

ABUSE OF INTERPOL'S NOTICE SYSTEM BY TURKEY



INTERPOL



Case of Selahaddin Gülen in Kenya
Case of Muaz Türkyılmaz in Panama





JOURNALISTS AND WRITERS FOUNDATION

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Table of Contents

I. Introduction.....	3
II. Interpol’s notices system	4
III. Abuse of the Interpol system.....	5
IV. Case of Selahaddin Gülen in Kenya	7
V. Case of Muaz Türkyılmaz in Panama	11
V. Observations and Conclusions	11
VI. Recommendations to Interpol and the Member States	12

ABUSE OF INTERPOL'S NOTICE SYSTEM BY TURKEY

I. Introduction

1. On July 15, 2016¹, a small faction of the Turkish Armed Forces (TSK) that called themselves the “Peace at Home Council” attempted to overthrow the Government of Turkey by seizing control of several key places in Ankara, Istanbul, and other locations. Forces loyal to the government were able to defeat the coup plotters and the attempted coup was thwarted within approximately 12 hours. According to official sources at least 246 people were killed and more than 2,000 were injured during the attempt.² As the attempted coup was still ongoing, the government accused the Hizmet/Gülen Movement (hereafter: “Hizmet Movement”) of orchestrating it and its real or perceived members or sympathizers for membership of a terrorist organization attempting to overthrow the government. The Hizmet Movement has denied any involvement in the attempted coup, reiterating its long-standing position against use of any kind of violence.
2. An unprecedented crackdown on human rights and fundamental freedoms targeting citizens from all walks of life, in particular the education, media, military, and justice sectors is still ongoing, with measures introduced under the umbrella of the state of emergency and post-state of emergency severely limiting individual rights and liberties.
3. According to the Turkish authorities, by the end of February 2021, 622,646 individuals were investigated for ties to the Hizmet Movement; 301,932 were detained (‘gözaltı’ in Turkish) by the police and 96,782 conditionally released under judicial control.³ From July 2016 to December 2017 only, the Turkish authorities also revoked 234,419 passports,⁴ with the overall number of cancelled passports by October 2021 estimated to be over 650,000.⁵
4. Almost immediately following the attempted coup of July 2016, the Government of Turkey also began a global purge that mirrors its domestic crackdown, increasingly reaching beyond Turkey's borders to intimidate or silence all those perceived as members of the Hizmet Movement. In its global transnational repression efforts since 2014, Turkey has now become the number one country carrying out renditions from other states, with the Turkish

¹ The events related to the attempted coup began at 7:29 p.m. in the evening of July 15, 2016

² Committee against Torture, *Concluding observations on the fourth periodic report of Turkey*, Addendum Information received from Turkey on follow-up to the concluding observations (CAT/C/TUR/CO/4/Add.1), Nov 8, 2016, para 61.

³ See for more: <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soyly-garaya-giden-hdpli-vekili-acikladi/2151784>.

⁴ According to official data (Turkish Interior Ministry): 55,665 were jailed, 234,419 passports revoked since coup attempt, available at: <https://turkeypurge.com/turkish-interior-minister-55665-jailed-234419-passports-revoked-since-coup-attempt>.

⁵ For the emergency legislations on the passport revocations, see: Yildiz, Ali: Turkey's Disregard for the Freedom of Movement, VerfBlog, 2019/12/11, <https://verfassungsblog.de/turkeys-disregard-for-the-freedom-of-movement/>

government confirming that it has been able to abduct and illegally transfer to Turkey 139 victims from 33 countries.⁶

5. The UN Working Group on Arbitrary Detention has consistently expressed concern over the pattern that all these cases follow, recalling that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.⁷ In addition, The 1992 Declaration for the Protection of All Persons from Enforced Disappearances is very clear about the connection between the systematic nature of enforced disappearances perpetrated by the Government of Turkey since July 2016 and crimes against humanity. The “*systematic practice of enforced disappearances is by its very nature a crime against humanity*”.⁸

