

Arbitrary deprivation of nationality and denial of consular services to Turkish citizens

Policy Brief*

The Institute on Statelessness and Inclusion¹ notes with grave concern recent steps taken by the government of Turkey towards the arbitrary deprivation of nationality of Turkish citizens living abroad, as well as the denial of important consular services to them.² These actions come in the aftermath of the attempted military coup d'état of 15 July 2016 after which the Turkish government engaged in wide-ranging, arbitrary and disproportionate attacks on the human rights and security of Turkish citizens.

On 6 January 2017, six months after the coup d'état, Decree (KHK) 680 was published, establishing procedures for the deprivation of nationality for Turkish citizens living outside of Turkey. There have also been many reports of the denial of consular services and related deprivations for Turkish citizens living abroad, including the cancellation and confiscation of passports, the refusal to extend the validity of passports, and the refusal to provide nationality identity cards or passports to children born to Turkish citizens abroad. The Institute considers these procedures to be arbitrary.

The deprivation of nationality is the act of an individual being stripped of citizenship by their state, severing the legal bond with the state and annulling the rights that were held as a citizen.³ International human rights law prohibits the arbitrary deprivation of nationality.⁴ The actions of the Turkish authorities exacerbate a growing international trend in which states deprive or threaten to deprive their citizens of nationality with the stated aim of 'protecting national security'.

This policy brief provides a closer look at the situation unfolding in Turkey and its international law implications.

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¹ The Institute on Statelessness and Inclusion (the Institute) is an independent non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. Its work combines research, education, and advocacy, and it provides expertise to civil society, academia, the UN and governments. For more information, see www.institutesi.org.

² The Institute has drawn on information provided by the Journalists and Writers Foundation (JWF), in producing this policy brief. JWF is an international civil society organisation dedicated to globally advancing peace, human rights and sustainable development. For more information about JWF, see www.jwf.org

³ It is important to note though, that the majority of human rights under international law are not restricted to citizens, but apply to all people. For an analysis of the international human rights framework and statelessness, see Institute on Statelessness and Inclusion, *The World's Stateless*, 2014, pages 28 – 31. Available at: <http://www.institutesi.org/worldsstateless.pdf>

⁴ See, for instance, Article 15 of the Universal Declaration of Human Rights. The right to nationality is also protected for example in both the Convention on the Rights of a Child and the International Covenant on Civil and Political Rights, both of which Turkey is a party to.

1. Background – response to the coup d'état and the State of Emergency

Turkey is party to the European Convention on Human Rights (ECHR) and various core UN human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and Convention on the Rights of the Child (CRC).⁵

The actions of Turkish authorities over the past few years to suppress dissent, violate basic rights and restrict the freedoms of citizens perceived as opposing the Erdogan government are well documented.⁶ The situation further deteriorated after the attempted coup, paving the way for an unprecedented crackdown on the human rights of Turkish citizens and residents.

Article 120 of the Turkish Constitution provides for a declaration of a state of emergency when the country's democratic system, public order, or its citizens' rights and freedoms are under threat, and stipulates that a state of emergency cannot exceed six months. In response to the attempted coup d'état, a state of emergency was declared on 20 July 2016 and extended on three occasions. The state of emergency has therefore now been in force for one year, and was extended again for three months on 19 July 2017.

Upon declaring a state of emergency, Turkey formally notified the Council of Europe under Article 15 of the ECHR that measures taken under the state of emergency *“may involve derogation from the obligations under the Convention”*.⁷ Turkey also notified the UN Secretary General of its invocation of Article 4 of the ICCPR, derogating from many of its Treaty Obligations. It is important to note however that as with the ECHR, derogation from the ICCPR is *“lawful only if there is a threat to the life of the nation, a condition that arguably is not met in this case”*,⁸ and that *“one cannot avoid, even in times of emergency, obligations to protect the right to life, prohibit torture, adhere to fundamental elements of due process and non-discrimination, and protect everyone's right to belief and opinion.”*⁹

There is concern that the failed coup is being used by the state as a pretext to engage in a wider crackdown and to target dissent. As of 14 July 2017, over 138,000 persons have been dismissed from their jobs, over 118,000 individuals – including teachers, journalists, military personnel, activists and judges – have been detained and over 55,000 arrested.¹⁰ The government is also targeting for investigation and reprisal many persons who live outside Turkey or have recently fled the country. Three months after the attempted coup President Erdogan began to question the status of citizenship of those who would not return in order to be investigated. For example, he stated in one address to the country that *“Sons of this nation will return and tell the truth to the relevant authorities about whatever they know [about the coup plotters]. If they do not, they will pay the price. At the very least, we will not say that ‘this is our citizen.’ We will do whatever is*

