



CANCELLATIONS OF TURKISH PASSPORTS AND PREVENTION OF THE FREEDOM OF MOVEMENT



CANCELLATION OF TURKISH PASSPORTS AND PREVENTION OF THE FREEDOM OF MOVEMENT

Introduction.....	3
The Freedom of Movement in the Decisions of the European Court of Human Rights.....	3
Restriction of the Freedom to Travel under the Turkish Constitution	4
Cancellation of Passports and Restrictions on the Right to Travel in the Emergency Decree Laws	6
The Passport Cancellation under the Passport Act and The Freedom to Travel	9
Passport Cancellations under the State of Emergency and the Applicable Remedies.....	13
Conclusion	16

Introduction

1. The freedom to travel refers to free movement of individuals who are citizens or foreigners.¹ The freedom to travel consists of three components:
 - a. Individuals enjoy freedom of movement in their own countries,
 - b. Individuals can leave the country including their own (i.e. going abroad),
 - c. Individuals can return to their own countries.²
2. The freedom to travel has been protected by many international documents including Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 10 of the Convention on Rights of Child, Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 4th Protocol of the European Convention on Human Rights (ECHR).
3. Article 23 of the Consitution of the Republic of Turkey provides that; *“Everyone has the right to freedom of residence and travel...Freedom of travel may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of offences. 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. Citizens shall not be deported, or deprived of their right of entry into the homeland.”*

The Freedom of Movement in the Decisions of the European Court of Human Rights

4. Even though the 4th Protocol of ECHR which regulates the freedom of movement has been signed by Turkey, it has not come into force and become legally binding as its internal approval process has not yet been completed. However the European Court of Human Rights (ECtHR) has ruled on a number of occasions regarding the issue within the context that Turkey has violated the right to respect for private and family life under Article 8 of the ECHR.

¹Erdoğan Göğçer (1973) *Pasaport Hukuku (Law of Passport)*, Ankara: Sevinç Matbaası, p.38.

²Jane McAdam (2011) An Intellectual History of Freedom of Movement in International Law: the Right to Leave as a Personal Liberty, 12, *Melbourne Journal of International Law*, pp. 27-56.

5. The ECtHR held İletmiş v. Turkey³ judgment that “*At a time when freedom of movement, particularly across borders, is considered essential to the full development of a person's private life, especially when, like the applicant, the person has family, professional and economic ties in several countries, for a State to deprive a person under its jurisdiction of that freedom for no reason is a serious breach of its obligations.*” The Court hence ruled that the right to respect for private and family life under Article 8 was violated by Turkey.
6. The ECtHR also decided in Paşaoğlu v. Turkey⁴ that the refusal of the Turkish authorities to grant the applicant a travel document like a passport on the account of a restriction registered in his name is an interference of the freedom of movement that is guaranteed under Article 2 of the Protocol No. 4. However, since that provision had been signed but not ratified by Turkey, it could not be applied in the case. Nonetheless, “*having regard to the applicant's personal and family situation at the relevant time, the Court considered that the maintaining of the measure for a long period, in the absence of any criminal charge, was disproportionate and could not be regarded as “necessary in a democratic society.”*” Accordingly, the Court held unanimously that there had been a violation of Article 8.

Restriction of the Freedom to Travel under the Turkish Constitution

7. According to Article 13 of the Constitution, fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular nature of the Republic and the principle of proportionality.
8. According to this regulatory framework, the restrictions to be brought against the freedom to travel;
 - a. must be done by law,
 - b. must be in conformity with the letter and spirit of the Constitution,
 - c. must not infringe the essence of fundamental rights and freedoms,
 - d. must not be contrary to the requirements of the democratical social order,
 - e. must not be contrary to the requirements of the secular nature of the Republic,

³ İletmiş v. Turkey (2005), ECHR, Application no. 29871/96 on 06 December 2005

⁴ Paşaoğlu v. Turkey (2008), ECHR, Application no. 8932/0396 on 08 July 2008

g. must not be contrary to the principle of proportionality.