II. Interpol's Notices System⁹

6. The International Criminal Police Organization (INTERPOL) is an inter-governmental organization enabling police in its 194 member countries to work together in order to prevent and fight international crime. In achieving its objectives, Interpol enables member countries to share and access data on crimes and criminals, offering a range of technical and operational support.
7. One of Interpol's most important functions is to help police in its member countries share critical crime-related information using the organization's system of international notices. Police can use Interpol notices to alert law enforcement in other countries of potential threats, or to ask for assistance in solving crimes. Notices can also be used by the United Nations Security Council, the International Criminal Court, and international criminal tribunals to warn that certain individuals and entities face UN sanctions.
8. The most common notice is the Red Notice, which purpose is to seek the location and arrest of a person wanted by a legal jurisdiction or an international tribunal with a view to his/her extradition. The legal basis for a Red Notice is an arrest warrant or court order issued by judicial authorities in a country. Many of Interpol's member countries consider a Red Notice to be a valid request for provisional arrest. Furthermore, Interpol is an official channel for transmitting requests for provisional arrest in several bilateral and multilateral extradition treaties, including the European Convention on Extradition, the Economic Community of

⁶ See for more: <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>.

⁷ See for example

https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_84.pdf

⁸ Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity.

⁹ Interpol Fact Sheet (COM/FS/2020-03/GI-02), <https://www.interpol.int/en/Resources/Documents#Fact-Sheets>

West African States (ECOWAS) Convention on Extradition, and the United Nations Model Treaty on Extradition.

9. In addition to red notices, Interpol issues Blue, Green, Yellow, Black, Purple, as well as UN Security Council Special Notices, the latter to inform Interpol's members that an individual or an entity is subject to UN sanctions. Similar to the notice, a *Diffusion* is issued for the same purposes as notices but sent directly by a member country or an international entity to the countries of their choice. Diffusions are also recorded in the Organization's police databases.
10. Notices and diffusions contain two main types of information: (i) identity details (physical description, photograph, fingerprints, identity document numbers, etc.) and (ii) judicial information (offence with which the person is charged; references to the laws under which the charge is made or conviction was obtained; references to the arrest warrant or court sentence, etc.).

III. Abuse of the Interpol System

11. Article 2(1) of Interpol's Constitution stipulates that the Organization should "*ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights.*"
12. International police cooperation therefore should be conducted in the spirit of the Universal Declaration of Human Rights, a set of principles protecting human rights that all UN Member States are expected to uphold. In particular, "*red notices*" will not be published if they violate the Interpol Constitution, which forbids the organization from "*undertaking any intervention or activities of a political, military, religious, or racial character.*" In 2015, Interpol also adopted a new policy to remove a "red notice" if it can be verified that the person has been recognized as refugee under the 1951 Refugee Convention.
13. Article 34 of Interpol's Rules on the Processing of Data (RPD) further states that: (i) 34(2): "*(...) prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 3 of the Organization's Constitution*"; (ii) 34(3): "*To determine whether data comply with Article 3 of the Constitution, all relevant elements shall be examined, such as: (a) nature of the offence, namely the charges and underlying facts; (b) status of the persons concerned; (c) identity of the source of the data; (d) the position expressed by another National Central Bureau or another international entity; (e) obligations under international law; (f) implications for the neutrality of the Organization; (g) the general context of the case.*"