⁵ For a full list of Turkey's UN Treaty Ratifications, see: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN

⁶ See for example, the concluding observations, recommendations, reviews and reports of various UN Treaty Body and Special Procedures and the Universal Periodic Review, available here: <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/TRIIndex.aspx>

⁷ See Communication JJ8187C of the Permanent Representation of Turkey to the Council of Europe, 22 July 2016, available here: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2929966&SecMode=1&DocId=2380676&Usage=2>

⁸ UN Office of the High Commissioner for Human Rights, *UN experts urge Turkey to adhere to its human rights obligations even in times of declared emergency*, Geneva, 19 August 2016, available here: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394>

⁹ Ibid.

¹⁰ See <https://turkeypurge.com/> for regular updates on the evolving situation in the aftermath of the failed coup and the state of emergency in Turkey. See also, New York Times, *The Scale of Turkey's Purge is Nearly Unprecedented*, Aug, 2016, available at <https://www.nytimes.com/interactive/2016/08/02/world/europe/turkey-purge-erdogan-scale.html> and Reuters, *Turkey fires 3,900 in Second post-referendum purge*, April 2017, available at <http://www.reuters.com/article/us-turkey-security-expulsions-idUSKBN17V0MH>.

necessary wherever we find them”.¹¹ He also stated in another address that “We have entered their lairs. They run, we are told to chase them. Are they running? Let them become citizens of the places to which they flee. They will no longer be citizens of this country”.¹² These public statements have paved the way for what was to follow, justifying the removal of citizenship of those who fled the country or had opposed the regime from outside.

2. Decree 680 and international standards relating to the arbitrary deprivation of nationality

Under Article 91 of the Turkish Constitution, parliament ordinarily authorises the government to issue decree laws on specified issues. During a state of emergency, the government does not require parliament authorisation to legislate by emergency decree laws. Instead, it can issue decree laws simply on the basis of a declaration of the state of emergency, approved by parliament.¹³

On 6 January 2017, six months after the failed coup, Decree (KHK) 680 was published. Article 75 of the Decree establishes the procedures for the deprivation of nationality for Turkish citizens living outside of Turkey. The Decree stipulates that the following paragraph be added to Article 29 of the Turkish Citizenship Law:¹⁴

“(2) In cases where investigation or prosecution has been carried out on the grounds of the crimes stated in the Turkish Penal Code dated 26/9/2004 and numbered 302, 309, 310, 311, 312, 313, 314 and 315 of the Turkish Penal Code, citizens who cannot be reached because of not being in the country shall be notified to the Ministry for the revocation of their citizenship within one month after investigation by the public prosecutor or by the court during the proceedings. In the event that they do not return to the country within three months despite the announcement made in the Official Gazette by the Ministry of Interior, the Turkish citizenship of these persons may be deprived by the proposal of the Ministry and the decision of the Council of Ministers.”

Accordingly, Turkish citizens living abroad who are under investigation for specific crimes face losing their nationality if they do not return. The crimes specified are as follows:

- *Article 302 of Section 14 of the Penal Code entitled ‘Offences against National Security’, which relates to ‘provocation of war against the state’.*
- *Articles 309 – 315 of Section 15 of the Penal Code, which list various crimes relating to ‘Offences against Constitutional Order and Operation of Constitutional Rules’.*¹⁵

¹¹ Speaking during a meeting with civil society representatives in Konya on 14th October 2016, available at <https://turkeypurge.com/erdogan-threatens-to-revoke-citizenship-of-gulen-followers-fleeing-turkey>

¹² Speaking from Rize, On October 15th, available at <https://www.turkishminute.com/2016/10/15/erdogan-vows-revoke-citizenship-gulen-movement-sympathizers/>

¹³ Article 121 § 3 of the Constitution

¹⁴ Turkish Citizenship Law, Law No. 403, 11 February 1964, available at: <http://www.refworld.org/docid/4496b0604.html> (unofficial translation).