9. According to Article 15 of the Constitution; in times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.
10. Under Article 15 of the ECHR; in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
11. As provided under Article 15 of the Constitution and Article 15 of the ECHR, even in cases of war or public emergencies, the restriction of the freedoms are subject to conditions. These are; non-violation of the obligations under international law and conformity with the proportionality principle. However as it can be seen below, not only that international law obligations and the proportionality principle have been violated but also the freedom to travel has been totally destroyed by the authorities who do not even adhere to the emergency decree laws.
12. Paragraph 3 of Article 121 of the Turkish Constitution authorizes the executive to issue decrees having the force of law (emergency decree law) “on matters necessitated by the state of emergency”. Various emergency decree laws issued envisage that the passports of those who are considered by administrative acts to have membership, affiliation, link or connection with terrorist organizations or structure/entities, organizations or groups which are held by the National Security Council as engaging in activities against the national security of the State shall be cancelled. Such provisions do not only provide the cancellation of the passports of those persons who took part in the coup attempt or had some links with the putschists but also of those persons who are regarded by the administrative authorities on the basis of the National Security Council decisions as engaging in activities against the national security of the State. The cancellation of passports on this latter case could have nothing to do with the coup attempt and thus no relevance to the “matters necessitated by the state of emergency”.
13. Further, Article 15 of the Constitution ensures that the exercise of fundamental rights and freedoms can only be suspended to the extent required by “the exigencies of the situation”. This is called “the principle of proportionality” in constitutional law. Even if the regulation made by the emergency decree law was on “a matter required by the exigencies of the state of emergency”, the regulation should not be

disproportionate with the intended purpose. In this context, it is not in any way proportionate to dismiss individuals from their public duties or to cancel their professional licences with administrative decisions without filing any judicial or administrative investigations, without having due processes or without granting the right of defence in the context of the state of emergency.

14. In order for an application to be proportionate, there needs to be a proportionality between the intended purposes to be reached and the means employed for that purpose. In order to re-establish the public order claimed to be damaged with the coup attempt, the public sector employees who had nothing to do with the coup attempt or the individuals working in the closed down institutions with the emergency law decrees were expelled from their public duties or their professional licences were revoked without filing an investigation, judicial trial and without granting the right of defence. As if these were not enough, their passports had also been cancelled. Is it possible to talk about the proportionality between the aims sought to be achieved and the means used for that purpose?

Cancellation of Turkish Passports and Restrictions on the Right to Travel in the Emergency Decree Laws

15. The Erdoğan Government declared the state of emergency (SoE) for three months on 20 July 2016 after the coup attempt on 15 July 2016 and has continuously extended it. The country has been under the emergency regime for 18 months even though its conditions are not met. The number of the emergency decree laws issued have reached to 32. Even though the emergency law decrees should be transitory in nature, the Government has been exploiting the situation as an opportunity and has made some structural changes in the basic laws like the Turkish Penal Code, the Law of Criminal Procedure and in the structure of many state institutions, notably of the judicial bodies⁵.
16. On the other hand, nearly 150.000 (one hundred fifty thousand) public sector employees such as judges and prosecutors, lawyers, journalists, military personnel, academics, educational and health officials have been dismissed from their jobs with these decrees directly or indirectly by the institutions in reliance of such decrees, the dismissed peoples' professional licences have been invoked, trustees have been appointed to dozens of municipalities, and thousands of private

⁵ <http://www.platformpj.org/wp-content/uploads/Construction-of-a-New-Regime-By-Decree-Laws-1.pdf>

education and health institutions, media organs, associations, foundations, trade unions and confederations have been closed down⁶.

