



Request concerning [...]
(Ref. CCF/[...])

DECISION OF THE COMMISSION
(105th session, 3 - 5 July 2018)

The Commission for the Control of INTERPOL's Files (the Commission), sitting as the Requests Chamber, composed of:

Vitalie PIRLOG, Chairperson
Petr GORODOV,
Sanna PALO,
Isaias TRINDADE,
Members,

Having deliberated in camera during its 105th session, on [...], delivered the following Decision.

I. PROCEDURE

1. The Commission studied a previous request by the Applicant for the deletion of the data concerning him registered in INTERPOL's files during its [...] session [...]. It concluded, in light of the information provided by the Applicant and by the INTERPOL National Central Bureau (NCB) of the [...] and by the NCB of [...], that the data challenged were compliant with INTERPOL's rules. On [...], the Commission informed the Applicant accordingly.
2. On [...], the Applicant submitted an application for the revision of the Commission's previous conclusions further to Article 42 of the Statute of the Commission (Statute). Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules of the Commission, the application for revision was found admissible, and the Commission informed the Applicant thereof on [...].
3. In accordance with Article 34(1) of the Statute, the NCB of the [...] and INTERPOL General Secretariat (IPSG) were consulted on the new arguments set forth in the application for revision.
4. During the study of the Applicant's case, the Commission consulted the NCB of [...], in accordance with Article 34(2) of the Statute, on specific issues raised in the application for revision.
5. Both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the application for revision during its 105th session.

II. FACTS

6. The Applicant is a national of [...].
7. He is the subject of a red notice issued at the request of the NCB of [...], on the basis of an arrest warrant issued on [...].
8. The summary of the facts, as recorded in the red notice, is the following: [...].

III. THE APPLICANT'S REQUEST

9. The Applicant requests the revision of the Commission's previous conclusions, and the deletion of the data concerning him.
10. He contends in essence that:
 - a) [...] authorities have denied his extradition to [...];

- b) His fundamental human rights would be violated in case of return to [...] and therefore the processing of the data in INTERPOL's files is not compliant with the spirit of the Universal Declaration of Human Rights and with Article 2 of INTERPOL's Constitution ;

IV. APPLICABLE LEGAL FRAMEWORK

11. Field of competence of the Commission :

- Article 36 of INTERPOL's Constitution states that the Commission shall ensure that the processing of personal data by the Organization is in compliance with the regulations the Organization establishes in this matter".
- Article 3(1)(a) and Article 33(3) of the Statute of the Commission establish that the powers of the Commission are limited to controlling whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements.

12. Application for revision:

- Article 42 of the Statute of the Commission for the Control of INTERPOL's Files states that "Applications for the revision of decisions of the Requests Chamber may be made only when they are based on the discovery of facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed".

13. Extradition issues:

- Article 81 of the RPD states that "the General Secretariat shall cancel a notice if [...] the National Central Bureau or international entity that requested the notice obtains data allowing it to carry out the required action but has not taken any steps to this end and, after being consulted, has not provided reasonable grounds for its lack of action."
- Article 82 of the RPD states that "Red Notices are published (...) in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action."
- Article 84(b) of the RPD further states that the requesting National Central 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."
- Article 87(b) also states that "The requesting National Central Bureau 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."
- INTERPOL General Assembly Resolution AGN/53/RES/7 of 1984 states that "if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice".

14. Compliance with human rights:

- Article 2(1) of INTERPOL's Constitution states that the Organisation 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."
- Article 34(1) of the RPD states 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."
- Article 5 of the Universal Declaration of Human Rights (UDHR) states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

- Article 9 of the UDHR states that “No one shall be subjected to arbitrary arrest, detention or exile.”
- Article 10 of the UDHR states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.
- Article 12 of the UDHR states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour or reputation. Everyone has the right to protection of the law against such interference or attacks.”

V. FINDINGS

15. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and IPSPG.
16. The Commission decided to first assess whether the conditions for a revision of its previous conclusions were met, and if so, to study together under point B below the related issues of extradition denial and compliance with human rights, in view of their interdependence and reliance on the same factual elements.