¹⁵ For the relevant extracts from the Turkish Penal Code, see Annex 1

It is important to note that those affected are merely under investigation for these purported crimes. Their failure to return to the country and surrender themselves to the authorities –known for widespread arbitrary arrests, detention and torture – may result in them being stripped of their nationality, even though they have not been convicted of any crime. The crimes listed are not themselves punishable through the revocation of nationality. In essence, Decree 680 penalises the failure to cooperate with a criminal investigation with the deprivation of nationality.

Significantly, stripping citizenship as a means of coercing someone to submit to a human rights violating criminal process is, at a minimum, ‘arbitrary’ and a violation of international human rights standards.¹⁶

Furthermore, for the withdrawal of citizenship to not be arbitrary, international law requires that it has a clear, non-retroactive legal basis; observes due process guarantees; serves a legitimate purpose; is the least intrusive measure possible to achieve that purpose; is in accordance with international standards; is non-discriminatory and proportionate.¹⁷ States also hold particular obligations with respect to the avoidance of statelessness,¹⁸ given the severely detrimental impact this can have on individuals affected and on members of their families.

Drawing on available information, the Institute is of the position that this Decree fails to serve a legitimate purpose, is disproportionate in its impact on individual rights, undermines the principle of legal certainty and is retroactive in nature. Furthermore, there is no provision in the decree for any judicial oversight or right to appeal any decision to deprive citizens of their nationality. There is also no provision of any safeguard to ensure that deprivation of citizenship will not result in statelessness.

It is also important to note that this decree only impacts persons living abroad. In essence, it serves to keep those individuals in exile. The International Law Commission has stated that *“a State shall not make its national an alien by deprivation of nationality for the sole purpose of expelling him or her”*.¹⁹

It is evident therefore that on a number of grounds, the implementation of Decree 680 will result in the arbitrary deprivation of nationality of Turkish citizens, in violation of international standards.

3. Steps taken pursuant to the issuance of Decree 680

Further to the issuance of Decree 680, the Turkish Ministry of Justice declared that it would issue a “return home” Gazette Notice naming those who were overseas and being investigated for the crimes outlined. The return home notice is based on Article 75 of the Decree and sets out that the failure of named individuals to present themselves before the Turkish authorities will result in the revocation of their citizenship by Cabinet decision.

¹⁶ For more discussion on human rights and arbitrary deprivation of nationality see A/HRC/13/34, General Assembly Human rights and arbitrary deprivation of nationality.

¹⁷ For a more detailed discussion, see Lambert, H. (2015). COMPARATIVE PERSPECTIVES ON ARBITRARY DEPRIVATION OF NATIONALITY AND REFUGEE STATUS. *International and Comparative Law Quarterly*, 64(1), 1-37. doi:10.1017/S0020589314000475 and UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: Report of the Secretary-General*, 19 December 2013, A/HRC/25/28, available at: <http://www.refworld.org/docid/52f8d19a4.htm>

¹⁸ See, for instance, Article 8 of the 1961 Convention on the Reduction of Statelessness and Article 7 of the European Convention on Nationality. However, note that Turkey is not party to either treaty.

¹⁹ See A/CN.4/L.797, draft article 9.

On 5 June 2017, a “return home” notice published in the Official Gazette contained the names of 130 individuals who were issued summons to return to Turkey and present themselves for criminal investigation. Recipients of the notice have three months to surrender themselves for investigation. **This timeframe expires on 4 September 2017.** Turkish human rights defenders are extremely concerned that the publication of this notice marks the beginning of the arbitrary deprivation of nationality, *en masse*, of those perceived as dissidents.

US-based Islamic preacher Fethullah Gülen who is accused of masterminding the failed July 2016 coup was among those issued a “return home” notice in June and his case is the first to be referred to court for the revocation of nationality to be implemented. Two members of parliament for the Kurdish Peoples’ Democratic Party (HDP) are also named. The HDP lawmakers are accused of “*providing arms to a terror organization*” and “*engaging in terror organization propaganda*,” with an arrest warrant already issued for them. Parliament is also reviewing dossiers to strip their parliamentary status due to absence.²⁰

The potential impact of Decree 680 is yet to be fully understood as its implementation is still in progress. Those deprived of citizenship will not be able to return to their country and may not be able to leave their country of residence. Those who have no second nationality risk being rendered stateless. They will rely on international protection under the 1954 Convention Relating to the Status of Stateless Persons, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol or subsidiary protection under other mechanisms. Those who do not receive any international protection will be particularly vulnerable. In addition to the risk of being arbitrarily deprived of nationality, parents are likely to be unable to transfer nationality to their children, potentially resulting in the denial of the child’s right to acquire a nationality under Article 7 of the Convention on the Rights of the Child.