14. Resolution ref. AGN/20/RES/11 (1951) requires applying the predominance test (even if in the requesting country the facts amount to an offence against the ordinary law). It states that “(...) *no request for information, notice of persons wanted and, above all, no request for provisional arrest for offences of a predominantly political, military, religious or racial character is ever sent to the International Bureau or the NCBs, even if - in the requesting country - the facts amount to an offence against the ordinary law.*”
15. From Member State's perspective, Article 34(1) of the Rules on the Processing of Data (RPD) stipulates that, “*the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 2 of the Organization's Constitution.*” Pursuant to Article 84 (b) of the RPD, the requesting National Country Bureau who has asked for the publication of a Red Notice “*shall ensure (...) that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties.*”
16. In particular since the attempted coup of July 2016, the Government of the Republic of Turkey, contrary to the letter and spirit of Interpol's regulations and in contravention with applicable domestic and international law, has made immense efforts to control and persecute dissidents and activists abroad by issuing politically motivated notices through Interpol. Hundreds, if not thousands of Turkish dissidents abroad have faced difficulties with law enforcement and immigration officials in various countries when they travel, caused either by red notices or the cancellation of their passports.
17. Since the 2016 coup attempt, Turkey had uploaded tens of thousands of requests in Interpol for persons the government designated as affiliated with the Hizmet Movement. There are also frequent credible reports since 2016 that individuals face complications related to erroneous lost or stolen passport annotations the government has filed against suspected Hizmet Movement members in the years directly following the attempted coup. Reports to Interpol's stolen or lost passport database¹⁰ often lead to individuals' detention or prevent them from traveling.
18. Interpol has generally upheld its principles by not publishing notices issued by Turkey, which constitute political abuse and thus violate Interpol's Constitution. On June 3, 2021, while reporting before the Turkish Parliament on the preparations for the 89th Interpol's General Assembly, high officials from the Ministry of Foreign Affairs and Interior of Turkey¹¹ admitted that Interpol General Secretariat had denied 773 requests¹² to detain perceived members of the Hizmet Movement. Recently, the Guardian was able to confirm

¹⁰ <https://www.interpol.int/en/How-we-work/Databases/SLTD-database-travel-and-identity-documents>

¹¹ Yavuz Selim Kıran, Turkish Deputy Foreign Minister & Lütfi Çiçek, Head of Europol Depart. of Interior Ministry

¹² <https://www.hurriyetdailynews.com/interpol-rejects-turkeys-773-red-notice-requests-on-feto-official-165277>.

with Interpol that the figure was more than 700.¹³ During the same meeting Turkish officials made no secret of their ill-intentioned plans to misuse the 89th Interpol's General Assembly in Istanbul to lobby Interpol General Secretariat in reversing decisions as regards the rejected red notices.¹⁴

IV. Case of Selahaddin Gülen in Kenya

19. Selahaddin Gülen is a Turkish citizen and a Lawful Permanent Resident (LPR) of the United States, who lived in Corpus Christi, Texas, since 2015.
20. In the aftermath of the attempted coup, a very clear pattern of persecution and prosecution emerged: individuals are who part of the extended family of Fethullah Gülen, including Selahaddin Gülen (nephew), his brother, sister and around 62 other family members are currently hit with bogus terrorism-related charges, not for anything they had done, but because of their family ties with the individual that the Government of Turkey accuses of orchestrating the attempted coup of July 15, 2016. Put it simply, for bearing the same last name - "Gülen".¹⁵
21. To detain Selahaddin Gülen, living in the United States as a Permanent Resident, the Turkish authorities did not bring any new accusation to craft a misleading arrest request to Interpol. Instead, they reopened a case, which the Prosecutor's Office had dropped back in 2008. On this basis, in December 2017, Turkish authorities issued a red notice¹⁶ for the detention of Selahaddin Gülen and his extradition to Turkey.
22. On October 17, 2020, Selahaddin Gülen travelled to Nairobi from the United States (via Dubai) on a tourist visa, with the intention to marry his then-fiancée (now spouse). On arrival at Jomo Kenyatta International Airport in Nairobi, his documents were verified by immigration officials, found to be fully compliant and he was admitted into the country. Following his admission in Kenya, Selahaddin Gülen was arrested and detained at the same immigration department.
23. On inquiry, Selahaddin Gülen was informed that a **Red Notice Alert** had been issued by Interpol Ankara requesting his immediate arrest. Pursuant to the notice, Turkey allegedly

¹³ Please see: <https://www.theguardian.com/global-development/2021/oct/17/has-interpol-become-the-long-arm-of-oppressive-regimes>

¹⁴ <https://www.hurriyetdailynews.com/interpol-rejects-turkeys-773-red-notice-requests-on-feto-official-165277>.

