



Commission de Contrôle des Fichiers de l'O.I.P.C. - INTERPOL
Commission for the Control of INTERPOL's Files
Comisión de Control de los Ficheros de la OIPC-INTERPOL
لجنة الرقابة على محفوظات المنظمة الدولية للشرطة الجنائية (الإنتربول)

INTERPOL's Independent Authority for the Control and Protection of Personal Data

DECISION OF THE COMMISSION

REQUESTS CHAMBER

Request concerning Aaa BBB

(Ref. CCF/xxx)

xxxrd session

[date]



DECISION CONCERNING AAA BBB

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

xxx

Members,

Having deliberated during its xxx session, on [date], delivered the following Decision.

I. PROCEDURE

1. On [date], Mr Aaa BBB (the Applicant), lodged a request for the deletion of the information concerning him registered in INTERPOL's files. Following the submission of all the required documents in accordance with Rule 30 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed the Applicant thereof on [date].
2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureaus (NCB) of CCC (country source), DDD (third country), EEE (third country) and FFF (third country), and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) and (2) of the Statute of the Commission, on the arguments set forth in the request.
3. Both the Applicant and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its xxx session.
4. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

II. DATA RECORDED IN INTERPOL'S FILES

5. The Applicant, a national of DDD, is the subject of a Red Notice issued on xxx, at the request of the NCB of CCC for "*Misappropriation, abuse of official powers*" on the basis of an arrest warrant issued on [date] by CCC.
6. The facts of the case state the following: "[...]."
7. [...]

III. THE APPLICANT'S REQUEST

8. The Applicant requested the deletion of the data concerning him, contending, in essence, that:
 - a) the data lack a clear description of criminal involvement;
 - b) the proceedings are no longer valid;
 - c) the proceedings do not respect the principle of *ne bis in idem*; and
 - d) EEE denied his extradition.

IV. APPLICABLE LEGAL FRAMEWORK

9. The Commission considers the following applicable legal framework.
 - 9.1. Field of competence of the Commission:
 - Article 36 of INTERPOL's Constitution,
 - Articles 3(1)(a) and 33(3) of the Statute of the Commission.
 - 9.2. Clear description of the criminal activities:

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- Article 83 (2)(b)(i) of INTERPOL's Rules on the Processing of Data (RPD),
- IPSP standards for the application of the RPD.

9.3. Validity of proceedings:

- Articles 11, 12 and 83(2)(b)(v) of the RPD.

9.4. *Ne bis in idem*:

- Article 14(7) of the International Covenant on Civil and Political Rights of the United Nations, adopted in 1966 and which entered into force on 23 March 1976 (ICCPR),
- Articles 4(1) and 4(2) of Protocol 7 of the European Convention of Human Rights of the Council of Europe.

9.5. Extradition issues:

- Article 31 of INTERPOL's Constitution,
- Articles 10, 34(1), 81, 82, 84(b) and 87(b) of the RPD,
- The INTERPOL General Assembly Resolution AGN/53/RES/7 of 1984.

V. FINDINGS

10. The Commission assessed the Applicant's most relevant contentions in the order in which they are described in Section III above.

11. For an appropriate study of the case, the Commission decided to study together under point B below the related issues of the validity of the proceedings and the principle of *ne bis in idem*, since they are interdependent and rely on the same factual allegations.

A. Clear description of the criminal activities

a) *The Applicant*

12. The Applicant argued he has been wrongly prosecuted by the Ministry of Taxes in CCC for having been corrupted when appointing subcontractors. The owner of the company GGG found no wrongdoings in his actions and did not issue any sanctions against him. Some inspectors checked the records of the company for four months and found no shortfalls.

b) *The NCB of CCC (NCB source of the data)*

13. The NCB submitted three legal documents which all contain a description of the Applicant's alleged criminal activities, including the decision to indict dated [date], the decision on declaration of search, dated [date], and the arrest warrant, all issued by the [...] district court of CCC. The arrest warrant stated that the Applicant was appointed as General Director of the company GGG on [date]. Together with HHH and under HHH direction, he organized the establishment of company III on [date], to embezzle company GGG. Using his official power, he intentionally created favourable conditions for company III and assigned to company III the contracts for clearing and real estate appraisal services under two contracts dated [date] and [date]. He also organized a tender for [...] for contractors, and assigned the contract to company III, even though the other companies were more reasonable. Together with HHH, the Applicant misappropriated [...]. Therefore, he was accused for wastefully plundering large amount of assets of company GGG by abusing of trust and of official position, which resulted with grave consequences. On the basis of these facts, he was charged for the crimes punishable under Articles [...] of Penal Code of CCC.

c) *Findings of the Commission*

14. Article 83(2)(b)(i) of the RPD requires that "*red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least summary of*

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facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person, including the time and location of the alleged criminal activity.”

15. IPSP standards for the application of the RPD provide that: “*for red notice requests and diffusions seeking the arrest of a person, it is important to provide sufficient facts that link the wanted individual to the charges against him/her. Providing such facts is crucial for facilitating international police cooperation.*”
16. Therefore, it is required that sufficient information is provided regarding the charges and penalties, that demonstrates that the Applicant is charged with a valid arrest warrant and that shows his possible effective personal participation in the criminal conduct of which he is charged. In this regard, it is recalled that the Commission’s function is not to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case. Only the competent national authorities may do so.
17. In this case, as mentioned in paragraph 13 above, the NCB provided information meeting these criteria and conditions, which also demonstrates the link between the Applicant and these criminal activities. Therefore, the Applicant’s arguments are not such as to call into question the existence of a clear description of criminal activities, within the meaning of Article 83 (2)(b)(i) of the RPD and IPSP standards for their implementation.

