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Joint Report on

# PASSPORT CANCELLATIONS & RELATED VIOLATIONS

for the United Nations' Universal Periodic Review of

**TURKEY**

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**EPN ( European Professionals Network )** is a Brussels-based civil society organization founded in 2009 to provide professionals in Belgium with services to foster career development, awareness-raising, network building and social enrichment by implementing projects on national and European level. EPN also advocates the rights and challenges of professionals at the EU level.

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## INTRODUCTION

1. Because of the Emergency Decrees that taken out within the scope of the State of Emergency which were started after the coup attempt on 15 July 2016, serious restrictions imposed to freedom of travel and the extent of the passport cancellation of citizens by administrative decisions has been expanded as such which causes systematic arbitrary treatments. In this context, executions of the mass passport cancellations that have become hundreds of thousands, have been put into action. Minister of the Interior Süleyman Soylu has said in his speech on 12 December 2017 that “234 thousand 419 passports have been cancelled within the scope of the FETÖ investigation.”<sup>1</sup> Relevant number didn't remain limited by people who have been investigated juridical or administrative, it also contains people who got involved into Gülen Movement even in the simplest form and their family members particularly their spouses. Also, by forming actual state which surpass legislative regulations, they are trying to disable valid passports by creating a record of the passports as wantage/lost/stolen in such a way that contrary to facts. This report is focusing on the arbitrary/unlawful passport cancellations which occurs in the period after the coup attempt and human rights violations as a result of relevant processes.

## NATIONAL AND INTERNATIONAL LAW

2. In the 23th article of the Constitution, it says, “*Everyone has the freedom of residence and movement. ... Freedom of movement may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of crimes. A citizen's freedom to leave the country may be restricted only by the decision of a judge based on criminal investigation or prosecution.*” There is a provision in the 13th article of the Universal Declaration of Human Rights: “*1- Everyone has the right to freedom of movement and residence within the borders of each State. 2- Everyone has the right to leave any country, including his own, and to return his country.*” And in the second clause of the 12th article of International Covenant on Civil and Political Rights dated 1966, “*Everyone shall be free to leave any country, including his own*”. Second and third verses of the title “Freedom of Movement” in the protocol no 4 which attached to the Human Rights Convention, “*... 2. Everyone shall be free to leave any country, including his own. 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.*” and this protocol

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<sup>1</sup> <https://www.cnnturk.com/turkiye/bakan-soyludan-feto-aciklamasi-actikca-icinden-cikmaya-devam-ediyor>

provision has been approved by Turkey, thus it become domestic law.

3. As it is known, according to 90th article of the Constitution, International Treaties which are put in the action properly considered as statutory. International Treaties' provisions are taken as a basis upon fundamental rights and freedoms when there is a conflict because of their different provisions on the same topic. According to this, either Constitution or No 4 protocol provision of ECHR, everyone has right to travel without any kind of restriction or prohibition nationally or internationally. The only exception of this freedom is judicial decision. With the power of the law, only judicial decision can restrict a person's freedom of travel.

### NUMBER OF CANCELLED PASSPORTS

4. As it is stated above, according to the statement of the Interior Minister in 2017, more than 230 thousand passport have been cancelled. With decrees, more than 130 thousand public agent have been expelled and in accordance with the relevant decree, travel warrants of these people have been cancelled. Also, thousands of people who works at different public utilities have been discharged by administrative decisions. Ministry of the Interior, demanded a list of people who were not expelled because of the decrees with a writing to public utilities to be able to cancel their passports as well. Also, on January 2019, Ministry of the Justice stated that more than 500 thousand people have been subjected to procedural act with the accusation of being a member of FETÖ.<sup>2</sup> It should be remembered that passports of people who were subjected to procedural act, have been cancelled as well. Also, as it will be explained in detail below, not only the ones who were determined that they have a connection with terror organisation or the ones who were taken legal action, but also the power of cancellation of their spouses' passports was given to administration. In addition, it involves not only spouses but also close relatives like children, mother, father. On 25 July 2018, after the state of emergency ended, it was announced that the cancellation annotation was removed for 155 thousand people whom passports were cancelled because of their spouses.<sup>3</sup> It should be taken into consideration that the number of people whom cancellation annotation was removed, were 155 thousand and there is no explanation about the ones whom process still continues. With all of these justifications, the number of cancelled passports is estimated to be more than 230 thousand which was declared to the public by Ministry of Interior. But it is not possible to give the precise number of cancelled passports or people who lost their right to travel and suffered as a

