



# Report on Turkey's Abuse of INTERPOL's Stolen and Lost Travel Documents Database

## Turkey's Disregard for the Freedom of Movement

1. On the 21<sup>st</sup> of July 2016, only a few days after the failed coup attempt, the Turkish government declared a State of Emergency which imposed severe restrictions on the rights and freedoms of Turkish citizens, including the freedom of movement.
2. [According to official statements made during](#) the state of emergency (2016-2018), the Turkish Government enacted thirty-two Emergency Decrees, under which [125,678](#) individuals were dismissed from public service and were subjected to various other sanctions. [These Emergency Decrees](#) (Arts. 3-5 of Decree-Law no. 667, Decree Law nos. 668,669,670,672, 675, 677, 679, 683, 686, 689, 692, 693, 695, 697, 701) include almost identical provisions which cancel the passports of those who were dismissed from public service;

*"... the relevant ministries and institutions shall immediately notify the relevant passport unit. Upon this notification, the relevant passport units shall cancel their passports..."*

3. The said Decree Laws also provide for the cancellation of the passports of the spouses of those dismissed:

*"The passports held by the spouses of persons, whose names are notified to the relevant passport unit under Paragraph 1, may also be cancelled by the Ministry of the Interior on the same date when it is considered to be detrimental in terms of general safety." (Article 10 of the Decree Law no. 673)<sup>1</sup>*

4. The Minister of the Interior announced in December 2017, that [234,419 passports had been revoked](#). 20,000 more public servants were subsequently dismissed, and their passports were cancelled together with the passports of their spouses. Those who previously had no passports were subjected to a passport ban. It is estimated that some 500,000 individuals are consequently deprived of their freedom of movement. Although Turkey's interior ministry revoked the restrictions on [155,350 individuals](#) after the state of emergency was finally lifted, there are still 125,678 individuals who are still banned from travelling abroad. It is also the case for their spouses and their children under 18 as well as the spouses and minor children of those who have been declared as

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<sup>1</sup> It should be noted that all of the said decree laws were approved by the Turkish Parliament and incorporated into the Turkish codex.

fugitives. This means that more than 300,000 people are still deprived of the freedom to leave the country as a result of administrative orders.

5. In a nutshell, through Emergency Decree Laws and Law no. 7188, the Turkish government severely restricted the freedom of movement of hundreds of thousands of Turkish citizens by cancelling their passports or refusing to issue new ones.

### Relevant International and National Law

6. The freedom of movement involves the [movements of individuals within a State as well as from one State to another](#). While the former ensures the right of a person to freely move and to choose a place of residence within the territory of a State, [the latter is about the right to leave a country, including the home country, as well as the right to \(re-\) enter](#).
7. Turkey is a member of the United Nations and a party to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), all of which protect the freedom of movement.
8. Art. 13 (2) of the UDHR reads “Everyone has the right to leave any country, including his own, and to return to his country”. According to Art. 12 (2) of the ICCPR and Art. 4 (2) of Protocol 4 of the ECHR, “Everyone shall be free to leave any country, including his own”. Under the ECHR and the ICCPR, no restrictions shall be placed on the freedom of movement other than such as are provided for by law and are necessary in a democratic society in the interests of national security or public safety (order), for the protection of health or morals, or for the protection of the rights and freedoms of others. In its General Comment no:27, the UN CCPR clarifies that [the right to leave a country must include the right to obtain the necessary travel documents](#).
9. According to Art. 23 § of the Turkish Constitution which last amended in 2010:

“[e]veryone has the freedom of residence and movement. A citizen’s freedom to leave the country may be restricted only by the decision of a judge based on a criminal investigation or prosecution”.

### Relevant judgements of the Turkish Constitutional Court

10. In three separate judgments, the TCC annulled the legal provisions that empowered the Government to revoke the passports of individuals without a judicial decision:
  - On 24th July 2019, the TCC annulled ([Decision No: 2019/63](#)), a provision which empowered the government to cancel hundreds of thousands of passports during the State of the Emergency period 2016-2018.<sup>2</sup> (App.1: translation of the judgment)
  - On 3/6/2021, the TCC annulled ([Decision: 2021/36](#)) a provision of Law no: 7188 which amended the Passports Law and empowered the government to cancel passports without a judicial decision.<sup>3</sup>
  - On 24/06/2021, the TCC annulled (Decision No: 2021/45) a provision of Law No. 7086 dated 6/2/2018 (that was on the approval of Decree-Law No. 686). The annulled provision had allowed the Government to revoke the passports of those dismissed from the civil service with Decree laws.<sup>4</sup>

<sup>2</sup> <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2019/63>  
(AYM, E.2016/205, K.2019/63, 24/07/2019, § 75-77)

<sup>3</sup> <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2021/36>  
(AYM, E.2019/114, K.2021/36, 03/06/2021, § 40-43)

<sup>4</sup> <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2021/45?KararNo=2021%2F45>  
(AYM, E.2018/81, K.2021/45, 24/06/2021, § 262-276)

11. Above mentioned judgments show that the TCC has indeed constantly made it clear that the revocation or cancellation of passports may be made only with a judicial decision, a decision by a judge or a court.

