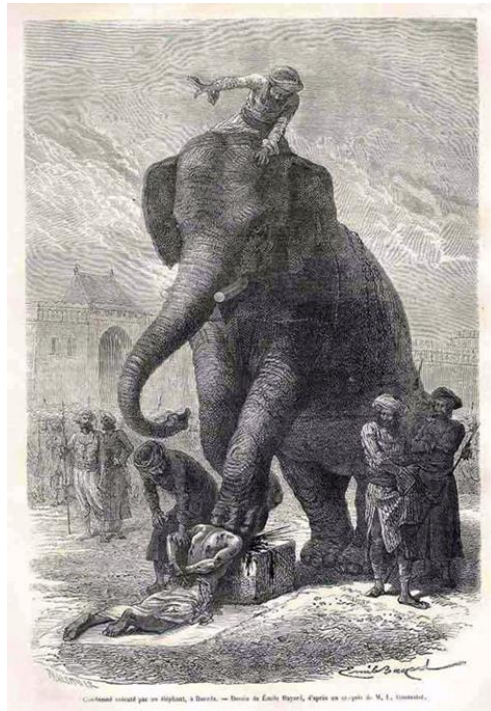


“Hang them in Taksim”

Europe, Turkey and the future of the death penalty

“Let us hang one or two people in Taksim.
See, nobody would dare act like that anymore!”¹

16 May 2017



India: public execution by elephant

¹ Turkish expression: *Taksim 'de bir iki kiři sallandırılm. Bak bir daha yapıyorlar mı?*

“The death penalty is incompatible with human dignity. It is inhuman and degrading treatment, does not have any proven significant deterrent effect, and allows judicial errors to become irreversible and fatal. Abolition of the death penalty is a distinctive achievement in Europe. It is a prerequisite for membership in the Council of Europe, and the absolute ban of the death penalty under all circumstances is inscribed in the Charter of Fundamental Rights of the European Union.”

Joint Declaration, European Union and Council of Europe (10 October 2016)²

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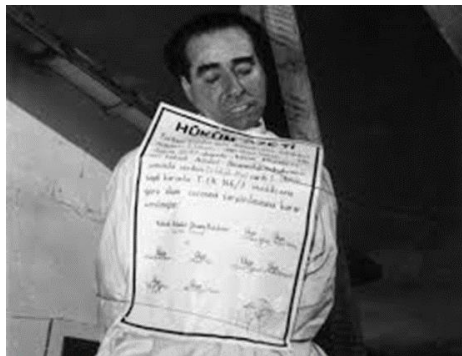
*The research for this report has been supported by **Stiftung Mercator** within ESI’s project on the future of EU-Turkey relations. The findings and suggestions are those of ESI only.*

² [“Joint Declaration by the European Union High Representative for Foreign Affairs and Security Policy, Federica Mogherini, on behalf of the EU, and the Secretary General of the Council of Europe, Thorbjørn Jagland, on the European and World Day against the Death Penalty”, 10 October 2016.](#)

Turkey's death penalty debate



Party leader Devlet Bahçeli – most consistent defender of capital punishment



Adnan Menderes – prime minister executed in 1961



General Kenan Evren – coup leader and president in favour of executions in 1980s



President Erdogan talking about reintroducing the death penalty in 2016

Executive summary

For almost a year now, Turkish president Recep Tayyip Erdogan has vowed, in speech after speech, that he is ready to restore the death penalty. Some have dismissed this as political theatre. And yet, Turkey would not be the first country to reintroduce the death penalty after it had fallen out of use. The Kingdom of Italy abolished the death penalty for civilians in 1889, only to see it reintroduced by Mussolini in 1930. The United States did not carry out any executions between 1968 and 1980. Turkey itself has had years of *de facto* moratoria on executions in the 1960s and 1970s, before carrying out more executions. Human rights progress is never irreversible.

Turkey abolished the death penalty in response to European Union conditionality after it received candidate status in 1999. In the years since then, accession negotiations and EU-Turkey relations have fallen into deep crisis. The question is what happens now, and how the EU should react if Turkey made capital punishment legal once again. At this moment, there is no clear response from Brussels. Threats to *suspend* accession talks mean little; what is needed is a clear message that introducing the death penalty would lead to a complete break in the accession process, and automatically return Turkey to the situation in which it found itself before it submitted its membership application in 1987. Since breaking off accession talks requires unanimity among all EU member states, this agreement would need to be reached now. The European Union Council should make a binding commitment that *any* accession country reintroducing the death penalty would *automatically* lose its candidate status.

The Council of Europe, Europe's leading international human rights institution, also needs to be clear about the complete isolation risked by Ankara. Turkey cannot legally reintroduce the death penalty without denouncing the *whole* European Convention on Human Rights. Membership in the Council of Europe is not conceivable without accepting the Convention. Reintroducing the death penalty would therefore isolate Turkey in Europe more than any military coup did in previous decades.

Everywhere, the abolition of the death penalty has required political leadership. Everywhere, it was a controversial step to take at the time. In France, which abolished the death penalty in 1981, it took until 1999 before more than half of the French public supported the ban. In West Germany, which abolished it in 1949, it took until 1971; in the UK, it took from 1969 until 2015. In making their case, European governments and institutions should avoid both arrogance and complacency.

This is a matter of holding the line on a hard-won human rights achievement. It is in the vital interest of all Europeans that this red line is not crossed anywhere in Europe. For Turkey to reintroduce the death penalty – the last execution took place in 1984 – would constitute a serious setback in the global struggle against capital punishment. Europeans should take the threat of the return of capital punishment in Turkey seriously. The EU and the Council of Europe should take every step they can, in time, to make this as unlikely as possible – in Turkey and anywhere else in Europe.

Dark shadow of justice

The death penalty is as old as human justice, a dark shadow that accompanies the efforts of societies to punish wrongdoing. It has been used to deter murder and blasphemy, maintain military discipline and ensure the fidelity of spouses. Justifications for it are found in the Bible and in the Quran; in the speeches of Robespierre and in those of 20th-century European democrats.³

The days are gone when elephants were used to crush heads in India. And yet, states continue to behead (Saudi Arabia), hang (Egypt, Iran), shoot (Belarus, China) and inject deadly substances (US, Vietnam). According to Amnesty International, in 2016 several thousand people were executed in China, at least 567 in Iran, 154 in Saudi Arabia, 88 in Iraq and 87 in Pakistan.⁴ Executions continue to be carried out today in dark cellars, on prison islands and in public squares around the world. Despite this grim reality, fewer governments use the death penalty than ever before. The campaign for its abolition has been a success story for the international human rights movement. As Amnesty International noted recently, “When we began that work in 1977, only 16 countries had totally abolished the death penalty. Today, that number has risen to 104.”⁵ In 1997, 40 countries carried out executions.⁶ In 2016 the number was 23. In Europe today only one pariah state, Belarus, continues to execute people (about 400 since 1991, some 15 per year), most recently in May this year.⁷

The demise of the death penalty in Europe is recent. When the European Convention on Human Rights (ECHR) was signed in 1950 in Rome, most member states of the Council of Europe still used the death penalty. More strikingly, there was no limitation for the types of crimes that deserved capital punishment. Article 2 of the ECHR simply read:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction for a crime for which this penalty is provided by law.”⁸

European democracies exploited this until the 1960s when they responded to colonial insurgencies in Kenya, Cyprus (UK) and Algeria (France). Following these disastrous campaigns, opposition to the death penalty grew across Europe, and in recent decades it became central to the identity of Europe’s leading human rights institution, the Council of Europe. In 1983, the ECHR was amended: Protocol 6 banned the death penalty during peacetime. In 2003, Protocol 13 entered into force and prohibited the death penalty under all circumstances. The

³ [Deuteronomy 13:5](#) in the Old Testament: “But that prophet or that dreamer of dreams shall be put to death, because he has taught rebellion against the Lord your God, who brought you out of the land of Egypt and redeemed you out of the house of slavery.” See Biblia.com, [“Deuteronomy 13:5”](#). [Quran 6:151](#): “... and do not kill the soul, which Allah has forbidden, except for the requirements of justice; this He has enjoined you with that you may understand.” See Berkley Center for Religious Peace & World Affairs, [“Quran 6:151”](#). [Maxim Robespierre in 1794](#): “We must smother the internal and external enemies of the Republic or perish with them. Now, in this situation, the first maxim of your policy ought to be to lead the people by reason and the people’s enemies by terror.” [“Maximilien Robespierre: The Political Philosophy of Terror”](#), 5 February 1975. Quotes by UK elected politicians in favour of the death penalty can be found here: [“48 Pro Death Penalty Quotes by Politicians from the United Kingdom”](#), accessed on 10 May 2017.