¹⁵ See for example: <https://english.alarabiya.net/en/2016/10/02/Turkey-police-detain-Gulen-s-brother>;
<https://turkeypurge.com/istanbul-police-detain-fethullah-gulens-niece-report>;
<https://www.nytimes.com/2016/10/04/world/europe/turkey-fethullah-gulen-brother.html>;
<https://stockholmcf.org/turkish-court-sentences-fethullah-gulens-brother-to-105-years-in-prison/>;
<https://turkeypurge.com/gulens-brother-dies-in-istanbul-while-hiding-from-govt-witch-hunt>

¹⁶ <https://www.cumhuriyet.com.tr/haber/fethullah-gulenin-yegeninin-tecavuz-davasi-dosyasi-yeniden-acildi-893088>

sought him to face trial for a case on which he was already tried and acquitted of the charges in 2008. He had no knowledge of the outstanding arrest warrant.

24. On October 19, 2020, Selahaddin Gülen was arraigned before the Chief Magistrates Court in the Kiambu area in Kenya under Misc Application No 448. He was released on bail pending hearing and determination of extradition proceedings against him. Additionally, he was directed to hand over his travel documents in court, and to report to the Department of Criminal Investigation (DCI) headquarters every Monday. Subsequently, Selahaddin Gülen appeared before the magistrate on October 28, 2020, November 6, 2020, and December 3, 2020, as directed by the court.
25. Article 87(b) of Interpol's Rules on the Processing of Data (RPD) further stipulates that, *"The requesting National Central Bureau or international entity shall act immediately once it has been informed that the person has been located in another country and, in particular, shall ensure the swift transmission – within the time limits defined for the case in question – of data and supporting documents requested by the country where the person was located or by the General Secretariat."* The Kenyan authorities notified Turkey immediately about the detention of Selahaddin Gülen on October 17, 2020. During the court hearings of October 28, 2020, November 6, 2020, and December 3, 2020, Kenyan prosecutors notified the court that they had not received any communication from the Turkish authorities on the case.
26. On December 18, 2021, Selahaddin Gülen was arrested for extradition purposes and taken to the Immigration Offices at JKIA station, in an attempt to illegally transfer him to Turkey. Even though this first attempt to transfer him illegally was prevented, the actions or inactions by the Government of Turkey show that the latter was not interested to follow normal extradition procedures.
27. On March 17, 2021, a Kenyan court issued orders barring the respondents (law enforcement agencies) or their agents from deporting and/or extraditing Selahaddin Gülen from the territory of the Republic of Kenya.
28. In the morning of May 3, 2021, Selahaddin Gülen attended the weekly check at the headquarters of the Directorate of Criminal Investigations, as directed by court order. During his return, his vehicle was stopped by several Subaru Foresters with several armed individuals (most probably law enforcement officers in plainclothes), few miles away from the Directorate of Criminal Investigations, as he was driving along Kiambu road, Nairobi. Perpetrators forced Selahaddin Gülen out of the vehicle. He was immediately hooded and taken to an unknown location. One of the perpetrators referred to the abduction as a *"multi-agency operation"* by state agents acting on behalf of the Government of Kenya. The cell phone of the victim was taken and switched off.