17. The main policy followed by the Government has been to create an atmosphere of “fear” for the opponent groups and thus a policy of “keeping them under control”. With the help of the Government and the Judiciary under its control, thousands of opponents from every walk of life have been dismissed from their jobs, imprisoned, tortured, prevented from seeing their relatives and lawyers for a long time. Many incidents of kidnapping by the intelligence service have taken place; no information is available on those kidnapped to date. Even the incidents of abductions involving state officials abroad had reportedly taken place. Thus, abolishing the freedom to travel is practiced yet as another pillar of this “fear” and “keeping under control” policy.
18. The passport cancellations started with the Emergency Decree Law No. 667 and continued with the following decree laws. While the Decree No. 667⁷ cancelled passports on the ground that the dismissed public sector employees and other staff posed a threat to the national security and they had membership, affiliation, link or connection with the terrorist organizations, the passports of the spouses of the aforementioned were also cancelled with the Decree Law No. 673 even though there were no administrative processes or investigations conducted in relation to them.⁸ The allegations that the spouses of the people who fled abroad had been taken as hostages became the main topic of public discussion when the passport of Dilek Dündar, the wife of the Ex- Chief Editor of the Cumhuriyet newspaper was confiscated while she was about to leave the country.⁹
19. Article 5 of the Emergency Decree Law No. 667 states that *“(1) Those against whom an administrative action is taken on the ground of their membership, or connection or contact with structure/entities, organizations, groups or terrorist organizations, which are found as established to pose a threat to the national security, and those against whom a criminal investigation or prosecution is conducted for the same reason shall immediately be reported to the passport department concerned by the institution or organization that takes the action. Upon this notification, the passports shall be cancelled by the passport departments concerned.”* Even though there is nothing stipulating that the aforementioned individuals cannot be issued passports,

⁶ No End in Sight Amnesty International 2017, <https://www.amnesty.nl/content/uploads/2017/05/No-End-In-Sight-ENG.pdf?x82182>

⁷ Article 3, 5 of the Emergency Law decree dated 23.07.2016, No. 667: <http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

⁸ Article 10 of the Decree on 01.09.2016, No. 673: <http://www.resmigazete.gov.tr/eskiler/2016/09/20160901M2-.htm>

⁹ <http://t24.com.tr/haber/can-dundar-bunun-adi-eslere-karsi-esleri-rehin-almaktir-orman-ve-mafya-kanunu,358266>

this provision has been used as a justification for the decision not to grant new passports to these individuals. The authorities interpret this provision as not granting any right to receive passports for the dismissed public sector employees who have been subject to such administrative action.

20. At the first glance, it could be thought that the passports of the individuals whose names were mentioned in the Decrees (KHK) were cancelled, the reality is not like that. It is seen that the passports of those who are not public sector employees and who have no criminal investigation and prosecution, no administrative or judicial investigation being conducted on them and who have no contact with terrorist organizations, affiliation or affiliation with terrorist organizations are also canceled. The Emergency Decree Laws which are not subject to any scrutiny of the Parliament and the Judicial review have not been considered enough, thousands of passports have been canceled by going beyond the bounds of any law. Mayor of Besiktas (from main opposition party) was recently suspended by the Minister of interior due to his alleged wrong-doings. His and his wife's as well as his children's passport were seized by the law enforcement. A journalist asked President at a press conference before he flew to Paris whether this was a breach of freedom of movement of those who has nothing to do with the investigation itself but just happened to be the family member of the Mayor. President's responded that he'd speak to Interior minister and would see if family members' freedom of movement should or should not be stricted. This recent case in point shows how people's freedom of movement is arbitrarily and unlawfully restricted and left in the discretion of President.

21. Article 10 of the Emergency Decree Law No. 773 has added the following provision to Article 5 of the Emergency Decree Law No. 667: *"(2) The passports of the spouses of the persons whose names are reported to the passport unit concerned under the first paragraph of this Article may also be canceled by the Ministry of the Interior on the same date if they are found to be prejudicial in terms of general security."* By inserting this additional provision, it was sought to create a "legal" foundation for the administrative practice of cancelling the spouses' passports. This provision is deemed to be a legal cover for the revocation of the spouses' passports, even if no administrative or judicial proceedings have been carried out in relation to them. As will be seen below, the spouses' passports are cancelled even without complying with the requirements of this provision, which are by its wording open to arbitrary practices.