⁴ Amnesty International, [“Death Sentences and Executions 2016”](#), 11 April 2017.

⁵ Amnesty International, [“Death Penalty”](#).

⁶ Amnesty International, [“The Death Penalty in 2016: Facts and figures”](#), 11 April 2017.

⁷ The Guardian reported in October 2016 that Belarus had more than one execution a month since 1991. *The Guardian*, [“Belarus resumes executions after EU sanctions dropped”](#), 12 October 2016. EEAS, [“Execution in Belarus of Siarhei Vostrykau”](#), 6 May 2017.

⁸ [European Convention on Human Rights](#), Art. 2, paragraph 1, Rome, 1950.

first has been ratified by all Council of Europe member states except Russia.⁹ Protocol 13 has been ratified by all Council of Europe member states except Armenia, Azerbaijan and Russia.¹⁰ However, none of them carry out executions.

There are some who believe that this settles the issue, arguing that the trend towards the abolition of the death penalty is irreversible, in Europe and in Turkey. This is a dangerous assumption, as human rights progress is never irreversible.

In fact, the death penalty in Turkey is as old as the Republic itself. It existed under the one-party dictatorship of the 20s and 30s; during Turkey's first parliamentary democracy in the 1950s; and following each military intervention, in 1960, 1971 and 1980. The list of those who have justified it includes coup leaders and civilian presidents. Semih Gemalmaz, in his detailed history of the death penalty in Turkey, noted that between 1920 and 1984, 712 people (697 men and 15 women) were executed.¹¹ This list does not include people sentenced and executed by "Independence Tribunals" in the early years of the republic.¹² During the Liberation War (1919-1923) 14 such tribunals sentenced soldiers who deserted, as well as non-Muslim Ottomans, mostly Greeks and Armenians, for collaboration with the enemy.¹³ Three tribunals remained active until March 1927 to deal with opponents of the Kemalist revolution.¹⁴ The total number of executions by those tribunals is estimated to reach 1,630.¹⁵ Some argue that the number is much higher.

Executions in Istanbul in the early 20th century



Public hangings on Sultanahmet Square and Eminonu Square

Public executions were also practised in Turkey for much longer than elsewhere in Europe. In France the last public executions occurred in 1939, when a criminal was publicly guillotined near the Palais de Justice. In 1957 there was still a public hanging in Sultanahmet Square, next to Hagia Sophia Museum.¹⁶ It was not until 1960 that Turkey carried out its last public execution, in Istanbul's Eminonu Square. Afterwards the body remained on display for five hours.¹⁷

⁹ Council of Europe, ["Chart of signatures and ratifications of protocol 6"](#).

¹⁰ Council of Europe, ["Chart of signatures and ratifications of protocol 13"](#).

¹¹ M. Semih Gemalmaz, *Türkiye'de Ölüm Cezası, 1920-2000*, Beta, January 2001, p. 103.

¹² *Yeni Şafak*, ["İstiklal Mahkemeleri Meclis'i yok saydı"](#), 21 April 2015.

¹³ Ergün Aybars, *İstiklal Mahkemeleri*, Milliyet Books, 1997, p. 10.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Birgün*, ["Başka birini asıyorsunuz!"](#), 6 June 2016.

¹⁷ *Onedio*, ["1950'lerin İstanbul'unda yaşanmış kan dondurucu bir cinayet ve halka açık son idam"](#), 10 August 2015.

The history of executions in Turkey since the Second World War looks like a pendulum: following the shock of many executions in some periods, there have been *de facto* moratoria in others: in the second half of the 1960s or in the second half of the 1970s. Then, as terrorism and instability returned to the top of the agenda, capital punishment returned. Is the pendulum about to swing back once again? Since 1984 Turkey has not carried out any more executions. In November 2003 Turkey ratified Protocol 6 under prime minister Erdogan. In May 2004 the parliament adopted constitutional amendments abolishing the death penalty in all circumstances. Protocol 13 followed in February 2006. What will happen now?

Dark Years: when executions took place (black) in Turkey 1920-1989

1920	█	1930	█	1940		1950	█
1921	█	1931	█	1941	█	1951	█
1922	█	1932	█	1942	█	1952	
1923	█	1933	█	1943	█	1953	
1924		1934	█	1944	█	1954	█
1925	█	1935	█	1945	█	1955	█
1926	█	1936	█	1946	█	1956	█
1927	█	1937	█	1947	█	1957	█
1928	█	1938	█	1948	█	1958	█
1929	█	1939	█	1949	█	1959	█
1960	█	1970		1980	█		
1961	█	1971	█	1981	█		
1962	█	1972		1982	█		
1963	█	1973		1983	█		
1964	█	1974		1984	█		
1965		1975		1985			
1966		1976		1986			
1967		1977		1987			
1968		1978		1988			
1969		1979		1989			

Bahceli is back

Devlet Bahceli, the elderly leader of the Nationalist Action Party (*Milliyetçi Hareket Partisi*, MHP), has been the most outspoken and consistent defender of capital punishment in Turkey for decades.¹⁸ It is not surprising that the recent return of the issue to the centre of the Turkish political debate coincided with his return to a position of major influence.

Born in 1948, the economist Bahceli entered politics in 1987 and became leader of the MHP in 1997. The 1990s were dark years for human rights in Turkey. As the 1995 report by the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı*) noted, “torture, extra-judicial executions, disappearances, burning down of villages and forced migration continued” and human rights violations were “widespread and systematic ... in almost every aspect of life.”¹⁹ There was constant pressure on the media: “Police violence against reporters for newspapers,

¹⁸ Turkish Grand National Assembly, [“Türkiye Büyük Millet Meclisi Milletvekilleri Dağılımı”](#).

¹⁹ Human Rights Foundation of Turkey, “1995 Turkey Human Rights Report”, TİHV Publications 14, February 1997, p. 17.

journals and television stations reached the level of beating people to death ... the police did not hesitate to break into the centre of the Turkish Journalists Association.”²⁰ There was violence against demonstrators: “Uniformed or plainclothes police officers opened fire on people in the Gaziosmanpasa and Umraniye districts of Istanbul.”²¹ There was relentless pressure against some political parties: the pro-Kurdish People’s Democracy Party (*Halkin Demokrasi Partisi*, HADEP) “underwent nation-wide persecution ... almost all party leaders, including chairperson Murat Bozlak, were arrested.”²²

Police violence was followed by impunity: “During the 1 May celebrations in 1996 three people were shot dead by the police, hundreds of people were detained and beaten ... but most of the newspapers did not give space to this incident, nor did any TV channels.”²³ The Human Rights Foundation of Turkey report noted that “militant police forces ... are the fruits of an anti-democratic system inclined to warmongering and violence. Human rights violations are structural and natural outcomes of this system.”²⁴ The report concluded:

“foreign governments follow a double-dealing policy when they exaggerate and applaud minimal steps taken by Turkish governments regarding democratisation and human rights ... such a policy legitimizes and indirectly supports appalling human rights violation in Turkey.”