29. At around 7.00 AM, on May 5, 2021, Selahaddin Gülen was picked up by a minivan and taken to an unknown location, most probably to the airport. He was transferred to Turkey aboard a private jet departing from Nairobi on May 5, 2021.
30. On May 6, 2021, three days following his abduction and one day after his illegal transfer to Turkey, the High Court of Kenya dismissed the preliminary objection by the Kenyan authorities of March 15, 2021 (requesting that Selahaddin Gülen be handed over to them for extradition to Turkey) and granted relief to Selahaddin Gülen pursuant to the Judicial Review Application of January 17, 2021.
31. Following his disappearance, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) transmitted the case concerning Selahaddin Gülen to the Government of Kenya under its urgent procedure.¹⁷ The Kenyan authorities have not replied to the WGEID.
32. On May 18, 2021, the spouse of Selahaddin Gülen, filed a missing person's report with the Kenyan police. Ever since the abduction of the victim (May 3, 2021), the Kenyan authorities have been completely silent on the disappearance of Selahaddin Gülen and have not taken any action or measures to establish the victim's whereabouts or hold the perpetrators to account, who seem to enjoy immunity from prosecution. It is certainly implausible and highly unlikely that Selahaddin Gülen was abducted and transferred to Turkey without the knowledge and active collaboration of Kenyan law enforcement.
33. On May 31, 2021, Selahaddin Gülen "reappeared" in Ankara, Turkey, posing in handcuffs between two Turkish flags. He was accused of bogus terrorism-related charges. Turkish media announced that he was "captured" abroad following an operation by Turkey's Intelligence Organization (MIT).¹⁸
34. In December 2020, legal representatives of Selahaddin Gülen asked Interpol to remove the red notice, arguing that it was politically motivated. On July 23, 2021, more than two months following the disappearance and transfer of the victim, **Interpol finally announced that Selahaddin Gülen's red notice had been removed.**
35. On August 24, 2021, Selahaddin Gülen attended his first hearing facing witnesses who spoke about his past. He is charged in Turkey with membership of a terrorist organization and refused a court-appointed lawyer, after his counsel was detained himself and convicted to ten years imprisonment on bogus terrorism charges. Selahaddin Gülen stated he would begin his defence only after his family retains a lawyer, during the hearing held in the capital Ankara."¹⁹ During the hearing, three different individuals presented by the Prosecutor's Office attempted to impute criminal responsibility by highlighting his alleged "connection" to the attempted coup of July 2016, even

¹⁷ A/HRC/WGEID/124/1, para. 59

¹⁸ <https://www.dailysabah.com/turkey/turkish-intelligence-nabs-feto-figure-linked-to-gulen-abroad/news>

¹⁹ <https://www.dailysabah.com/turkey/investigations/top-feto-figure-appears-before-court-in-turkey>

though he had lived in the United States since 2015. The hearing was adjourned to November 18, 2021.

36. The Prosecutor's Office also pursued the accusations for crimes in an apparent attempt to justify the red notice alert. On September 2, 2021, given the age of the defendant at the time of the alleged crime and other relevant factors, the Erzurum 1st High Criminal Court decided to release the defendant, imposing judicial control measures. Following the appeal by Prosecutor's Office, on September 9 the Erzurum 2nd High Criminal Court overturned the decision, ruling for the continued detention of Selahaddin Gülen. As of October 2021, Selahaddin Gülen remains in custody.

V. Case of Muaz Türkyılmaz in Panama

37. Muaz Türkyılmaz is a Turkish national who spent most of his life studying and working in Turkmenistan, the Russian Federation, Saudi Arabia, and Georgia, since 1993. He is a strictly law-abiding citizen and had been never charged or prosecuted for any wrongdoing in any country.
38. In the aftermath of the attempted coup of July 15, 2016, the Government of Turkey imputed criminal responsibility to Muaz Türkyılmaz over his family ties to Muammer Türkyılmaz, an individual the Turkish authorities perceive as being high-up in the hierarchy of the Hizmet Movement.
39. In order to track Muaz Türkyılmaz and eventually secure his arrest, the Turkish authorities cancelled his passport, even though it is unlikely this was reported to Interpol's stolen or lost travel document database, but rather through direct inquiries to several member states.
40. This "*strategy*" by the Turkish government is also confirmed by the UN Working Group on Enforced or Involuntary Disappearances, which notes that, "*In addition to the agreements, it appears that in some cases, the authorities orchestrating the transfers have revoked the citizenship or annulled the passport of targeted individuals with the aim of facilitating expeditious arrests abroad.*"²⁰
41. Following the attempted coup of July 2016, the threats and risks against Turkish dissidents in Georgia, including Muaz Türkyılmaz (since 2017), only intensified. Unable to apply for asylum in Georgia because of the threats to his life, and facing abduction, arbitrary detention and subsequent expulsion, deportation, extradition or otherwise illegal transfer to Turkey, in October 2019, Muaz Türkyılmaz decided to escape persecution by travelling to Panama.

²⁰ See for example, Urgent Appeal to the Government of Panama (UA PAN 2/2020), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25697>.