The Passport Cancellation under the Passport Act and The Freedom to Travel

22. Article 22 of the Passport Act No. 5682 enumerates conclusively in which cases passports shall not be issued. Accordingly, *"No passport or travel document shall be issued to those persons going abroad who are banned by the courts and to the persons whose departure from the country is ascertained as prejudicial in terms of general security by the Ministry of Internal Affairs."* As it is understood from this provision, passports shall not be issued only for those who are prohibited from going abroad by judicial decision and for those whose departure from the country is viewed prejudicial by the Ministry of Interior. No one except these two categories can be deprived of the right to obtain a passport. As the reasons for not issuing passport are stated clearly and conclusively in the Act, it is not possible to expand on the reasons by way of interpretation.
23. In practice, even though there are no ongoing judicial investigations or prosecutions, thousands of people's freedom to travel are being violated by the passport cancellations. As there are no judicial decisions barring these people from going abroad, there are no determinations made by the Ministry of Interior that their departure are considered as prejudicial in terms of general security either. Therefore, neither conditions foreseen as a reason for not issuing passport under Article 22 of the Passport Act is applicable for these persons.
24. Moreover, Article 23 of the Constitution clearly stipulates that freedom of travel may be restricted only by a judicial decision due to criminal investigation or prosecution. Therefore, Article 22 of the Passport Act which foresees passport refusal for those persons who are considered as prejudicial in terms of general security clearly violates Article 23 of the Constitution. The enjoyment of basic rights and freedoms is a general principle and their limitation is exceptional. Therefore, the regulations concerning the limitation of basic rights and freedoms should be narrowly construed. The Constitution envisages that the freedom to travel can be restricted only on the ground provided by the Constitution. The expansion of the ground of restriction by the Passport Act is completely against the Constitution and hence will not be unenforceable.
25. **Plenary of the Chambers for Administrative Cases of the Council of State** held that *"In this case; even though it is stated under Article 22 of the Passport Law that passports or travel documents shall not be issued for those whose departure from the country are found prejudicial in terms of general security by the Ministry of Internal Affairs, according to paragraph 4 of the Article 23 of the Constitution, 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, ... Under the circumstance, in accordance with the aforementioned provision of the Constitution, as it is clear that the administration cannot restrict the freedom of the citizen to leave the country without the decision of the judge, there is no compliance with the law either by the administrative action of the defendant administration or by the decision of the administrative court in rejecting the case.”¹⁰

26. On the other hand, investigations about other family members are verbally indicated as a ground for canceling the passports (generally for spouses) or for not processing the passport requests. However, investigations or prosecutions of other family members and children apart from the person himself cannot be used as a justification for not issuing passport. This is not a reason cited by Article 23 of the Constitution or Article 22 of the Passport Act as ground for refusing passport. Further, the allegation or the fact of a family member committing a crime can only be a concern for that person alone. It is clearly against the principle of individual criminal responsibility to restrict the freedom of travel of family members due to the alleged or otherwise actions of other family members. Article 38 of the Turkish Constitution stipulates that "criminal responsibility is personal".
27. **Hence, 10th Chamber of the Council of State stated in one of its decision that** *“... On the date of the request of the plaintiff for a passport ... the plaintiff’s marriage was still continuing with the stated name and that person was previously determined that he/she was involved with some prohibited activities, that is why, he/she was registered as being sought in absentia. Due these reasons, if the plaintiff were issued a passport, it was possible that he/she would be involved with activities against the security of the country, even though the rejection of the passport request with this reasoning has nothing to do with regulatory compliance and on the other hand, there had not been any determined prohibited act or conduct on the part of the plaintiff till the date of the application and as the principle of the personality of the criminal responsibility is a well-established judicial practice...”*. So the decision of the local court was reversed by the 10th Chamber.
28. **In another decision of the 10th Chamber of the Council of State,** the decision of the local court was reversed after stating that *“After the examination of the file, it is understood that the case was based on the assumption that ‘if the plaintiff goes abroad, he/she might be involved with activities against our country’, however, as a result of the plaintiff’s commitment of the actions deemed as crime by the laws, the plaintiff received the punishment foreseen in the laws for that crime and that punishment was executed, and finally the plaintiff was released, the case in question*