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<sup>2</sup> [http://www.cumhuriyet.com.tr/haber/turkiye/1276109/iste\\_yargidaki\\_FETO\\_bilancosu.html](http://www.cumhuriyet.com.tr/haber/turkiye/1276109/iste_yargidaki_FETO_bilancosu.html)

<sup>3</sup> In the statement, "*Within the scope of the execution of the President's instructions, after the end of the state of emergency, as a result of the investigation and research conducted by the Ministry of Interior, 155 thousand 350 people were found legally unobjectionable, the cancellation annotation on their passports was removed.*". <https://www.ntv.com.tr/turkiye/son-dakikaicisleri-bakanligindan-155-bin-pasaport-icin-karar,oX9P8ObygEyK--agzBxv2Q>

result of this practise, but its estimated number includes much more people than it is imagined.

## **PASSPORT CANCELLATION AS A FORM OF PUNISHMENT**

5. Following the corruption investigations on December 2013, the “witch hunt” initiated by Erdoğan for the Gülen Movement, which later expanded to include all the opposition groups in the country, has changed form after the coup attempt in 2016 and turned into a practice of systematic human rights violations, such as mass detentions, arrests, and dismissing from profession, that deeply affect the social structure. Turkish government, which was not content with suspension of opposition groups’ right to freedom and security, has since developed measures which restrict freedom of travel to the utmost. More than 130 thousand people have been expelled from public offices with the Decree Laws and executive decisions issued under the state of emergency. Thousands of private schools, health organizations, foundations and media organs were closed. Thousands of people in judiciary and academic positions were left unemployed, and private companies with assets of billions of dollars were confiscated. The cancellation of passports, which is incompatible with democracy and the rule of law, has been an additional method of punishment for the people working in all these public and private institutions.
6. The president of Saadet Party, Temel Karamollaoğlu, who was also a presidential candidate in opposition to Erdoğan, stated that he was not given a passport in a governmental office where he went to renew his passport, and when he asked why, he was told that the word “terror” was noted next to his name. Only upon objections he was able to have his passport renewed.<sup>4</sup> Professor of constitutional law, president of the Constitutional Law Research Association, member of Istanbul Bar Association and CHP deputy Professor İbrahim Kaboğlu was dismissed from his post at Marmara University Faculty of Law with a decree dated 7 February 2017. Being on trial after having signed the text titled “We Will Not Be a Party to This Crime” by Academics for Peace, Professor Kaboğlu’s passport was cancelled and confiscated while he was as a guest professor at the University of Paris III in France, as a result, he could not attend his lectures.<sup>5</sup> Even a renowned professor of Constitutional Law in Turkey could not achieve a result from filing appeals against these sanctions which are clear violations of freedom of travel. In the current legal order, it does not seem possible for ordinary citizens to seek their rights regarding the issue of violation of basic human rights.
7. Turkish government does not only restrict its citizens’ access to basic human rights under the name of fight against FETO, but also, it does not limit its security policies to Turkey, it tries to apply them in abroad to those who are “identified” opposers. In this context, Turkish government, based on the charges of association with a terrorist organization, works on measures to prevent people from leaving Turkey, as well as developing legal and factual situations which will force Turkish citizens living abroad to return to the country.

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<sup>4</sup> <https://www.aa.com.tr/tr/politika/karamollaoglundan-pasaport-aciklamasi/1502235>

<sup>5</sup> <http://www.hurriyet.com.tr/gundem/yurtdisina-yine-cikamadi-40875628>