Three years later, the situation had not improved. The Human Rights Foundation of Turkey pointed to an estimated 270 people killed by unidentified assailants or victims of extrajudicial executions in 1998 alone. It warned that “all fundamental freedoms and rights were infringed systematically”: 42,991 people were detained and 3,659 people jailed in 1998; torture remained widespread and systematic; 133 intellectuals, journalists and writers were in prison; 300 members of a pro-Kurdish political party, including its chairman, were in jail; and 2,500 cases were brought against Turkey before the ECHR in 1998.²⁵

During the 1990s, the death penalty remained on the agenda. Turkish prosecutors requested and Turkish judges handed down capital punishment even though these sentences were not then approved by parliament and not carried out. In 1995 the number of the people who were convicted to death increased and “at the Diyarbakir state security court the number of people for whom the death penalty was sought reached 832.”²⁶ At the time 13 articles in the criminal code and 26 articles in the military criminal code prescribed the death penalty. A new crime demanding the death penalty was in fact added in 1995: “burning down forests of the state for terrorist ends.”²⁷

In February 1999, Abdullah Ocalan, leader of the illegal Kurdistan Workers Party (*Partiya Karkeren Kurdistan*, PKK), was captured by Turkish forces in Nairobi, Kenya. During the following parliamentary election campaign Devlet Bahçeli ran on a simple slogan, promising voters that “We will hang him!” (*Asacagiz*). Bahçeli led his party to the best election result in its history: in April 1999, the MHP obtained 18 percent of the vote and 129 seats, becoming the second-largest party in parliament. In May, Bahçeli became deputy prime minister.

²⁰ *Ibid.*, p. 10.

²¹ *Ibid.*, p. 9.

²² *Ibid.*, p. 10.

²³ *Ibid.*, p. 11.

²⁴ *Ibid.*, p. 13.

²⁵ Quoted in Marvine Howe, *Turkey – A Nation Divided over Islam’s Revival*, June 2000, p. 259.

²⁶ Human Rights Foundation of Turkey, “1995 Turkey Human Rights Report”, TİHV Publications 14, February 1997, p. 225.

²⁷ *Ibid.*, p. 227.

On 29 June 1999 Ocalan's short trial on the prison island of Imrali ended with a death sentence for separatism and treason.²⁸ EU external relations commissioner Hans van den Broek urged Turkey to "take into account the EU's opposition to the death penalty."²⁹ On 25 November, the Supreme Court of Appeals in Ankara approved the verdict. The country held its breath, waiting for the decision on when to execute Turkey's most prominent prisoner.³⁰ Then, in December 1999, the EU Summit in Helsinki offered Turkey official candidate status for EU accession. This transformed the debate.

On 12 January 2000, Devlet Bahçeli, whose MHP was part of the governing coalition, met prime minister Bulent Ecevit. The meeting lasted seven hours. They agreed not to proceed with the parliamentary approval of Ocalan's sentence for now. Then, in October 2001, the Turkish Parliament voted to amend article 38 of the constitution with 474 votes against 16, limiting the use of the death penalty to cases of war, imminent threat of war and terrorism.³¹ In summer 2002, the number of people sentenced to death stood at 125.³² Then, on 3 August 2002, parliament voted in favour of changing the law and abolishing the death penalty also for those convicted on terrorism charges.³³ Bahçeli opposed these changes.³⁴

So why did Bahçeli and other supporters of capital punishment lose the debate at that moment? Opinion polls published at the time do not reveal any popular demand to abolish the death penalty. However, there was broad public support for the goal of joining the EU, which had made clear that accession talks would not start without a ban on capital punishment. For many politicians, it became a concession to make as part of a deal with the EU. In 2002 even the retired general and 1980 coup leader Kenan Evren admitted that he had changed his mind for this reason: "I am for the lifting of the death penalty because I am for Turkish accession to the EU. This is Turkey's target. Atatürk oriented Turkey to this target. Since we will join that institution, we shall accept its rules."³⁵ For a moment in June 2002 even Devlet Bahçeli appeared ready for a tactical concession, as he explained in an interview with *Hürriyet*:

"What happens if after we abolish the death penalty and we decide on the Kurdish language issue, no date for negotiations is given to us? ... We propose: 'Give us a date. We have 7-8 years for negotiations. As long as negotiations keep going, we comply with our obligations.'"³⁶

Table – Support for capital punishment in opinion polls 1997-1999 (percent)³⁷

Year	Source	For	Against	No opinion
1997	Legal Research Association	59.8	37.9	2.3
1999	<i>Hürriyet</i>	72.5	27.5	–

²⁸ Ankara Second State Security Court, "[1999/21 sayılı karar](#)", 29 June 1999.

²⁹ *Irish Times*, "[EU calls on Turkey not to execute Ocalan](#)", 30 June 1999.

³⁰ On 30 November 1999 the Court decided to indicate the following interim measure to the Government: "The Court [European Court of Human Rights] requests the respondent State to take all necessary steps to ensure that the death penalty is not carried out so as to enable the Court to proceed effectively with the examination of the admissibility and merits of the applicant's complaints under the Convention." European Court of Human Rights, "[Case of Ocalan v. Turkey \(Application no. 46221/99\)](#)", 12 May 2005.

³¹ Turkish Grand National Assembly, "[4709 sayılı kanun](#)", 3 October 2001.

³² *Bianet*, "[80 yılın utanç listesi: İdam kurbanları](#)", 3 August 2002.

³³ There were 253 votes for, 152 against and 123 abstentions. See *BBC*, "[Europe welcomes Turkish reforms](#)", 3 August 2002.

³⁴ *Sabah*, "[Partiler fire verdi](#)", 3 August 2002.

³⁵ *BBC Türk*, "[Türkiye'nin idam cezası tarihinde neler var?](#)", 1 November 2016.

³⁶ *Hürriyet*, "[AB zirvesinin zabıtları açıklandı](#)", 25 June 2002.

³⁷ M. Semih Gemalmaz, *Türkiye'de Ölüm Cezası, 1920-2000*, Beta, January 2001, p. 11.

The MHP lost its seats in parliament in late 2002, falling below the 10 percent electoral threshold. However, Bahçeli's campaign for capital punishment did not come to an end. During the general election campaign in 2007, he threw a noose into a howling crowd at a rally in Erzurum:

"You [Erdogan] govern alone. You have the power. Why haven't you hung him yet? ... Do you really lack the money to even buy a simple noose? Take this, and hang him!"³⁸

The MHP returned to parliament in July 2007 with 14 percent of the vote, and it obtained between 12 and 16 percent in all subsequent elections. Bahçeli kept insisting on his signature issue.

In 2012, he stated: "The Nationalist Action Party is today as determined as it was yesterday and will support any initiative to reinstate the death penalty."³⁹ When he announced his party's election manifesto in October 2015, he argued that the return to armed conflict in Turkey's southeast had shown that his party had been right all along:

"We said that PKK would never leave the armed struggle, that they would not bury their weapons. We turned out to be right ... We said that the terrorist would force the government to sit around a [negotiation] table. We turned out to be right. *We told them that they should not abolish the death penalty* and that the sentences should not be lowered. *We turned out to be right.*"⁴⁰

Bahçeli kept pushing. On 19 July 2016, four days after the failed coup attempt, he announced: "If the Justice and Development Party (*Adalet ve Kalkınma Partisi, AKP*) is ready for the death penalty, count us in too."⁴¹

On 7 August 2016 Erdogan invited the leaders of the ruling AKP, the Republican People's Party (*Cumhuriyet Halk Partisi, CHP*) and the MHP to a "Democracy and Martyrs Meeting" on the Istanbul shore of the Marmara Sea. More than one million people turned the square into a sea of Turkish flags. Two huge pictures – Ataturk and Erdogan – adorned the stage. There was a vast banner with the names of 240 people who had died during the coup attempt. The meeting started at 5 pm with a military march: "Martyrs never die, the fatherland never splits." Bahçeli spoke first, and in an extraordinary tour de force summed up his case for an iron fist:

"I greet this grandiose crowd which cannot be described with words. I embrace all my brothers from every corner of the country who follow us via TV. Your enthusiasm enlightens our bright future and lightens up the dark night we went through ... You did not abandon our martyrs. You courageously opposed the oppressors and defended our brotherhood with faith. You gave the traitors a lesson without hesitating."

Bahçeli then moved seamlessly from summer 2016 to Turkey's eternal enemies:

"On 15 May 1919 Izmir was occupied. On 16 March 1920 Istanbul [coup attempt] was occupied. Don't forget, the 15 July was a new attempt of invasion, of massacre, of destruction ... 'Water sleeps, the enemy never', this proverb was vindicated on 15 July. The oppressors, the traitors, the tools of imperialism, took the appearance of Turkish soldiers, and they turned the weapons of the nation against the nation."

³⁸ *Sabah*, "[Bahçeli mitingte ip attı: Biz asamadık alın siz asın](#)", 30 June 2007.