¹⁰ The Decision of the Council of State, Plenary Session of the Chambers for Administrative Cases on 31.02.2013, Case No: 2008/921, Decision No: 2013/314.

was based on the fact that the plaintiff was in contact with the extreme leftists after his/her release and nothing other than that was found prejudicial for his/her going abroad in terms of general security. In the present case, even though there is no determination that it is prejudicial for the plaintiff to go to abroad in terms of general security, the plaintiff's freedom to go abroad was restricted by not issuing a passport to him/her. Therefore there is no conformity with the general principles of the law, the Constitution and the Law No. 5682 in the administrative act in dispute."

Harrasing Dissidents Through Interpol

29. Though commonly described as an international police agency, Interpol is actually an organization of law enforcement agencies/institutions (which communicate to Interpol through their respective National Central Bureaus). Interpol is based on respect for the sovereignty of its member states and it does not make arrests on its own. The agency (Interpol) controls a bunch of data systems, the date in it are owned by its member states. Interpol is obliged by its own Constitution to follow a number of rules, including avoiding any intervention in political, military, religious and ethnic affairs. According to Interpol's constitution article §2 abd §3¹¹, the organisation must stick to recognized crimes like murder, robbery, and arson.
30. A number of local and international press reports emphasized that, Turkey wanted to "abuse" Interpol's law enforcement mechanisms to chase after and slience Erdogan's dissidents from all segments of the Turkish society. American bi-weekly business magazine, Forbes,¹² on 13 July 2017 tried to cast light onto shadow in relation to Turkey's attempt at the Interpol. It is almost cristal clear that Turkey wanted to include 60,000 and/or more individuals into Interpol's various data bases just right after the failed coup attempt. Turkey wanted to restrict and strand the freedom of movement of President Erdogan's critics in Turkey and around the world. On the other hand, some cases implied that Turkey had sought Interpol's Red Notices on those 60,000 individuals. Red Notices are commonly described as international arrest warrants, though they are not binding requests to other Interpol member states to locate and arrest the named individuals, coupled with a pledge from a nation that requested the Red Notice to seek the extradition of those individuals.

¹¹ <https://www.interpol.int/About-INTERPOL/Legal-materials/Neutrality-Article-3-of-the-Constitution>

¹² <https://www.forbes.com/sites/tedbromund/2017/07/13/is-turkey-trying-to-harass-u-s-service-members-through-interpol/3/#11b41f2c3305>

31. Hurriyet Daily News¹³, a Turkish newspaper alleged that Interpol had “removed Turkey from its database” after the Turkish government sought to report 60,000 people to Interpol on the grounds that they were members of Gulen Movement. Though Interpol denied the allegations about suspending or blocking Turkey’s access to Interpol’s systems, it made it clear in its statement to BBC¹⁴ on the following day that they did not process Turkey’s request to add 60,000 people into Interpol’s systems due to “non-occurrence.” This means that the requests did not comply with Interpol’s rules on avoiding involvement in political activities, that they lacked proper documentation, such as a court order or an arrest warrant, or both.
32. Upon a request from a member nation, adding 60,000 individuals to Interpol’s data base in one day tells us a lot. Nominal Interpol data base, in 2015, contained just over 163,000 records. Turkey’s attempt to put more 60,000 would increase the data base by well over a third. It has taken over 70 years to accumulate 163,000 records. For one country to seek to add 60,000 records in a single day was unprecedented¹⁵.
33. In April 2017, the Parliamentary Assembly of the Council of Europe¹⁶ underlined that ‘Interpol and its Red Notice system have been abused by some member states ... in order to repress freedom of expression or to persecute members of the political opposition beyond their borders’ and called on all member states of the Council of Europe to ‘refrain from carrying out arrests ... when they have serious concerns that the notice in question could be abusive’.
34. Turkish-Swedish journalist Hamza Yalçın was detained at Barcelona’s El Prat airport on 3 August 2017 pursuant to an international request for cooperation issued through Interpol by Turkey. On 4 August, he was arrested by Spanish police on charges of ‘terror propaganda’ and ‘insulting the Turkish President’¹⁷.
35. On 19 August 2017, another Turkish-born author, Doğan Akhanlı, who has written about human rights in Turkey was arrested in Spain after Turkey issued an Interpol warrant for the writer, a critic of President Recep Tayyip Erdoğan’s government¹⁸. Germany’s foreign minister Sigmar Gabriel immediately reacted to the arrest and called his Spanish counterpart over the detention of Akhanlı while he was on holiday in Spain. Minister Gabriel urged Spain not to extradite the German writer to Turkey

