstances should a law be adopted which provided for the execution of coup participants one would expect it to be struck down by the Constitutional Court. There are, however, fears that the Constitutional Court might, for one reason or another, decline to interfere with such a law.



The ECBA is but a neutral observer of developments in Turkey in general and of the recent coup and its aftermath in particular. Nonetheless the ECBA emphasises that failure by the Constitutional Court to strike down such a law would constitute an abdication of its duties and responsibilities to the law and the people it governs and would signal in addition the total abandonment of the rule of law in Turkey.

Any law restoring the death penalty especially with retroactive effect and any failure by the Constitutional Court for whatever reason, to strike that law down could only result in Turkey's expulsion from the Council of Europe or in the suspension of its membership.

The ECBA does not contest the fact that attempts to overthrow the government of a country by the use of military force may constitute a criminal offence, indeed a serious criminal offence. The nature of the offence does not detract, however, from the imperative need to afford to all suspects access to and regular visits from a lawyer from the outset and to afford to all accused persons a "fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" within the meaning of Article 6 of the Convention. These are the fundamental and therefore inalienable rights of all suspects in criminal proceedings and of all accused in every criminal trial.

The ECBA therefore urges Turkey to ensure that those accused of attempting to overthrow the current government will be able to instruct defence counsel of their choice, that defence counsel will be able to perform their professional duties without interference of any kind whatsoever and that no attempt shall be made to interfere with the independence and impartiality of the courts or with the obligation to act within reasonable time so that pre-trial detention is not used as a means of punishment.



Turkey has everything to gain by adhering to these principles.

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