³⁹ *Yeni Şafak*, "[Bahçeli'den hükümete hodri meydan](#)", 13 November 2012

⁴⁰ *NTV*, "[MHP seçim beyannamesini açıkladı](#)", 3 October 2015.

⁴¹ *Bianet English*, "[Bahçeli: If AKP is ready for death penalty, count us in too](#)", 19 July 2016.

He explained that these enemies had plotted against Turkey for centuries:

“The coup attempt of 15 July was an attempt to take revenge by those who lost in Kosovo 627 years ago. Those whose heads were squeezed in Nicopolis 620 years ago attempted to raise their heads on 15 July. It was an attempt to rise up by those who we thought had suffocated in the blood they shed on the battlefields of Varna 572 years ago; in Istanbul 563 years ago; in Mohacs 490 years ago. Those who opened fire against our parliament, against the general directorate of the police, against the national intelligence service; those who killed our citizens are on the same dark path as those who came 101 years ago to Canakkale [Gallipoli] and opened fire on us. These people are the lowest creatures, feeding on the soul of the Muslim Turk, devoted to fight against the right of existence of the Muslim Turk.”⁴²

Turkey, besieged by external and internal enemies, also needed to look for inspiration to its greatest leader. As Bahçeli put it on the anniversary of Atatürk’s death in November 2016, Mustafa Kemal had “always fought against occupation and treason ... This country, thanks to him, was able to remain alive on this soil and remain united in this fatherland surrounded by fire.”⁴³ Turkey needed to be strong and treat traitors ruthlessly. Bahçeli kept repeating the need to reintroduce capital punishment: “The people want the death penalty. If the AKP is ready, the MHP has always been. Come and let us resolve this issue.”⁴⁴

During this period, Bahçeli’s MHP became ever more influential. On 11 October 2016, Bahçeli told his parliamentary group that he had changed his mind and was now in favour of a referendum on a presidential system, which previously all opposition parties had opposed.

“If the AKP brings its plans to parliament and takes into account our principles and sensitivities, I believe a reasonable outcome will be achieved.”⁴⁵

This was a turning point. Any constitutional change in Turkey requires the support of at least two-thirds of the deputies (367) in the 550-seat parliament in Turkey; to call a referendum on constitutional changes, the support of 330 deputies is needed (60 percent). Following the November 2015 elections, the ruling AKP had 317 seats. The two other opposition parties were both against holding such a referendum. Bahçeli held the key with 40 seats.⁴⁶ On 3 November 2016 Erdogan invited Bahçeli to the Presidential Palace in Ankara. This was Bahçeli’s fourth visit to the palace since the 15 July coup attempt.⁴⁷ On 10 November, Bahçeli announced that the MHP ought to “open the way to peace and order and not be the architect of chaos.”⁴⁸

⁴² The Battle of Nicopolis on 25 September 1396 resulted in the defeat of a crusader army of Hungarian, Bulgarian, Croatian, French, German and other troops at the hands of an Ottoman force. This led to the end of the Second Bulgarian Empire. It was the end of the last large-scale Crusades of the Middle Ages, together with the Crusade of Varna in 1443–1444. 1453 saw Constantinople fall to Mehmet the Conqueror. The Battle of Mohács on 29 August 1526 was fought between the Kingdom of Hungary and the Ottoman Empire, led by Suleiman the Magnificent. The Ottoman victory led to the partition of Hungary for several centuries. Çanakkale refers to the battle of Gallipoli during World War I.

⁴³ *Milliyet*, “[MHP liderinden 10 Kasım mesajı](#)”, 9 November 2016.

⁴⁴ *Hürriyet Daily News*, “[AKP to work on limited measure to reinstate death penalty in Turkey](#)”, 1 November 2016.

⁴⁵ *Reuters*, “[Turkey heads toward vote on stronger presidency, with nationalist nod](#)”, 18 October 2016.

⁴⁶ *Hürriyet Daily News*, “[What lies beneath the MHP’s presidential strategy](#)”, 20 October 2016.

⁴⁷ *NTV*, “[Beştepe’de Erdoğan-Bahçeli görüşmesi](#)”, 3 November 2016.

⁴⁸ *T24*, “[Bahçeli: Başbakan’ın anayasayla ilgili düşüncesi makul, çözümün parçası olmaktan başka tercihimiz yok](#)”, 10 November 2016.

In December, the AKP introduced the constitutional amendments package in parliament. The responsible committee approved it on 3 January.⁴⁹ The parliamentary debate lasted only 13 days. On 21 January, 339 deputies voted in favour of these amendments to be put to a referendum.⁵⁰ The referendum on 16 April approved the changes with 51.4 percent in favour.

Ever since, Bahçeli has been biding his time. On 9 May, he told his parliamentary party group in Ankara:

“Is the death penalty a social demand? Yes. Will the ruling AKP support it? Yes. Will the president approve it, if the law is presented to him? That is a ‘yes’ too. Then we should not wait, sing someone else’s tune or be late. Instead, we must show what Turkey is and will be by declaring to everybody her independence.”⁵¹

Erdogan’s turn

On 10 June 2002 Recep Tayyip Erdogan, leader of the newly created opposition party AKP, spoke at the opening ceremony of his party’s office in Silivri, Istanbul: “We are the frontrunners of those who say ‘yes’ to Europe. Turkey shall cease to be the periphery of Europe. The death penalty shall be fully abolished. We are ready to support the government to this end.”⁵²

For Erdogan, this was not an abstract issue. On 25 April 2002, a few months before elections that would see the AKP win an absolute majority in the Turkish parliament, Erdogan was summoned by the prosecutor of the Ankara state security court, Nuh Mete Yüksel, for a speech given in 1992 in his home town Rize. In this speech, Erdogan had stated that sending young conscripts to die in the southeast of Turkey fighting the PKK was “suicidal butchery” (*intihar cellatlığı*).⁵³ Ten years later, Prosecutor Yüksel initiated an investigation, arguing that Erdogan had provoked people to commit the offense of “attempting by use of force to alter, change or abolish the constitution of the Republic of Turkey.”⁵⁴ The sentence for this crime was death by hanging. On 25 April 2002, Yüksel asked the court to detain Erdogan pending a trial. Erdogan had already been in jail on trumped up charges for a few months in 1998.

After hearing Erdogan, the acting judge of the Ankara state security court, Ramazan Aksan, rejected the prosecutor’s request to arrest him.⁵⁵ Nuh Mete Yüksel never finished writing his indictment.⁵⁶ On 22 October 2002, the High Council of Judges and Prosecutors removed him from office.⁵⁷

In November 2002, the AKP won an absolute majority of seats. On 14 March 2003 Erdogan became prime minister. One year later, on 7 May 2004, capital punishment was removed from the Turkish constitution by an amendment passed with 457 votes in favour and 8 votes against. A law followed in July 2004, removing all references to the death penalty from the criminal

⁴⁹ Centre for American Progress, “[Erdogan’s proposal for an empowered presidency](#)”, 22 March 2017.

⁵⁰ *Hürriyet Daily News*, “[Secret ballot debate grows as charter talks proceed](#)”, 11 January 2017; “[CHP vows to take charter changes to high court after secret ballot principle breached](#)”, 16 January 2017; *The New York Times*, “[Amid Fistfights, Turkey’s Parliament Backs a New Constitution](#)”, 20 January 2017.

⁵¹ *Hürriyet Daily News*, “[Opposition MHP calls on AKP gov’t to swiftly reinstate death penalty](#)”, 9 May 2017.

⁵² *Hürriyet Daily News*, “[Erdogan: İdam kalksın](#)”, 10 June 2002.

⁵³ *Gazeteport*, “[‘O hakim Erdoğan’ı nasıl ipten aldı?’](#)”, 26 March 2016.

⁵⁴ “[765 sayılı Türk Ceza Kanunu](#)”, 1 March 1926.

⁵⁵ *NTV*, “[Tayyip Erdoğan serbest bırakıldı](#)”, 25 April 2002.

⁵⁶ Turkish Grand National Assembly, “[28 Şubat alt komisyonu tutanağı](#)”, 11 October 2012.