¹³ <http://www.hurriyetdailynews.com/interpol-denies-reports-of-turkeys-removal-from-database-after-listing-60000-wanted-gulenist-names-115135>

¹⁴ <http://www.bbc.com/turkce/haberler-dunya-40506353>

¹⁵ <https://www.forbes.com/sites/tedbromund/2017/07/13/is-turkey-trying-to-harass-u-s-service-members-through-interpol/#3546986e6ba3>

¹⁶ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23714&lang=en>

¹⁷ <http://www.pen-international.org/newsitems/spain-release-turkish-swedish-journalist/>

¹⁸ <https://www.theguardian.com/world/2017/aug/19/germany-urges-spain-not-to-extradite-erdogan-critic-to-turkey>

after he was detained on a Turkish warrant. Mr Akhanli was then released on 20 August on bail. German Chancellor Angela Merkel also criticized Turkey's use of an Interpol arrest warrant to detain a German writer in Spain. Chancellor said "We must not misuse international organisations like Interpol for such purposes¹⁹". Two months after his arrest in Spain, on 19 October 2017 Dogan Akhanli has returned to Germany.

36. On 6th September 2017, German and Swedish Foreign Ministers wrote a letter to European Union (EU) Commission's vice president Federica Mogherini. Both Ministers urged the Commission to act against what they said Turkey's politically-motivated arrest warrants through Interpol.
37. In a joint letter signed by both countries foreign ministers Simon Gabriel and Margot Wallström, the commission is warned that Turkey is violating the Interpol's constitution with politically motivated arrest warrants²⁰.
38. INTERPOL, for its part, introduced changes earlier in 2017, aimed at helping to improve its systems in dealing with abusive Red Notices. These reforms, which followed recommendations made by Fair Trials, are an important step in the right direction, but it is clear that there is more work to be done²¹.
39. Since 2012, Fair Trials has been highlighting the misuse of Interpol systems. Fair Trials have been worked on several cases and helped dozens of people who have been subject to abusive Interpol alerts from countries including Russia, Belarus, Turkey, Venezuela, Sri Lanka and Indonesia.
40. By March 2018, it is reported that INTERPOL has suspended Turkey's requests of RedNotice for nearly 50 individuals finding them politically motivated and abuse of the INTERPOL tools²².

Passport Cancellations under the State of Emergency and the Applicable Remedies

41. The freedom of movement of hundreds of thousands of people has been eliminated by the Justice and Development Party (aka AKP) Government in the way that is incompatible with the Constitution and contrary to the provisions of the unconstitutional emergency decree laws. The problems encountered by the Turkish citizens regarding the passport cancellations can be classified under two categories:

¹⁹ <https://www.reuters.com/article/us-eu-turkey-election/merkel-attacks-turkeys-misuse-of-interpol-warrants-idUSKCN1B00IP>

²⁰ <https://turkeypurge.com/sweden-germany-urge-eu-to-act-against-turkeys-interpol-abuses>