42. The US National Central Bureau Interpol intercepted Türkyılmaz's departure aboard a flight bound to Panama City, on allegedly a stolen or lost passport, as reported by the Turkish authorities. Having received information from the US National Central Bureau Interpol on his departure from Europe and arrival in Panama, in late 2019 the Turkish government requested and received confirmation from the authorities of Panama that Muaz Türkyılmaz resided in Panama City.
43. In January 2020, the Turkish government sought the extradition of Muaz Türkyılmaz to Turkey, citing as a legal basis the United Nations Convention against Transnational Organized Crime, to which both countries are States parties (ratified by Panama on August 18, 2004, and Turkey on March 25, 2003).²¹
44. The extradition request by the Turkish authorities claimed that Muaz Türkyılmaz (i) was a member of an alleged terror organization in Saudi Arabia; (ii) used ByLock messaging application; (iii) had an account with Bank Asya; (iv) donated to once the largest humanitarian organization in Turkey (Kimse Yok Mu), with over 200,000 volunteers in 100 countries; and finally (v) he is the son of Muammer Turkeyılmaz, perceived high-up in the "hierarchy" of the Hizmet Movement.
45. Muaz Türkyılmaz was detained on September 14, 2020, in Panama City, following the seizure of his passport by Panama immigration authorities on September 8, 2020, as he was boarding a plane headed to the Netherlands. After several months in pre-extradition detention in Panama City Muaz Türkyılmaz was finally released and was able to safely reach a third country.

VI. Observations and Conclusions

46. The case of Selahaddin Gülen is a prime example of political abuse of the Interpol system by Turkey. Selahaddin Gülen was detained in Nairobi on October 17, 2021, based on a red notice alert issued by Interpol Ankara. He was sought for alleged crimes on which he was already tried and acquitted of all charges in 2008.
47. Following his abduction (May 3, 2021) and his illegal transfer to Ankara, he was however investigated and prosecuted by the Turkish authorities on crimes against the constitutional order and terrorism.²² The first paragraph of the indictment against Selahaddin Gülen specifically refers to the fact that he is the nephew of Fethullah Gülen, which appears to be his only "crime" throughout the indictment.

²¹ See here: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en.

²² See for example here: <https://www.dailysabah.com/turkey/investigations/turkish-court-charges-feto-figure-linked-to-fetullah-gulen>

48. As in other instances of Interpol abuse, it does appear that despite Interpol's interventions, the latter was not able to properly review the request of the Turkish authorities in the case of Selahaddin Gülen.
49. Following his illegal transfer, the accusations against Selahaddin Gülen in Turkey, as well as the sheer number of requests already denied by Interpol's General Secretariat, the latter can safely assume in good faith that it is more likely the Turkish authorities would provide information to craft misleading arrest requests.
50. The case of Muaz Türkyılmaz is another example of political abuse of the Interpol system by Turkey. Muaz Türkyılmaz was arrested on September 14, 2020, in Panama City, after the seizure of his passport by Panamanian immigration authorities on September 8, 2020, while he was boarding a plane to the Netherlands. After several months in pre-extradition detention in Panama City, Muaz Türkyılmaz was finally released by the court and was able to reach a third country safely.
51. Turkey's disturbing human rights record, including arbitrary detention, torture and enforced disappearance of dissidents, as well as unfair trials of those subject to abduction and illegal transfers from other countries to Turkey, raise serious concerns that if extradited or otherwise transferred to Turkey, individuals subject of Interpol red notices will risk torture, ill-treatment or even death.

VII. Recommendations to Interpol and the Member States

52. The 89th Interpol's General Assembly, to be held from November 20-25, 2021, in Istanbul is an opportunity to remind the authorities of the host country on the need to conform its actions with Interpol's Constitution and the set of principles protecting human rights. In particular, the Turkish authorities should ensure that the data, including on lost and stolen passports, submitted to the organization are in compliance with Article 3 of the Organization's Constitution.
53. All demands or efforts by the host country (Turkey), one of the most egregious abusers of the system, to boost Turkey government's campaign in pursuing dissidents around the world, should be approached cautiously and rejected by Interpol, in accordance with the spirit of the Universal Declaration of Human Rights.
54. Finally, considering the Turkish abuse of the Interpol system, all other member states should adopt a more cautious approach when enforcing notices or diffusions originating from Turkey.



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