A. Application for revision :

a) *The Applicant*

17. The Applicant claims that, since the study of his previous request by the Commission and the conclusions adopted during its [...] session, he has been subject to extradition proceedings linked to the Red Notice in the [...].
18. After judicial hearings and the presentation of evidence, the [...] handed down a decision on [...], denying his extradition to the [...] and making authoritative pronouncements on the risks that his fundamental rights would be breached in case of return to [...].
19. The Applicant argues that these new elements, which could not be presented at the time of the previous study of his case, have a strong influence on the compliance of the data challenged with INTERPOL’s rules and that they should lead the Commission to reevaluate its earlier conclusions.

b) *Findings of the Commission*

20. The Commission first recalled that further to Article 42(1) of the Statute, “applications for the revision of decisions of the Requests Chamber may be made only when they are based on the discovery of facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed”.
21. The Commission considered that although the wording of Article 42 of the Statute mentions the “decisions of the Requests Chamber”, this provision is fully applicable *mutatis mutandis* to the “conclusions” or “recommendations” adopted by the Commission prior to the entry into force of the Statute on [...].
22. The Commission reviewed its previous conclusions adopted during the [...], and the arguments previously raised by the parties at that time. It held that the decision of the United Kingdom authorities to deny the Applicant’s extradition [...]. It also found that this decision, which is grounded on the risks of serious violations of the Applicant’s human rights in case of extradition to [...], may potentially have an impact on the compliance of the data challenged with Article 2 of INTERPOL’s Constitution and on the general outcome of the case.
23. Moreover, further to Article 42(2) of the Statute, “applications for revision must be made within six months after the discovery of the fact[s]”. The Commission established that the new fact presented by the Applicant has been materialized by the decision of [...], within the prescribed deadline.

24. In view of the above, the Commission held that the new fact set forth in the application for revision meets the required criteria established in Article 42 of its Statute. It decided that it would study anew the compliance of the data challenged, on the basis of both these new facts and the information previously provided by the parties during the prior study.

B. Extradition denial and human rights :

a) The Applicant

25. The Applicant claims that the human rights records of the [...] are extremely concerning, as documented by numerous international reports. If extradited to this country, he claims that he would be exposed to terrible conditions of detention, prison overcrowding, poor nutrition and other abuses constituting acts of torture or cruel, inhuman and degrading treatment, particularly in view of his [...] origins, in violation of Article 5 of the UDHR and Article 3 of the European Convention of Human Rights (ECHR).
26. Moreover, he claims that in case of extradition to [...], he would face a flagrantly unfair trial, on the basis of a case built on fabricated evidence and brought by disgruntled business partners, in violation of Article 9 and 10 of the UDHR (and Articles 5 and 6 of the ECHR). In this regard, he would be particularly prejudiced [...], and he would not have access to interpretation of legal proceedings.
27. He asserts that the conduct of [...] in this case is concerning and shows their lack of genuine interest, as it took excessively long time for the judiciary to issue an arrest warrant on the basis of the complaint, to obtain the issuance of a Red Notice or to prepare extradition request and respond timely to clarification requests from other countries. Therefore if extradited [...], he would likely be exposed to very lengthy pre-trial detention, while the culpable delay would have dire consequences on his fundamental rights.
28. He further claims that his potential extradition would have disproportionate consequences on his family life, protected under Article 12 of the UDHR (and Article 8 of the ECHR), as he would be separated from [...], all living with him in [...].
29. The Applicant asserts that, after receiving an extradition request from [...]. However, the [...] authorities did not participate actively in the proceedings and did not present any rebuttal to the arguments and evidence submitted [...] of the decision handed down by the Court.
30. In view of the precedents before the same Court [...] and of the substantive evidence submitted by the Applicant on the human rights bars to his extradition, the [...].
31. The Applicant argues that he may not be extradited from [...] but that because of the Red Notice he is barred from travelling abroad out of fear of being arrested and subject to lengthy detention before his extradition is refused again. He claims that his fundamental human rights have already been affected and interfered with, since he has been detained in [...], and subject to a long extradition process [...].
32. He argues that in view of the straightforward decision [...], the prospects of his extradition are now very unlikely and that the purpose of the Red Notice can no longer be achieved while it can still generate dire consequences on his life.
33. He invites the Commission, on the basis of its own jurisprudence in relation to extradition [...], to conclude that the processing of data in INTERPOL's files has caused disproportionate interferences with his rights in view of the rather minor nature of the offence, and that the Red Notice is not compliant with Article 2 of INTERPOL's Constitution.

b) The NCB of the [...]