²¹ <https://www.fairtrials.org/european-union-calls-on-interpol-to-prevent-abuse-of-red-notices/>

²² <http://t24.com.tr/haber/interpol-turkiyenin-kirmizi-bulten-taleplerini-askiya-aldi-iddiasi,576965>

42. a) Those persons having passport problems due to an investigation or dismissal decision about their parents or their spouses even though they are not personally dismissed or there is no investigation process in connection with them,
- b) Those persons having been dismissed from their public offices or having worked in the institutions closed by the emergency decree laws, whose passports have been canceled or passport requests have been turned down even though there are no investigations on them.
43. Oddly enough, no notification is sent by the administrative units to the individuals whose passports are cancelled; when the individual in question goes to the airport with the passport he/she carries, the passport is seized on the ground that the passport is stolen or lost and then the person in question is prevented from leaving the country. By acting in this manner, the public administration is both committing the crime of forgery in the official documents and seriously impairing the dignity and reputation of those individuals by means of such act of seizure of the passports of the individuals via putting a stolen or missing annotation on their passports.
44. Such passport cancellations put the Turkish citizens living abroad in more difficult position. The individuals can neither go to another country nor return to their countries. Besides, some are also exposed to investigations by the judicial authorities. The Turkish consulates abroad even refuse consular services for these people.²³ One of the most striking examples of this is the incidence of the cancellation of the passport of Enes Kanter, a basketball player who then in the Oklahoma City Thunder team in the American National Basketball League (NBA). As a result of the cancellation of his passport due to his critical views of the Erdogan Government, Enes Kanter could not enter Romania and after being kept under police custody, he was allowed to go to London and then returned to New York with the help of the interference of the US authorities.²⁴
45. Upon the application of the main opposition party, the Republican People's Party (CHP), to the Constitutional Court for the annulment of the emergency decree laws which were issued on the basis of the State of Emergency Act; the Constitutional Court rejected the application by referring to the third line of the paragraph 1 of the Article 148 of the Constitution which states that "*...decrees having the force of law issued during a state of emergency, martial law or in time of war shall not be brought before the Constitutional Court alleging their unconstitutionality as to form*

²³ No End in Sight Amnesty International 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/05/No-End-In-Sight-ENG.pdf>

²⁴ NBA's Enes Kanter: Turkey cancelled my passport over my political views, <http://edition.cnn.com/2017/05/20/sport/nba-enes-kanter-turkey-passport-canceled/index.html>

or substance.” According to the Constitutional Court, in the application brought against the provisions of the emergency law decrees issued in accordance with Article 121 of the Constitution, it is not possible to carry out judicial review of the substance of the decrees.²⁵

46. In a case brought forward by way of individual application, the Constitutional Court decided that the application was found unacceptable as domestic judicial remedies had not yet been exhausted as a result of the establishment of the Commission to Review the State of Emergency Measures on 1 January 2017.²⁶ The Council of State ruled in numerous applications that such disputes fall under the jurisdiction of administrative courts.²⁷ The administrative courts have decided on a number of cases that the emergency decree laws are legislative acts and cannot be the subject of administrative proceedings.²⁸
47. Decree Law No. 685 of 21.07.2016 has established the State of Emergency Procedures Investigation Commission. However, sub-clause (f) of Article 10 of the Communique on the Procedures and Principles for the Operation of the State of Emergency (OHAL) Commission prepared in accordance with Article 2 of the Decree Law clearly states that the issue of cancellation of passports has been left out of the duty of the Commission.
48. Astonishingly, the Right to Information Act No. 4982 has been used by the authorities as justification for rejecting the applications against passport cancellations with a very “absurd” logic and “brazen” lawlessness. As a response to many applications made against the cancellation of passports and the demand for removal of the prohibition to go abroad, the governorships and respective police units send the following standart reply: *“In response to your petition with the reference number, after the consideration and investigation of the matter; I respectfully submit that according to Article 16, 19 and 20 of the Right to Information Act No. 4982, your application is outside the scope of the Right to Information Act.”* However, these people do not ask for any information within the scope of the Right to Information Act, they only want to revoke the decision to cancel their passports and lift the prohibition barring them from going abroad.