4. The denial of consular services to Turkish citizens

There have been reports of the denial of consular services and related deprivations for Turkish citizens living abroad. These include the cancellation and confiscation of passports, the refusal to extend the validity of passports and the refusal to provide nationality IDs or passports to children born to Turkish citizens abroad. While the full extent of these actions is not known, the table below sets out the cases that have been brought to the attention of the Institute, during the period April - June 2017. This appears to be a growing problem.

Denial of Passport or Nationality ID for new-borns	Not issuing IDs for children	76
	Not issuing Passports for children	
Denial of Consular Services	Cancelling Adult/Child Passports	695
	Military Services	
	Power of Attorney Services	
	Not Extending Passports	
Confiscation of Passport		19
	Total:	790

*for a country-specific breakdown of these statistics, please see Annex 2

²⁰ See Daily News, *Gülen, two HDP MPs and 127 others face denaturalization within three months*, 5 June 2017, available here: <http://www.hurriyetdailynews.com/gulen-two-hdp-mps-and-127-others-face-denaturalization-within-three-months.aspx?PageID=238&NID=113927&NewsCatID=338>

Being denied consular assistance and services results in individuals being denied access to other rights, including the right to birth registration,²¹ to obtain documents and to enter your own country.²² Those denied consular services do not have access to legal recourse due to a lack of due process standards.

In addition to this, there have been 10 reported cases of Turkish nationals living in Cambodia, China, the Philippines and Nigeria who were not allowed to leave their countries of residence, restricting their freedom of movement. There have also been 78 reported cases of deportation of Turkish citizens to Turkey since the attempted coup.²³ There is a risk of such deportations being in violation of the principle of *non-refoulement*, in light of reports of torture and other gross human rights abuses inflicted on Turkish citizens who have been extradited to Turkey.²⁴

5. Recommended steps for an international response

In light of the above analysis of the threat of arbitrary deprivation of nationality and the denial of consular services to Turkish citizens living outside the country, the Institute urges the international community to ensure the protection of such persons. Following are some recommendations in this regard:

- *Directly address* as a matter of priority and importance the deteriorating human rights situation in Turkey, including in relation to the arbitrary deprivation of nationality of Turkish citizens, through relevant and appropriate United Nations, Council of Europe and other international and regional mechanisms, as well as through bilateral diplomatic engagement.
- *Ensure* that Turkish citizens are not deported to Turkey, where they risk being subject to severe and irreparable harm or persecution. Such deportations may contravene international obligations under the principle of *non-refoulement*.
- *Consider* granting refugee status to Turkish citizens who have been issued summons under Decree 680 or denied consular services, where such individuals face the threat of persecution.
- *Strengthen* understanding and application of the prohibition of the arbitrary deprivation of nationality under international law.
- *Strengthen* documentation and awareness of steps being taken to arbitrarily deprive Turkish citizens of nationality, deny them consular services and violate their rights. Flag particular profiles and cases of individuals at risk of statelessness and *refoulement* to relevant state, UN and civil society actors.

²¹ See CRC Article 7.1.

²² See ICCPR Article 12.4.

²³ Including from Malaysia, Myanmar, Qatar and Saudi Arabia.

²⁴ See the Independent, *Turkish men 'face torture' after being extradited from Malaysia as post-coup crackdown continues*, May 2017, available at <http://www.independent.co.uk/news/world/asia/turkey-coup-attempt-erdogan-gulen-hizmet-movement-crackdown-malaysia-arrests-extradited-karaman-a7733276.html>

Annex 1: Criminal Code - Law Nr. 5237 (selected extracts)

Adopted on 26.09.2004

Published in Official Gazette No. 25611, dated 12.10.2004

ARTICLE 302

(1) Any person who provokes authorities of a foreign country to start war or to take hostile action against Turkish Republic, or cooperates with the authorities of a foreign country to serve this purpose, is punished with imprisonment from ten years to twenty years. The punishment to be imposed is increased by one third in case of execution of provocation act through press or broadcast organs.