⁵⁷ *Takvim*, “[‘O kaset de kumpas...’](#)”, 6 March 2017.

code.⁵⁸ In October 2004, visiting the Council of Europe in Strasbourg, Erdogan explained that a new era had begun:

“We abolished the death penalty and eliminated it from our laws. We will shortly complete the procedures for the ratification of Protocol 13 to the European Convention of Human Rights.”⁵⁹

On 20 December 2004, a draft law on the ratification of Protocol 13 was submitted to the Turkish parliament, signed by prime minister Erdogan and deputy prime minister Abdullah Gul:

“Taking into consideration that even if the least painful method is used for the execution of capital punishment, the person’s body is still subject to an act of violence against human dignity, which, besides the physical pain, causes a moral pain hardly bearable until the very moment of execution, and that capital punishment is also against the principle of individual criminal responsibility since it inflicts sufferance not only on the convict but also on his relatives, it is decided to abolish capital punishment with Protocol number 13 on the abolition of the death penalty in all circumstances ... With the ratification of this protocol, our country will reach the highest international legal standard with regard to the right to life.”⁶⁰

In 2006 the government ratified Protocol 13. One year later, during the 2007 election campaign, Erdogan dismissed Bahçeli’s offer of a noose:

“We are now in an era when capital punishment is replaced by aggravated life imprisonment. If, in this new era, you are still throwing around a noose, this only shows how far you are from the laws of this country. He knows nothing about today’s reality.”⁶¹

In 2010 Erdogan spoke out against capital punishment again on the occasion of another constitutional referendum campaign. Erdogan invoked the executions of Erdal Eren (executed at age 17), Necdet Adali (22) and Mustafa Pehlivanoglu (22) following the 1980 military coup.⁶² On one occasion he read, tears in his eyes, from letters they wrote to their families right before their execution. The meeting was broadcast live.⁶³

How deeply held were these convictions?⁶⁴ In 2012, during a debate in Bali, Erdogan noted that, “Capital punishment has been lifted in Europe. But has it been lifted in the United States, Japan and China? The death penalty can be legitimate in some cases.” He added that “today, a lot of people are in favour of reinstating capital punishment, according to polls, because parents of the dead suffer while others have a good time ...”⁶⁵ In 2012 most observers suggested not to take the prime minister “literally”, that these “words should be seen primarily as a sign of his impatience and dissatisfaction with the blocks standing in front of Turkey’s EU bid.”⁶⁶ A

⁵⁸ [5218 sayılı kanun](#), 17 July 2004.

⁵⁹ Parliamentary Assembly of the Council of Europe, [“Official report of debates: 2004 ordinary session \(fourth part\), 4-8 October 2004”](#), 2004.

⁶⁰ [The rationale of the draft law on the ratification of Protocol 13](#), submitted to the Turkish parliament on 20 December 2004.

⁶¹ *Internet Haber*, [“Millet sana ip gönderirdi”](#), 1 July 2007.

⁶² *Habertürk*, [“Başbakan 12 Eylül’ü dört genç ölümle andı”](#), 20 July 2010.

⁶³ *Ibid.*

⁶⁴ *Al Arabiya News*, [“Alarm in EU as Turkey moots return to death penalty”](#), 17 November 2012.

⁶⁵ *EU Observer*, [“Turkish PM moots reinstating death penalty”](#), 12 November 2012.

⁶⁶ *Al Arabiya News*, [“Alarm in EU as Turkey moots return to death penalty”](#), 17 November 2012.

diplomat told AFP in Istanbul that “This is not the first time he is using diversion when he is in trouble.”⁶⁷ The issue was, indeed, soon dropped.

In June 2015 Erdogan accused the EU of hypocrisy following the sentences against Egypt’s deposed President Mohamed Morsi and others: “The West, unfortunately, is still turning a blind eye to Sisi’s coup. While the West has abolished the death penalty in their own countries, it just watches, without taking any action against this execution in Egypt.”⁶⁸ In May 2016 he repeated this charge on Turkish television following the execution of an Islamist politician in Bangladesh: “If you are against political executions, why did you remain silent about the execution of Motiur Rahman Nizami who was martyred a couple of days ago? Have you heard anything from Europe? ... No. Isn’t this called a double standard?”⁶⁹

On 16 July 2016, a day after the coup attempt in Turkey, a crowd demanded the restoration of capital punishment in the courtyard of the Turkish parliament.⁷⁰ One day later Erdogan explained during a funeral ceremony in Istanbul’s Fatih mosque: “In democracies, the demand of the public cannot be set aside.”⁷¹ On 18 July he told *CNN*:

“The people are of the opinion that, after so many terrorist incidents, these terrorists should be killed. That’s what the people think. That’s where they are. They don’t see any other outcome. Life sentence or aggravated life sentence – why should I keep them and feed them in prisons for years to come? That’s what the people say.”⁷²

He added: “European nations, no, they don’t have it. And we actually abolished the death penalty before EU accession talks so that we would be allowed to become a member ... we abolished it, my administration. But we can always go back and reintroduce it.”⁷³ On 23 July Erdogan told *France 24*, “Is there capital punishment in the U.S.? There is. In Russia? There is. In China? There is. Capital punishment exists in most of the world.”⁷⁴ And on 7 August 2016, during the Istanbul “Democracy and Martyrs Meeting”, Erdogan told the crowd:

“My brothers and sisters, when I saw the body of one of our citizen on Vatan Street, a body cut in two, how could I put this image aside? In Ankara, when fighters attacked the presidential palace, during the shooting, a sister of ours had her head cut off, and it was found on the roof of a building. If you have seen this, how can you just say that there is no capital punishment in the EU or in the Council of Europe?”⁷⁵

The leader of the main opposition party CHP, Kemal Kilicdaroglu, dismissed Erdogan’s announcement one day later:

⁶⁷ *Ibid.*

⁶⁸ *EuroNews*, [“Turkey: Erdoğan condemns Egypt death penalty ruling against ousted Mursi”](#), 16 May 2015.

⁶⁹ *AFP*, [“Turkey’s Erdoğan blasts Europe’s silence on Bangladesh leader’s execution”](#), 16 May 2016.

⁷⁰ *T24*, [“Başbakan Yıldırım’dan, ‘İdam isteriz’ diyen vatandaşlara: Mesajınızı aldık, gerekeni yapacağız!”](#), 16 July 2016.

⁷¹ *Hürriyet Daily News*, [“Erdoğan urges citizens to ‘fill up’ Turkey’s squares after failed coup attempt”](#), 17 July 2016.

⁷² *CNN*, [“CNN World exclusive interview with Turkish president Recep Tayyip Erdoğan”](#), 18 July 2016.

⁷³ *Ibid.*

⁷⁴ *Sabah*, [“Cumhurbaşkanı Erdoğan France 24’e önemli açıklamalar”](#), 23 July 2016.

⁷⁵ *TRT Avaz*, [“Cumhurbaşkanı Recep Tayyip Erdoğan’ın Konuşması – Demokrasi ve Şehitler Mitingi”](#), 7 August 2016.

“The president launched a discussion on capital punishment. As if he had not learned any lesson from what has happened, he says, ‘Bring it to me and I will sign it.’ He knows it won’t happen or he should know it won’t happen.”⁷⁶

Kilicdaroglu might be wrong. On 29 October 2016 Erdogan explained in a speech given on national day:

“I believe that to postpone this topic [of capital punishment] any further would not be right because the public demand for this is very high ... I believe [the government] will bring it to parliament, and parliament will pass it with the right decision ... Can the European Union bring 246 martyrs back to me? Can the European Union bring 2,194 veterans back to me? It’s what the people say that matters, not what the West thinks.”⁷⁷

In search of clarity in Brussels

Many in the EU believe that the EU has already made its position clear. On 18 July 2016, the EU’s foreign affairs chief Federica Mogherini declared that “no country can become an EU member state if it introduces the death penalty ... [Turkey] is bound by the European Convention on Human Rights, which is very clear on the death penalty.”⁷⁸ On the same day, the spokesperson of Angela Merkel explained: “Germany and the EU have a clear position: We categorically reject the death penalty.”⁷⁹ On 25 July 2016, Jean-Claude Juncker, the president of the European Commission, stated: “If Turkey brings back capital punishment, we will immediately stop the negotiation process.”⁸⁰ On 29 July 2016, then foreign minister Frank Walter Steinmeier of Germany said that the reintroduction of capital punishment would mean *the end* of accession talks.⁸¹ In November 2016, the European Parliament stated “that reintroduction of capital punishment by the Turkish Government would have to lead to a formal suspension of the accession process.”⁸²

More recently, French president Francois Hollande warned that if Turkey reinstates the death penalty, it would “constitute a rupture.”⁸³ A Commission’s spokesperson stated on 18 April 2017 that reinstating the death penalty is “the reddest of all red lines”: “Moving from rhetoric to action would be a clear signal that Turkey does not want to be a member of the European family.”⁸⁴

So is everything clear? Alas, no. First there is the question what all of these words actually mean: “not being able to become an EU member state”, to “stop”, to “end”, to “suspend the negotiation process”, or to provoke “rupture”. Does it mean temporarily suspending negotiations, which requires a qualified majority in the Council?⁸⁵ Or does it mean terminating the accession process for good, which requires unanimity?⁸⁶

⁷⁶ *Hürriyet Daily News*, [“CHP head criticizes Erdoğan over remarks on death penalty at unity rally”](#), 9 August 2016.