²⁵ The decision of the Constitutional Court on 12.10.2016, Case No. 2016/166, and Decision No. 2016/159

²⁶ The decision of the Constitutional Court on the Application of Remziye Duman on 20/07/2017, Decision No. 2016/25923.

²⁷ The Decision of the 5th Chamber of the Council of State on 04.10.2016, Case No: 2016/8136, Decision No: 2016/4076.

²⁸ The decision of the Istanbul Administrative Court No. 9 on 06.12.2016, Case No: 2016/2199; Decision No: 2016/1981.

Conclusion

49. It is stated under Article 23 of the Constitution that “...*Freedom of travel may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of offences. 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. Citizens shall not be deported, or deprived of their right of entry into the homeland.*”. Article 22 of the Passport Act enumerates the cases whereby the passports shall not be issued conclusively. Accordingly, “*Passports or travel documents shall not be issued for the persons going abroad who are banned by the courts and to the persons whose departure from the country is determined as prejudicial in terms of the general security by the Ministry of Internal Affairs.*”
50. Even though it is envisaged under Article 23 of the Constitution that freedom to travel may only be restricted by a judicial decision due to criminal investigation or prosecution, it has also been reiterated with the past judicial decisions that the prohibition of the citizens' freedom to travel with the determination of the Ministry of Internal Affairs in accordance with the Article 22 of the Passport Act is both against the law and unconstitutional. As a matter of law, passports of hundreds of thousands of individuals who had nothing to do with the declaration of the state of emergency have been cancelled by the provisions of the Decree Law No. 667 and 773, and a good part of it have not been able to use their freedom of travel.
51. What is even worse is that the passport cancellations and prevention of the freedom to travel take place in an irresponsible way and are based on legally absurd grounds even contrary to Article 22 of the Passport Act and to the provisions of the decree laws which are themselves contrary to Article 23 of the Constitution and the international treaties. 51. Upon the cancellation of passports of the individuals who have no ongoing investigation or connection, affiliation or membership with terror organizations, their application for getting new passports or for removing the travel ban have been rejected on the basis of the Right to Information Act No. 4982. The passport cancellations and the restrictions on the freedom to travel are being used as method of collective punishment by the government for the individuals and families even without bothering to find any link with the "alleged" crime.

PLATFORM FOR PEACE & JUSTICE (PPJ)

Platform for Peace and Justice (PPJ) is a platform that monitors and reports the developments in the fields of peace, justice, democracy, the rule of law and human rights, with a special focus on Turkey.

PPJ is currently an online intellectual medium undertaking its work by generating and disseminating news, articles, op-eds, and reports as well as by organizing activities and initiating campaigns.

PPJ is an initiative of a group of dedicated scholars, lawyers, journalists and civil society activists.

PPJ's work is primarily based on democratic and human rights principles enshrined in the international human rights instruments and understood through the prism of the European best practices.

PPJ strongly believes that a worldwide peace and justice can only be achieved through the advancement of these values and principles across the borders.

Mission

PPJ aims to promote peace, justice, democracy, the rule of law and human rights in the world, particularly in Turkey, through;

- raising awareness and sensibility for upholding these values and principles,
- monitoring and reporting human rights violations,
- generating and diffusing knowledge on conducive policies and practices,
- defending basic human rights and democratic principles against infringements,
- campaigning against human rights violations affecting individuals and groups,
- serving as a common and open platform for advocating human rights and democratic principles,
- strengthening respect for human dignity and civil right consciousness,
- encouraging good policies and practices for building peace among people and nations.

Vision

PPJ's vision is to become a prominent civil society organization for defending and fostering universal democratic and human rights principles in Europe striving for peace and justice for all.

Reach us via director@platformpj.org