## REGULATIONS ON PASSPORTS

8. Article 5 of Decree Law No. 667 has extended the scope of cancellation of passports through administrative decisions: *“Those who are subject to criminal investigation or prosecution shall be immediately notified to the relevant passport unit by the institutions and organizations carrying out the transaction. Upon the notification, the passports are cancelled by the relevant passport units.”* The said Decree Law was enacted on 29 October 2016.<sup>6</sup>
9. With the amendments in the Passport Law and the Law on the Organization and Duties of the Ministry of Interior, the scope of passport cancellations by administrative decisions has been extended. The previous version of Article 22 of the Passport Law was deemed as a frame of the cases in which a passport will not be issued. Accordingly, *“passports or travel documents shall not be given to those who are banned by the courts from traveling abroad, and those whose departure from the country is determined to be inconvenient to the general safety by the Ministry of Interior.”* However, the aforementioned article of the Passport Law was not deemed sufficient and in addition to the statement of *“to those who are banned by the courts from traveling abroad, and those whose departure from the country is determined to be inconvenient to the general safety by the Ministry of Interior”*, Article 23 of Decree Law no. 674, *“And passports shall not be given to those who are founders, managers or employees of all kinds of education and health institutions and foundations, associations or companies whose affiliation, connection or liaison with terrorist organizations have been determined by the Ministry of Interior.”* This provision was subsequently enacted on 10 November 2016.<sup>7</sup>
10. As mentioned above, more than 230,000 passports have been cancelled based on these regulations. Since the legal ways to appeal to these cancellations have been blocked, hundreds of thousands of people's freedom of traveling, which is a freedom protected by the Constitution and the International Conventions, have been restricted due to the lack of valid travel documents.

## CANCELLATION OF SPOUSES' PASSPORTS

11. In the process of legalization of Decree Laws, Article 5 of Law no. 6749 has been enacted: *“(1) The relevant passport unit shall immediately be notified by the institutions and organizations carrying out criminal investigations or prosecutions of those who are associated with institutions, organizations or groups which are determined to be a threat to national safety and those who are members of or associated with terrorist organizations. (2) The passports of the spouses of the persons whose names are notified to the relevant passport unit in accordance with the first paragraph may also be cancelled by the Ministry of Interior on the same date if deemed necessary for safety*

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<sup>6</sup> This provision was accepted and enacted as the first paragraph of Article 5 of Decree Law no. 6749 dated 18.10.2016 which was promulgated in the Official Gazette issued 29872 and dated 29.10.2016.

<sup>7</sup> This provision was accepted and enacted in accordance with the Article 23 of the Law No. 6758 dated 10.11.2016.

*reasons.*”<sup>8</sup> This provision disregards the principle of individual criminal responsibility and provides an unlimited discretionary authority to cancel the passports of not only the “persons associated with terrorism” but also the spouses of those persons.

12. In practice, this is a way of preventing those who are already abroad from reuniting with their families. With this practice, not only those who are seen as a threat by the state but also their families are punished.
13. Journalist Can Dündar, who was clearly targeted by Erdoğan after having reported the news of Turkish intelligence sending guns to ISIS, was arrested and kept in prison for a while. He went to Germany upon his release. His wife Dilek Dündar was also victimized when she was seized by the police on 3 September 2016 while she was at the airport to fly to Germany to reunite with her husband.<sup>9</sup>
14. The unlawful practice in question is not only a procedure for Dilek Dündar, wife of Can Dündar, a publicly recognized person, but a very clear violation of the freedom of travel faced by hundreds of thousands of victims.

### **PASSPORT CANCELLATION OF PEOPLE WHO LIVE ABROAD**

15. Within the change of the Passport Law which is made by Emergency Decree Law No/674, it is stated that ‘*A passport is not given to people who are determined by Internal Affairs that they are the founder or the manager of an educational establishment, health institution, foundation, association or a company abroad or who work in these places*’, the passports of people who live abroad and are a member of Gülen Movement, has been cancelled and they were not given a new passport. Also, the consulates that are in charge of passports have attempted for Turkish citizens who live abroad to be extradited.<sup>10</sup>

### **RECOMMENDATIONS**

16. People whom passport have been cancelled should be informed adequately about the cancellation decision.
17. Passport cancellation decisions taken by administrative bodies should be revoked immediately.

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<sup>8</sup> Article 5 of the Law No. 6749 dated 18.10.2016, on Legalization of the amendments to the Decree-Law as a part of measures taken under the state of emergency.

<sup>9</sup> <https://www.mynet.com/can-dundarin-esi-dilek-dundara-yurtdisi-yasagi-110102616872>

<sup>10</sup> <http://www.tr724.com/bm-korumasi-talep-eden-8-kisi-mogolistandan-cikmak-icin-yardim-istiyor/>

18. The passport cancellation practice of family members of people who are under investigation by administrative bodies should be stopped immediately.
19. All of the necessary precautions should be taken in order to perform freedom of travel properly.