



Jürgen Stock
Secretary General
INTERPOL General Secretariat
200, quai Charles de Gaulle
69006 Lyon, France

Sent by email

5 June 2023

Dear Secretary General Stock,

Re: Open letter sent on behalf of The Arrested Lawyers Initiative

Please find enclosed an open letter signed by a group of international law and human rights experts who are calling on INTERPOL to take appropriate actions to comply with its human rights obligations and protect individuals against abuse by Turkey of INTERPOL's Stolen and Lost Travel Document (SLTD) database.

Please also find attached a detailed report on the ways Turkey misuses INTERPOL's SLTD database including case studies demonstrating the associated risks and human rights violations.

This open letter is sent on behalf of The Arrested Lawyers Initiative¹, a Brussels-based rights group committed to protecting and upholding the rule of law by defending international lawyers and human rights defenders to carry out their duties without fear of intimidation, reprisal or harassment.

Yours Sincerely,

Ben Keith
Direct Access Barrister with litigation rights

¹ <https://arrestedlawyers.org/>

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OPEN LETTER TO SECRETARY GENERAL OF INTERPOL

INTERPOL SHOULD TAKE A MORE ROBUST APPROACH TO PROTECTING HUMAN RIGHTS BY ERADICATING THE MISUSE OF INTERPOL'S DATABASES BY TURKISH AUTHORITIES

5 June 2023

Dear Secretary General Stock,

We, the undersigned, are concerned about Turkey's misuse of INTERPOL's Stolen and Lost Travel Document (SLTD) system, and about INTERPOL's ability to adhere to its human rights obligations by implementing protections against such misuse.

It is widely reported that the Turkish Government is deliberately misusing INTERPOL's SLTD database to circumvent the formal extradition process and to evade INTERPOL's controls of Notices and Diffusions. Turkish authorities misuse the SLTD mechanism by improperly recording as lost or stolen or revoked or invalid the passports of dissidents in an attempt to have them deported to Turkey where they face political reprisals.

The Nordic Research Monitoring Network has published leaked documents from Turkey's National Intelligence Organization showing that the country abuses INTERPOL's SLTD system to bypass a set of restrictions imposed on Turkey's access to the Red Notice database.ⁱ

INTERPOL is required by its Constitution not to take any action of a political nature and to comply with the Universal Declaration on Human Rights (UDHR). Freedom of movement is a fundamental human right enshrined in the UDHR and the European Convention on Human Rights.

The Turkish Constitutional Court has repeatedly ruled that the revocation or invalidation of passports by the Government is unlawful because the revocation of travel documents must only be done by court order. Despite the rulings, over 300,000 Turkish citizens remain banned from travelling because their passports have been unconstitutionally cancelled.

Any use of INTERPOL's SLTD database to record a passport as lost, stolen, or revoked without evidence of a court order will be in direct violation of INTERPOL's Constitution and Rules. We, the undersigned, request that, as a matter of urgent priority, INTERPOL adopts measures to prevent abuse of its SLTD database and to immediately delete all non-compliant data on the SLTD database.

A 2019 study commissioned by the European Parliament's Subcommittee on Human Rights recommended that INTERPOL 'should take steps to hold the NCBs accountable for their misapplication of Interpol rules and regulations, applying Articles 130 and 131 of the RPD.'ⁱⁱ The Notices and Diffusions Task Force can request additional information from NCBs in order to decide whether a Notice is compliant. We recommend implementing a similar review mechanism for the SLTD database to protect INTERPOL from misuse and individuals from human rights violations.

Please find attached a detailed report on how Turkey misuses INTERPOL's SLTD database and case studies demonstrating the associated risks and human rights violations.

Actions

1. We ask that INTERPOL suspends Turkey from using INTERPOL databases until the General Assembly can make a final decision. This power is given to the General Secretariat under Article 130 of the RPD.
2. We ask that INTERPOL suspends Turkey from the use of the SLTD database until further checks can be put in place.

Sincerely,

The Arrested Lawyers Initiative, Belgium

Patrick Breyer, Member of the European Parliament

Dr Theodore Bromund, The Heritage Foundation

William Browder, Head of the Global Magnitsky Justice Campaign

Nicola Canestrini, Italian human rights lawyer

Javier Cremades, President of the World Jurist Association

Clare Daly, Member of the European Parliament

Rhys Davies, UK Barrister, Editor of Red Notice Monitor

Gunnar Ekeløve-Slydal, Deputy Secretary General of The Norwegian Helsinki Committee

Michelle Estlund, US Attorney

Enes Kanter Freedom, US

Human Rights Foundation, US

Human Rights Defenders, Germany

Italian Federation for Human Rights (FIDU), Italy

Ben Keith, UK Barrister, Editor of Red Notice Monitor

Baroness Kennedy of the Shaws KC, Member of the UK House of Lords and Chair of the International Bar Association's Human Rights Institute

Yuriy L. Nemets, Esq., US Attorney

Dr Anna Oehmichen, German human rights lawyer

Professor Laurent Pech, The Good Lobby, Belgium

Marie-Aimée Peyron, Vice President Conseil National des Barreaux-Bâtonnier de Paris (2018-2019)

Roger Sahota, UK Solicitor, Editor of Red Notice Monitor

Professor Antonio Stango, President of the Italian Federation for Human Rights

State Watch, UK

The Norwegian Helsinki Committee

Mick Wallace, member of the European Parliament

Ali Yildiz, Brussels-based human rights lawyer

ⁱ <https://nordicmonitor.com/2021/08/turkey-set-a-plan-in-motion-to-manipulate-interpol-in-hunting-down-critics-opponents/>

ⁱⁱ [https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU\(2019\)603472](https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2019)603472)



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 21st 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)¹

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

¹ 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 2016-2018.² (App. I: 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.³
 - 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.⁴

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

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

⁴ <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 Law⁵ 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

⁵ 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 2010⁶ 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.⁷ 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

⁶ 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)

⁷ 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

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.⁸ (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

⁸ <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

1 June 2023