⁷⁷ *Hürriyet Daily News*, [“Capital punishment to be brought to parliament soon: President Erdoğan”](#), 29 October 2016.

⁷⁸ *Reuters*, [“EU reminds Turkey it bound by treaty not to use death penalty”](#), 18 July 2016.

⁷⁹ *Die Zeit*, [“Todesstrafe wurde Ende der Beitrittsverhandlungen bedeuten”](#), 18 July 2016.

⁸⁰ *Anadolu Agency*, [“Death penalty will end Turkey’s EU bid, says Juncker”](#), 25 July 2016.

⁸¹ *Spiegel Online*, [“Steinmeier warnt Türkei vor Wiedereinführung der Todesstrafe”](#), 29 July 2016.

⁸² European Parliament, [“Resolution on EU-Turkey relations”](#), 24 November 2016.

⁸³ *The Guardian*, [“EU leaders urge Erdogan to show restraint after referendum victory”](#), 17 April 2017.

⁸⁴ *EU Observer*, [“EU urges Turkey to investigate election fraud”](#), 18 April 2017.

⁸⁵ [Negotiating Framework](#), Paragraph 5, Luxembourg, 3 October 2005.

⁸⁶ Council of the EU, [“How does EU enlargement work?”](#).

The recent past offers no clear guidance. In December 1999, it was possible for Turkey to have the death penalty in its laws and constitution and still become a candidate for accession. The 2001 European Commission report on Turkey noted that, “In 2000, 17 people were sentenced to capital punishment, and 10 between January and August 2001.”⁸⁷

In fact, suspending the talks would mean little in practice. Of the 34 chapters of the EU *acquis* to be negotiated, 15 were blocked by the EU, Cyprus and France years ago for various reasons that are still valid; 16 have already been opened, and Turkey has opted not to open the remaining three, so as to protect domestic business interests. In December 2016, EU Enlargement Commissioner Johannes Hahn described the call for suspension as “an artificial debate” because of the stand-still in accession negotiations.⁸⁸ Even if the talks were formally suspended, Turkey would remain a candidate country and continue to receive pre-accession funds – more than €600 million per year. Turkey could then end up in a similar position as Macedonia, Bosnia or Kosovo – countries in the EU accession process that are not actually negotiating accession with the EU.

What, on the other hand, would it mean to break off accession talks? It would mean an end to negotiations, all pre-accession funding and annual progress reports, to take away Turkey’s EU candidate status and end up in a relationship that would resemble that which the EU has today with Ukraine and Moldova. Turkey would find itself where it was before its application in 1987.

Recent Council decisions do not help to clarify the EU’s position on possible suspension or termination, and at which point either might happen. On 18 July 2016, following the coup attempt, Council conclusions noted that “the EU recalls that the unequivocal rejection of the death penalty *is an essential element* of the Union *acquis*.”⁸⁹ Conclusions on 15 November 2016 stated that “Ministers ... in their debate particularly highlighted *worrying renewed considerations* in Turkey to introduce a bill to parliament to reinstate the death penalty.”⁹⁰ Not all EU member states seemed to agree that the reintroduction of the death penalty would require a strong response. The Financial Times reported how at the meeting in November UK foreign minister Boris Johnson,

“urged the EU to stop pushing Turkey ‘into a corner’ over the death penalty, in an intervention that stunned fellow ministers ... An already tense meeting of foreign ministers in Brussels flared up on Monday as Mr Johnson argued that the bloc must avoid lecturing Ankara over potentially introducing capital punishment. Noting that Britain and other EU countries retained capital punishment on the statute book until the 1980s and 1990s, Mr Johnson said it was vital to keep contacts with Ankara open at all costs.”⁹¹

Some might well speculate that even if the death penalty is adopted, the EU member states will not reach unanimity to break off negotiations.

This is why a strong and unambiguous statement by the EU should make clear now that it is not bluffing on capital punishment. For it to be credible, the 28 member states in the Council should commit themselves in advance to the position that *every* candidate and potential candidate loses this status by introducing the death penalty into their laws. This is no *lex turca*, but a policy applying to any country that has expressed or will in the future express the wish to

⁸⁷ European Commission, “[2001 Regular Report on Turkey’s progress towards accession](#)”, 13 November 2001.

⁸⁸ *Associated Press*, “[EU debates Turkey membership amid push for a freeze](#)”, 13 December 2016.

⁸⁹ Council of the EU, “[Council Conclusions on Turkey](#)”, 18 July 2016.

⁹⁰ Council of the EU, “[Foreign Affairs Council](#)”, 15 November 2016.

⁹¹ *Financial Times*, “[Boris Johnson warns EU against taking hard line on Turkey](#)”, 18 November 2016.

join the EU. It is also a clear signal to the public in existing EU member states that the EU takes its human rights commitments seriously.

Showing absolute clarity on this issue has worked before. Following the murder of a woman in southern Hungary in April 2015, an EU prime minister, Viktor Orban of Hungary, declared that “The death penalty question should be put on the agenda in Hungary ... Hungary will stop at nothing when it comes to protecting its citizens.”⁹² There was an immediate reaction.⁹³ On 19 May 2015, the European Parliament debated the situation in Hungary. Manfred Weber, chair of the largest group (EPP), was firm: “Reintroducing the death penalty is out of the question.”⁹⁴ Commission vice president Frans Timmermans explained:

“Article 2 of the EU Charter of Fundamental Rights prohibits explicitly and clearly any person from being condemned to death, or executed ... This is part of our common values. As far as the Commission is concerned, there is no doubt that the reintroduction of capital punishment would be contrary to the EU’s fundamental values. A reintroduction of the death penalty by a Member State would therefore lead to the application of Article 7 TEU ... Article 7 TEU provides for a far-reaching sanction mechanism specifically designed to ensure respect for the fundamental values of Article 2.”

On 4 June 2015, Orban met Weber in Budapest and promised that Hungary would not introduce any laws that went against fundamental EU documents.⁹⁵ The EU must be as clear again, for the sake of its core values, of Turkey and its citizens, and of the global struggle against a cruel, dark temptation.

It turns out that even EU prime ministers are on occasion tempted to forget what previous generations of Europeans discovered:

“We have to consider what type of society we, our children and our grandchildren, want to live in. That violence begets violence cannot be disputed. The death penalty only brutalises society by further legitimising cold-blooded killing as justice. It is a fallacy that it prevents violent crime or can be considered as justice ... Capital punishment, like torture, is simply wrong.”⁹⁶

Wars, executions and European memories

The painful experience that “violence begets violence” and that the death penalty brutalises society is one that Europe’s big democracies have made themselves not too long ago.

When the European Convention on Human Rights was adopted in Rome in 1950, it explicitly recognised the legality of capital punishment. It also did not limit the crimes which could be punished in this way. This created a huge gap for human rights protection, which had terrible consequences. Historian Brian Simpson describes the fate of Evaghoras Pallikarides in the British Crown Colony Cyprus, who “was hanged, aged 19, on 14 March 1957 in the course of the Cyprus insurrection. The offence for which he was executed was that of possessing a

⁹² *The Guardian*, [“Hungary PM: bring back death penalty and build work camps for immigrants”](#), 29 April 2015.