34. The NCB of [...] confirmed the authenticity of the decision [...].

c) The NCB of [...] (NCB source of the data)

35. The NCB of the [...] did not provide additional information to the Commission, in relation to the new facts presented in the application for revision, despite reminders.

36. However, the Commission considered the substantive answers and relevant documents linked to the case previously transmitted [...] in the context of the examination of the Applicant's prior request.

d) Findings of the Commission

37. The Commission first established that the mere fact that one of INTERPOL's Member countries has denied the extradition of an individual subject to a Red Notice does not, in itself, directly affect the compliance of the corresponding data registered in INTERPOL's files. In this regard, it should be noted that INTERPOL General Assembly resolution AGN/53/RES/7 of 1984 states that "*if certain countries refuse extradition, this is reported to the other NCBs in an addendum to the original notice*".
38. Extradition proceedings are undeniably complex processes, often involving considerations based on the national laws of the requesting and the requested States, on the provisions of criminal cooperation agreements (bilateral, regional or international), and on their interplay with other international obligations (human rights law or refugee law).
39. The grounds for extradition refusals can therefore be very diverse, depending on the particular bilateral extradition situations. They can be either related to procedural or to substantive elements, connected to a specific criminal case or rather linked to the requested person's individual situation. Moreover, they are not always ascertainable to the Commission, or not always conveyed to it.
40. Yet, the Commission acknowledged that in some cases, national decisions denying the extradition of an individual on the basis of the risks that his human rights would be violated upon surrender to the requesting State may be regarded as additional evidence supporting the Applicant's claims of non-compliance with Article 2 of INTERPOL's Constitution and with the Universal Declaration of Human Rights. Likewise, national decisions denying the extradition of an individual on the basis of the political character of the case may be taken into account as additional evidence supporting the Applicant's claims of political predominance and non-compliance with Article 3 of INTERPOL's Constitution.
41. In this context, the Commission recalled that it is not its role to assess a country's law enforcement or judicial system *in abstracto*. Hence, it does not rely on general statements concerning the situation in a country and only examines the compliance of data with INTERPOL's rules on the basis of specific information related to the case under study or to the person who is the subject of the request.
42. However in the present case, the decision [...], denies the extradition [...], on the basis of the risks that he would be submitted to torture in the context of his detention and that he would face an unfair trial. These fundamental human rights are enshrined in Articles 3 and 6 of the ECHR, to which the decision directly refers, and they are equally protected through Articles 5 and 10 of the UDHR. Moreover, the decision highlights that the Applicant would face heightened individuals risks on account of his ethnicity and nationality, [...].
43. Although this decision is not legally binding on other States, who remain at liberty to decide sovereignly to cooperate on this case and extradite the Applicant should he be later apprehended on their territories, the conclusions drawn by an independent [...] judicial body on the risks faced by the Applicant in case of extradition cannot be ignored by the Commission in the course of its own review. Finally, the Commission also recalled from its first study [...] did not lead to his actual extradition despite a long detention, as the [...] authorities failed to provide the requested extradition documents within the prescribed deadline.
44. All these elements contribute to a body of corroborating evidence, which makes the retention of the data concerned in INTERPOL's files not compatible with the Organization's obligation to ensure effective cooperation between police authorities within "the spirit of the Universal Declaration of Human Rights". In light of all of the aforementioned circumstances, the Commission concludes that the data challenged are not compliant with Article 2 of INTERPOL's Constitution.

FOR THESE REASONS, THE COMMISSION

NOT INTENDED FOR PUBLIC DISSEMINATION

- 1) Decides that the conditions for revision, as defined in Article 42 of the Statute, are met ;
- 2) Decides, upon revision, that the data concerning the Applicant are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files.