(2) In practice of this article, direct and indirect encouragement or support of the organizations that are formed to commit crime against the security of Turkish Republic, is considered as a hostile action.

(3) Precautions specific to legal entities are imposed in case of commission of the offenses defined in this article by corporation.

ARTICLE 309

(1) Any person who attempts to dissolve Turkish Grand National Assembly, or partially or entirely avoids performance of the legislative organs by using force or threat, is punished with heavy life imprisonment.

(2) Precautions specific to legal entities are imposed in case of commission of the offenses defined in this article by corporation.

ARTICLE 310

(1) Any person who attempts to dissolve Government of Turkish Republic, or partially or entirely avoids its performance by using force or threat, is punished with heavy life imprisonment.

(2) Precautions specific to legal entities are imposed in case of commission of the offenses defined in this article by corporation.

Armed revolt against the Government of Turkish Republic

ARTICLE 311

(1) Any person who provokes the citizens to rise an armed revolt against Government of Turkish Republic, is punished with imprisonment from fifteen years to twenty years. If succeeded in rising of a revolt, the provoker is punished with imprisonment from twenty years to twenty-five years.

(2) Any person who commands an armed revolt against the Government of Turkish Republic is punished with heavy life imprisonment. Other persons who participate in the revolt are sentenced to imprisonment from six years to ten years.

(3) In case of commission of these offenses mentioned in the first and second subsection at the time of the war by taking advantage of the its negative affects on the State, the offender is punished with heavy life imprisonment.

(4) In case of commission of other offenses along with this offenses mentioned in the first and seconds subsection, the offender is additionally punished according to the provisions relating to these offenses.

Armed organized criminal groups

ARTICLE 312

(1) Any person(s) who forms organized criminal groups to commit the offenses listed in fourth and fifth sections of this chapter, and commands these groups, is punished with imprisonment from ten years to fifteen years.

(2) Those who enlist to the organized criminal group defined in the first subsection is sentenced to imprisonment from five years to ten years.

(3) Other provisions relating to the offense committed by forming organized criminal groups are applied exactly the same for this offense.

Supply of arms

ARTICLE 313

(1) Any person who knowingly manufactures, purchases, transports, stores, or illegally transfers arms to the country for use in the activities of the organizations defined in the above articles, is punished with imprisonment from ten years to fifteen-years.

Alliance for offense

ARTICLE 314

(1) If two or more persons make a deal to commit any one of the offenses listed in fourth and fifth sections of this chapter by using suitable means, the offenders are sentenced to imprisonment from three years up to twelve years, depending on the quality of offense.

(2) No punishment is imposed on the persons who break up the alliance before commission of the offense or commencement of investigation.

Confiscation of Army Commanding Quarters

ARTICLE 315

(1) Any person who undertakes the command of a army quarter or fleet or a war ship, or air fighter-fleet or a fortress, or a fortified zone, or a military base or plant, or a port or city, although he is not legally authorized or assigned to carry out such duty by the State, is sentenced to life imprisonment.

(2) The same punishment is imposed on the officers who are assigned to undertake commanding duty by the State, or legally authorized to hold such office, but do not obey the orders given by the authorized to leave the quarters.

See also Turkish Citizenship Law 5901, available at:

[http://eudo-citizenship.eu/NationalDB/docs/TUR%20Turkish%20citizenship%20law%202009%20\(English\).pdf](http://eudo-citizenship.eu/NationalDB/docs/TUR%20Turkish%20citizenship%20law%202009%20(English).pdf)

Annex 2 – Breakdown of countries in which denial of consular services is taking place (as of June 2017)

Country	Denial of Consular Services	Denying Passport/ ID to New-borns	Confiscation of Passports	Restriction of Travel Rights
Afghanistan	36	18	1	
Algeria	3	3		
Cambodia	1			2
China	4			4
Dominican Republic		1		
Egypt	63	8	2	
Gabon	5			
Georgia	56	4	10	
Indonesia	4	7	1	
Iraq	106			
Kosovo	1			
Morocco	9	3	1	
Myanmar	4	4	1	
Niger	1			
Nigeria	13	24		1
Pakistan	368			
Philippines	6	3		3
Poland			1	
Russia			1	
Saudi Arabia	3			
Thailand	2			
Tunisia	8	1		
Ukraine	2		1	
	695	76	19	10