⁹³ *Ibid.*

⁹⁴ European Parliament, [“10. Situation in Hungary \(Debate\)”](#), 19 May 2015.

⁹⁵ *Mandiner*, [“Orban: A legeroteljesebb nemzeti erdek joban lenni az Europai Nepparttal”](#), 4 June 2015.

⁹⁶ Council of Europe, [“Death is not justice – The Council of Europe and the death penalty”](#), September 2010, p. 5.

weapon. It was a light machine gun, and it was not in a serviceable condition at the time he was apprehended.” This was not an isolated incident. The UK, under governor John Harding, having proclaimed a state of emergency in Cyprus in November 1955, used the death penalty systematically to extract information. The possible use of capital punishment was vastly extended in its scope, while emergency powers gave the colonial government total control of the press (with the power to close down any publication for sedition and libel) under draconian censorship laws. There was mass detention without trial as well as extensive powers to requisition property.

The strategy embraced by colonial authorities in Cyprus was to fight isolated “terrorists” and identify “troublemakers” and “subversives” who were considered to have misled a basically loyal population. This thinking was common in European colonial administrations. In British Kenya the same strategy to respond to a peasant rebellion against British rule in 1952 (labelled the Mau Mau rebellion by the colonial government) led to massive repression, extensive detention without trial, and the application of capital punishment on an unprecedented scale. Within a few years, 744 executions were carried out in Kenya under emergency regulations, including for crimes such as participating in oath-taking ceremonies (54 executions). And while the last public execution in the UK had taken place in 1868, public hangings were again common in Kenya:

“Capital punishment was extended to such offenses as sabotage, possession of weapons, and consorting with the Mau Mau ... Many of these executions took place in public, transportable gallows being employed.”⁹⁷

Meanwhile, elsewhere in Africa, France, another democracy which had played a key role in drafting the European Convention on Human Rights in 1950, struggled in vain to suppress an uprising (which was never officially considered a war) in its Algerian territories. Military tribunals in French Algeria rendered almost 1,500 death sentences between 1954 and 1962. Of these, 198 were carried out. Routine torture, summary executions of captured prisoners, mass internment and the use of the death penalty characterised the French counter-insurgency strategy. While the authorities in Paris considered this a rebellion within France itself, the notional application of French law and justice did not make any difference to human rights in French Algeria. After 1957 all lawyers who used to defend Algerian rebels were arrested or put under house arrest; several were suspended, two murdered. As for regular courts:

“The judges never challenged the methods of the police or of the military paratroopers. Complaints by victims of forced sequestration or torture-induced wounds were rarely recorded or hardly ever prosecuted. On the other hand, attempted murder or complicity with attempted murder by the rebels were punished by a death sentence.”⁹⁸

Cyprus did not remain under British control, and spiralled into further violence soon. The British Empire in Africa unravelled. France lost in Algeria. The bitterness of the war triggered a mass exodus of French Algerians. The recent history of European powers dealing with colonial insurgencies is a record of immense human rights abuses and abysmal policy failures. It is also a reminder of how tempting it has been, even for democratic leaders faced with violence, to resort to repression, intimidation and the use of extreme measures; how easily security forces under certain conditions resort to abhorrent practices, even if these are morally, legally and politically disastrous.

⁹⁷ A. W. Brian Simpson, *Human Rights and the End of Empire – Britain and the Genesis of the European Convention*, Oxford University Press, 2001, p. 835.

⁹⁸ Yves Beigbeder, *Judging War Crimes and Torture*, Chapter: “French Algeria: The Dirty War (1954-1962)”, Martinus Nijhoff Publishers, 2006, p. 99.

Will Turkey exit the Council of Europe?

In 2010 Thorbjorn Jagland, the secretary general of the Council of Europe, noted:

“When our organisation was created after the second world war, most European states still retained capital punishment. 60 years on, none of our member states has executed any death sentence for more than a decade. This has turned the territory of our member states into a *de facto* death penalty-free zone, stretching from Lisbon to Vladivostok, and from the Atlantic to the Urals ... it is not surprising that the Council of Europe has been at the heart of the abolitionist movement in Europe during the last 30 years.”⁹⁹

Turkey has signed and ratified Protocols 6 and 13. There is no possibility of reservations for these two protocols.¹⁰⁰ As these protocols stipulate, they become part of the European Convention of Human Rights (ECHR) for each country that ratifies them.¹⁰¹ Turkey can therefore only denounce the ECHR as a whole.¹⁰² It could then withdraw from the Council of Europe or wait for the Committee of Ministers to ask it to withdraw by a two-thirds majority or to decide on its expulsion.¹⁰³ Turkish citizens would lose a human rights umbrella, and the Council of Europe one of its oldest and largest member states.

In order to avoid such a scenario, the Council of Europe must be proactive. Thorbjorn Jagland explained in 2010 that,

“unfortunately, many European citizens continue to be in favour of the death penalty. Therefore, *our organisation believes there is a continuing need to explain* to people why capital punishment is wrong. Only that way can we be assured that future generations grasp why the death penalty has been abolished and why it should stay abolished.”¹⁰⁴

Acting on this insight, the moment to explain loudly and clearly to the Turkish public why the death penalty “should stay abolished” is now. What is needed is a Council of Europe advocacy campaign, talking openly about the bitter experiences, policy and judicial errors and lessons learned that led governments across the continent to reject capital punishment as unacceptable under all circumstances. The Council of Europe is the institution best placed to remind the European, Turkish and global public of the arguments found in many of its publications:

“Justice, revenge, an eye for an eye, deterrence! These have been the long-held justifications and rationalisations for carrying out executions. And, if the wrong person was ‘mistakenly’ executed? An unfortunate but necessary evil to assuage the fears of ordinary law-abiding folk that those implicated in murderous crimes shall be punished and thus the authority vested in the state be reaffirmed? The good of society is more important than the individual and sometimes mistakes happen?”¹⁰⁵

It is a case that must be made again and again, and an opportunity for the Council of Europe to remind Europeans why it matters, acting as the moral conscience of a continent.

⁹⁹ Council of Europe, [“Death is not justice – The Council of Europe and the death penalty”](#), September 2010, p. 5.

¹⁰⁰ Council of Europe, [“Chart of signatures and ratifications of protocol 6”](#).

¹⁰¹ According to Protocol 6 (art 6) and Protocol 13 (art 5), see Council of Europe, [“European Convention on Human Rights”](#), November 1950.

¹⁰² Council of Europe, [“European Convention on Human Rights”](#), Article 58, November 1950.

¹⁰³ Council of Europe, [“Statute of the Council of Europe”](#), Articles 7 and 8, May 1949.

¹⁰⁴ Council of Europe, [“Death is not Justice – The Council of Europe and the Death Penalty”](#), September 2010, p. 5.

¹⁰⁵ Council of Europe, [“Death is not Justice – The Council of Europe and the Death Penalty”](#), September 2010, p. 5.

ANNEX: Victims – how capital punishment worked in Turkey

If there is a serious debate on restoring the death penalty in Turkey, it will be important to recall the reality of capital punishment in the past. The best way to do so is by retelling the tragic stories of some individual victims of this practice, including:

- Atif Hoca, executed over the hat law in the 20s
- Adnan Menderes and two ministers executed in 1961
- Deniz Gezmiş and his two friends executed in 1972
- Erdal Eren, executed in 1980

Atif Hoca: In November 1925 the Turkish parliament passed a law on wearing hats, making it mandatory for all men to go either hatless or wear a Western-style brimmed hat in public places. Earlier in the summer, president Mustafa Kemal Atatürk had told an audience in the Anatolian town of Kastamonu:

“Members of the Turkish nation who call themselves civilized must prove and show that they are intellectually civilized as well. They must show how civilized they are through their family life and lifestyles.”¹⁰⁶

“We shall wear Oxford shoes or alternately, ankle shoes from now on; and trousers, waistcoats, shirts, ties, removable collars, jackets and most naturally, hats!”¹⁰⁷

The consequences of disobeying this law were severe. Two weeks after it was adopted, on 7 December 1925, a group of policemen came to Atif Hoca’s house in Istanbul’s Fatih district.¹⁰⁸ Atif Hoca was a well known Islamic scholar, accused of having written a booklet on “The Brimmed Hat and the Imitation of Europeans.”¹⁰⁹ It described the brimmed hat as a symbol of a non-Islamic way of life and called on Muslims not to imitate Europeans. It had been published in 1924, before the law on wearing hats was adopted.