### **The Current Situation**

12. Following the three decisions above, the Ministry of Interior first revoked all restrictions adopted as per those annulled provisions in the summer of 2022. Shortly after, it, however; found a new way to cancel the passports of dissidents.
13. The Ministry of Interior started to invoke an archaic provision of the Passport law which was most used during the Military Regime which ruled the country following the military coup of 1980. It was namely Article 22 of the Passport Law<sup>5</sup> and reads *“Passports or travel documents shall not be issued to those who are prohibited from travelling abroad by the courts, to those whose departure from the country has been determined by the Ministry of Interior to be risky for general security ...”*
14. It has been reported that after the revocation of all restrictions adopted as per the legal provisions adopted by the TCC, the Ministry of Interior of Turkey imposed further restrictions which concerned approximately 60,000 individuals and cancelled their passports by designating them as such persons *“whose departure from the country has been determined to be risky for general security.”* And it is also reported that Turkey has been registering these passports on Interpol’s SLTD database as invalid and revoked.

### **INTERPOL’s role**

15. INTERPOL is required by its constitution not to take any action of a political character and to comply with the Universal Declaration on Human Rights.
16. As indicated in a CCF Decision, adopted during the 107th session, Article 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the

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<sup>5</sup> Full text of Article 22 of the Passport Law

Passports or travel documents shall not be issued to those who are prohibited from travelling abroad by the courts, to those whose departure from the country has been determined by the Ministry of Interior to be risky for general security ... However, in cases of necessity and upon the proposal of the Minister of Interior and the approval of the Prime Minister passports or travel documents may be issued to persons save for those who have been prohibited by the courts from travelling to foreign countries.

The clear identities of those concerned (name, surname, place and date of birth, mother and father's name and place of registration) and the reason for the restriction shall be notified to the local police authorities by the relevant departments.

As soon as the relevant police authorities receive such information, they shall, through the provincial police directorate, communicate it in writing and via the fastest method to the writing to the security directorates with border crossing gates, to the provincial security directorate where the person is registered and Notifies the General Directorate of Security.

They shall be prevented from travelling abroad and shall not be issued passports or documents, and if issued, they shall be withdrawn.

The expired passports of those who are prohibited from issuing passports or going abroad by the authorities mentioned in the first paragraph and those whose stay abroad is determined to be risky for general security shall not be renewed and they shall be issued with a travel document for their return to Turkey.

Passports or travel documents may not be issued to those who have lost their passports or travel documents and who cannot justify this, or to those who have been expelled from foreign countries, taking into account the reasons for their expulsion.

cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers."

### **Violations of fundamental human rights**

17. As explained above the ICCPR and ECHR which Turkey is a party, protect the freedom of movement. In addition, Art. 13 (2) of the UDHR reads "Everyone has the right to leave any country, including his own, and to return to his country". In its General Comment no:27, the UN CCPR clarifies that [the right to leave a country must include the right to obtain the necessary travel documents.](#)
18. Furthermore, Art. 23 of the Turkish Constitution which was last amended in 2010<sup>6</sup> reads "[e]veryone has the freedom of residence and movement. A citizen's freedom to leave the country may be restricted only by the decision of a judge, based on a criminal investigation or prosecution".
19. The part that "*Passports or travel documents shall not be issued ... to those whose departure from the country has been determined by the Ministry of Interior to be risky for general security*" in Article 22 of the Passport Law of 1950 is clearly contrary to the Turkish Constitution, because:
20. Article 23 of the 1980 Constitution which was last amended in 2010 precedes Article 22 of the Passport Law of 1950, as it is of subsequent date. Also, the above-mentioned constitutional provision makes Article 21 of the Passport Law void, as the Constitution has supremacy over the laws.<sup>7</sup> In its decision, dated 2021, the TCC clearly said that as the Constitution has supremacy over the laws, after the 2010 amendment to Article 23 of the 1980 Constitution, passports can be cancelled/revoked only by a judicial decision.
21. The Turkish Constitutional Court (TCC) indeed concluded that the 2010's Constitutional amendment has put an end to the restriction of the citizen's freedom to travel abroad by the administrative decision and adopted the principle that the freedom to travel abroad can only be restricted due to criminal investigation or prosecution and subject to a judge's decision. The TCC said:

*263. The third paragraph of Article 23 of the Constitution, which regulates the freedom to leave the country, which is an aspect of the freedom of movement, was amended by the Law No. 5982, dated 7/5/2010, on the Amendment of Certain Articles of the Constitution of the Republic of Turkey, and the Article took its current form. In the justification of the said Constitutional Amendment, it is stated that "The amendment to the Article puts an end to the restriction of the citizen's freedom to travel abroad by the administration and adopts the principle that the freedom to travel abroad can only be restricted due to criminal investigation or prosecution and subject to a judge's decision." Thus, it is understood that the aim is not to grant any discretionary power to*

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<sup>6</sup> In the justification of the said Constitutional Amendment, it is stated that "The amendment to the Article puts an end to the restriction of the citizen's freedom to travel abroad by the administration and adopts the principle that the freedom to travel abroad can only be restricted due to criminal investigation or prosecution and subject to a judge's decision." Thus, it is understood that the aim is not to grant any discretionary power to the administration in as far as restricting the citizen's freedom to travel abroad, and that the restriction can only be made by a judge's decision. - <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2021/45?KararNo=2021%2F45> (AYM, E.2018/81, K.2021/45, 24/06/2021, § 262-276)

<sup>7</sup> XI. Supremacy and binding force of the Constitution

ARTICLE 11- The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals. Laws shall not be contrary to the Constitution. [https://www.anayasa.gov.tr/media/7258/anayasa\\_eng.pdf](https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf)

*the administration in as far as restricting the citizen's freedom to travel abroad, and that the restriction can only be made by a judge's decision.*

*265. The freedom to travel abroad may be restricted only for the reasons set out in Article 23 of the Constitution. In other words, the Constitutional legislator has determined that the freedom to travel abroad can only be restricted due to a criminal investigation or prosecution and upon a judge's decision.*

*266. The rules to which the lawsuit is subject, on the other hand, restrict the freedom of persons to travel abroad through an administrative act, ... without the requirement for a judge's decision due to a criminal investigation or prosecution.*

*276. For the reasons explained above, the rules are contrary to Articles 15, 23 and 40 of the Constitution. They must be cancelled.*<sup>8</sup> (App.1: translation of the judgment)

22. Similarly, ECtHR found in [İletmiş v. Turkey](#) and [Paşaoğlu v. Turkey](#) that refusal of the Turkish authorities to grant the applicant a travel document in the absence of any criminal charge, was disproportionate and could not be regarded as “necessary in a democratic society” and consequently violates their right to respect for private and family life (Art 8 of the ECHR).
23. This kafkaesque provision also falls short of the requirements set up by the UN CCPR [General Comment no:27 of the UN CCPR \(para. 13\)](#) as it:
- impairs the essence of the right,
  - reverses the relation between right and restriction, between norm and exception,
  - lacks precise criteria, and
  - confers unfettered discretion on those charged with their execution.
24. The revocation/cancellation/invalidation of passports by the Turkish government thus breaches the Turkish Constitution and therefore violates the Rules on the Processing of Interpol data.

#### **Political and abusive character of the concerned action**

25. The Human Rights Committee of the Turkish Parliament also found that the sentence that “Passports or travel documents shall not be issued to those whose departure from the country has been determined by the Ministry of the Interior to be risky for general security.” of Article 22 of the Passport Law was contrary to the Turkish Constitution and to international treaties, and of prone abuse of the government. The Human Rights Committee said (App.12):

“In our country, the use of the authority specified in this Article has varied greatly according to the changing governments, administrations and practices, and many citizens have suffered due to the unfounded and sometimes arbitrary use of the authority granted to the administration by this Article.”

“According to the Constitution, it is also possible to impose a restriction on persons against whom a court case has been initiated. However, it is not possible to reconcile the denial of a passport or the restriction of the freedom of travel, and the prohibition of travelling abroad without any court decision or a legal basis, based solely on the records that are kept, by whom and in what manner is not known, with human rights. Such a practice means touching the essence of the freedom of

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<sup>8</sup> <https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2021/45?KararNo=2021%2F45> (AYM, E.2018/81, K.2021/45, 24/06/2021, § 262-276)

movement, which is one of the fundamental rights and freedoms, and this is contrary to the modern rule of law.” (App.11)

26. Thus, the Turkish Parliament concluded that this provision has been used for political purposes.

### **Conclusion**

27. In conclusion, the Turkish government does not have the power to revoke/cancel/invalidate the passports of Turkish citizens. This power is exclusively vested in the judiciary and such decisions can be made only by a judge or a court due to criminal investigation or prosecution.

28. Any passport revocation/cancellation/invalidation data lacking a decision of a judge, or a court breach the Turkish Constitution and consequently Article 11(1) of the Rules on the Processing of Data (RPD) which requires "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity.

29. Interpol shall adopt measures to counter Turkey’s persistent actions that are in breach of the Interpol constitution and regulations as well as its abuse of the SLTD database and delete the data registered by Turkey targeting dissidents.

**The Arrested Lawyers Initiative**

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