A first court acquitted him.¹¹⁰ In December 1925 the police arrested him again. His second trial took place before an Independence Tribunal. On 26 January 1926 he was sentenced to death and on 4 February 1926 hanged in Ankara’s Samanpazari Square.¹¹¹

In the 1920s, the total number of people killed by the police in several central and eastern provinces of Turkey where uprisings took place against the hat law, or hanged by the Martial Court and the Ankara Independence Tribunal, is estimated to be more than 50.¹¹²

Adnan Menderes and two ministers: In the 1950s, under Democratic Party rule and prime minister Adnan Menderes (May 1950 to May 1960), 49 people were executed in Turkey.¹¹³

¹⁰⁶ Mustafa Kemal Atatürk, “[Türk Ocağı ve Şapka Nutku](#)”, 27 August 1925.

¹⁰⁷ Kaya Genç, “[Turkey’s Glorious Hat Revolution](#)”, *Los Angeles Book Review*, 11 November 2013.

¹⁰⁸ *Hürriyet Daily News*, “[The victims of Turkey’s ‘hat-revolution’](#)”, 14 December 2011.

¹⁰⁹ *Hürriyet*, “[İskilipli Atif Hoca olayı!](#)”, 5 December 2011.

¹¹⁰ *Hürriyet Daily News*, “[The victims of Turkey’s ‘hat-revolution’](#)”, 14 December 2011.

¹¹¹ *CNN Türk*, “[Erdoğan CHP’yi Atif Hoca’yla vurdu](#)”, 18 May 2011.

¹¹² Kaya Genç, “[Turkey’s Glorious Hat Revolution](#)”, *Los Angeles Book Review*, 11 November 2013;

Hürriyet Daily News, “[The victims of Turkey’s ‘hat-revolution’](#)”, 14 December 2011.

¹¹³ M. Semih Gemalmaz, *Türkiye’de Ölüm Cezası, 1920-2000*, volume II, Beta, January 2001, p. 628-769.

Then the party was overthrown in the early morning of 27 May 1960. A Turkish military junta arrested prime minister Adnan Menderes along with all the leading members of the Democratic Party. Hundreds of people were transferred to heavily guarded Yassiada, an island in the Marmara Sea, where they awaited their trial. It was a mass trial: in the stands stood 587 accused.¹¹⁴ To deal with their political prisoners, the new military rulers appointed a tribunal of nine judges. The historian Eric Zurcher noted that “there was no legal basis for the existence of the tribunal itself and its members were clearly biased politically against the Democratic Party ... the judges made no effort to hide their distaste for the accused.”¹¹⁵ Charges varied from violating the constitution, to being responsible for a pogrom against the Greek minority, to embezzling money from state funds:

“The criminal cases and the corruption charges – some of which were bizarre, such as the one in which Menderes was accused of killing his illegitimate baby, or in which [president] Bayar was accused of forcing a zoo to buy a dog he had received as a gift – were clearly brought in a largely ineffectual effort to tarnish the reputations of these men.”¹¹⁶

The Yassiada trial, which started in October 1960, was a farce. It looked like a trial: there were court sessions (203), and there were witnesses (1,068). After eleven months, there were harsh verdicts: 464 persons were found guilty, 31 sentenced to life imprisonment and 15 to death. Legal procedures were changed so that these verdicts could not be appealed. President Celal Bayar, the only one among Turkey’s first seven heads of state who was not a former general, was first sentenced to death and then pardoned due to his age.¹¹⁷ Three death sentences were carried out. Minister of Foreign Affairs Fatin Rustu Zorlu and Minister of Finance Hasan Polatkan were hanged on 16 September 1961. Prime Minister Adnan Menderes made a suicide attempt, failed, and was executed one day later.

Deniz Gezmiş and friends: The 1971 military intervention led to another series of executions. On 6 May 1972, Deniz Gezmiş and other members of Turkey’s extreme-left movement were executed. They were accused of shooting at a police checkpoint, robbing a bank in January 1971 and kidnapping a US citizen and four US soldiers.¹¹⁸ The lawyers of the 26 defendants were given 15 days to prepare the defense. Within three months the court rendered its verdict in October 1971. Deniz Gezmiş was one of the accused and sentenced to capital punishment.¹¹⁹ The parliament ratified the sentence in March 1972. This was challenged before the Constitutional Court by the opposition party CHP. The parliament ratified the verdict once again in April 1972.¹²⁰ Suleyman Demirel (the leader of the conservative Justice Party) and Alparslan Türkeş (the leader of the MHP) voted in favour of execution.¹²¹ Of 450 MPs, 273 approved carrying out the sentence.¹²² 1,800 writers, journalists, artists and others signed a petition against the executions, to no avail.¹²³ On 5 May, gallows were set up in the court of the Ankara prison. The families were not informed. Lawyers were woken up in the middle of the

¹¹⁴ Eric J. Zurcher, *Turkey – A Modern History*, I.B.Tauris, 2003, p. 261.

¹¹⁵ *Ibid.*, p. 260.

¹¹⁶ *Ibid.*, p. 260.

¹¹⁷ There were seven presidents between 1923 and 1989. Six were former generals: Mustafa Kemal Atatürk, founder of the Turkish Republic; İsmet İnönü, chief of general staff 1920-1921; Cemal Gürsel, commander of the Turkish Land Forces 1958-1960; Cevdet Sunay, chief of general staff 1960-1966; Fahri Korutürk, commander of the Turkish Navy 1957-1960; Kenan Evren, chief of general staff 1978-1983.

¹¹⁸ *Bianet English*, “[1971-1972: Last Days of Young Revolutionaries before Execution](#)”, 6 May 2009.

¹¹⁹ The remaining defendants were finally sentenced to either aggravated life imprisonment or fifteen years of imprisonment.

¹²⁰ *Radikal*, “[Türkeş, Denizler’in idamında oy kullanmadı mı?](#)”, 9 May 2012.

¹²¹ *Haber 7*, “[Gezmiş ve arkadaşlarının idamına evet diyenler](#)”, 7 May 2013.

¹²² *Cumhuriyet*, “[İşte üç fidanın idamına evet ve hayır diyenler](#)”, 6 May 2014.

¹²³ *Bianet English*, “[1971-1972: Last Days of Young Revolutionaries before Execution](#)”, 6 May 2009.

night to be present. At 1:25 am on 6 May, Deniz Gezmis was the first to be taken to the gallows.¹²⁴

Erdal Eren: Following the 1980 coup, special courts sentenced 517 people to death. The Military Supreme Court of Appeals approved 124 first instance verdicts; 54 were then ratified by the legislative authority and 50 people were executed. One of them was Erdal Eren. Eren was arrested during student protests held before the 1980 coup. In February 1980, the leftist Patriotic Revolutionary Youth Association organised a march in Ankara to protest against the killing of a Middle East Technical University student by a security guard of an MHP minister. During the march, a young soldier was shot.¹²⁵ Twenty-four students including Erdal Eren were taken into custody. On 5 February the military prosecutor issued an indictment accusing him of murder.¹²⁶ Eren admitted that he fired shots from afar. The post-mortem examination, however, revealed that the soldier was shot from a short distance. The judges issued their verdict on 19 March, 36 days after the trial had begun, Eren was sentenced to death.¹²⁷ Eren's lawyer appealed. The appeals chamber reversed the first instance verdict, but the military prosecutor insisted on it and prevailed on 20 November.¹²⁸ Erdal Eren was hanged on 13 December 1980 in Ankara.

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¹²⁴ *Bianet English*, "[1971-1972: Last days of young revolutionaries before execution](#)", 6 May 2009.

¹²⁵ *Birgün*, "[36 years ago today Erdal Eren was executed by military regime of Turkey at the age of 17](#)", 13 December 2016.

¹²⁶ M. Semih Gemalmaz, *Türkiye 'de Ölüm Cezası, 1920-2000*, Beta, January 2001, p. 433.

¹²⁷ *Ibid.*, p. 433.

¹²⁸ *Ibid.*, p. 434.