B. Validity of the proceedings, the principle of *ne bis in idem*

a) The Applicant

18. The Applicant stated that the proceedings against him are no longer valid. He was detained in FFF in 2007 and was extradited to his home country DDD. He had received a letter from the DDD Ambassador in [...] CCC informing him that the DDD Embassy in CCC learned from diplomatic channels that the criminal proceedings against him in CCC were terminated. He provided a copy of this letter, dated [date].
19. The Applicant also submitted that his case was tried by the High Court in [...] DDD. The Court found that the evidence in his case was not sufficient, and therefore decided to close the case. Accordingly, based on the *ne bis in idem* principle, the Red Notice is not compliant with INTERPOL’s rules. The Applicant did not provide a copy of this court decision.

b) The NCB of CCC

20. The NCB confirmed that the proceedings against the Applicant and the arrest warrant are still valid. According to Article [...] of the Penal Code of CCC, if the offender is hiding from the investigation or court, the statute of limitations is interrupted. According to criminal legislation of CCC, the running period of the statute of limitations is restored when the person is detained or voluntarily confesses. Therefore, the statute of limitations for prosecution regarding this case has not expired.
21. The NCB also reported that it did not request his extradition from DDD, and it has never transferred the proceedings of this criminal case to the DDD judicial authorities. The [...] Ministry of Economy of CCC has sent a request for legal assistance concerning the investigation in this case. However, the CCC authorities never informed the DDD authorities that this case was closed.

c) The NCB of DDD

22. The NCB confirmed that the Applicant is an DDD citizen. On [date], he was in FFF. Following his arrest, CCC authorities and DDD authorities both requested his extradition, and the FFF authorities surrendered him to DDD authorities on [date].
23. Since DDD does not extradite its own nationals and the facts of the case also constitute a criminal offence under DDD law, the DDD Public Prosecutors Office opened an investigation for the facts committed in CCC. The DDD authorities sent a request for mutual legal assistance to CCC authorities

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asking for a copy of the file, but the request was not granted. On [date], the DDD Court of Appeal decided to discontinue the DDD investigation according to Article [...] of the DDD Code of Criminal Procedure, since the proceedings were pending for three years and the request for mutual legal assistance to CCC authorities was not executed. On [date], the DDD Ministry of Justice was informed through diplomatic channels that the criminal proceedings against the Applicant in CCC were suspended.

d) The NCB of FFF

24. The NCB confirmed that the Applicant was arrested in FFF in [date] due to his search initiated by CCC, before the publication of the Red Notice. The CCC authorities confirmed the intention to request his extradition and provided FFF General Prosecutor's office with a copy of the arrest warrant. The DDD authorities also requested his extradition. On [date], the FFF General Prosecutor's office granted his extradition to DDD and notified CCC about this decision.

e) Findings of the Commission

25. Article 11 of the RPD states “*data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the National Central Bureau, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers.*”

26. In this regard, the Commission notes that the NCB of CCC confirmed the validity of the proceedings and the arrest warrant, and stated it never informed the competent DDD authorities that the proceedings were closed. On the other hand, the NCB of DDD stated it received confirmation from CCC through diplomatic channels that the proceedings in CCC against the Applicant were closed. The Commission is faced with contradictory factual accounts. In the absence of any registered messages between the two NCBs in INTERPOL's files, it notes that the NCB of CCC, in its messages to the Commission, has repeatedly confirmed the validity of the proceedings, and provided an adequate explanation of the statute of limitations under its legislation. Therefore, the Commission does not conclude the proceedings are invalid under the CCC law.

27. Concerning the principle of *ne bis in idem*, as stipulated in Article 14(7) of the International Covenant on Civil and Political Rights (ICCPR), “*no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*” The objective of the principle of *ne bis in idem* is to ensure that a person is not tried, convicted or acquitted in a country more than once for the same facts. It is among the essential rights of the defense in national proceedings but it is not equally recognised at international level, except when explicitly accepted by States under bilateral or multilateral treaties.

28. Two main conditions are required for the application of this principle:

- successive prosecutions for the same facts (in extradition treaties often referred to as successive prosecution for the same offenses);
- a final decision on guilt or innocence made by a court, i.e. a judgment of conviction or acquittal.

29. A *ne bis in idem* provision in an extradition treaty is often a ground for refusal of extradition only where the decision was taken by a court of the State from which the extradition is sought.

30. In this case, the Commission firstly notes that there is no final decision on guilt or innocence made by any DDD court. As mentioned in paragraph 23 above, the NCB of DDD confirmed that the case under its jurisdiction was closed due to his DDD nationality and that it did not receive any response from the CCC authorities on its request for mutual assistance. Furthermore, both the NCB of DDD and the NCB of CCC confirmed that the proceedings against the Applicant were never transferred from the CCC authorities to the DDD authorities by any treaty or agreement. Therefore, the Commission establishes that the *ne bis in idem* principle does not apply.

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C. Extradition denial by EEE

a) The Applicant

31. Lastly, the Applicant submitted that the EEE authorities denied his extradition. He provided a copy of the decision from the EEE district court in [...], dated [date]. The Judge decided that firstly, the DDD authorities made a final judgement on this case, so the principle of *ne bis in idem* applies; secondly, the criminal prosecution became statute-bared under Article [...] of the EEE Criminal Procedure Act, hence the conditions for extradition under the [...] Convention on Extradition were not met and his extradition to CCC was denied.

b) The NCB of CCC

32. The NCB confirmed that following the Applicant's arrest in EEE in [date], the extradition documents were sent through INTERPOL and diplomatic channels to the competent authorities of EEE. In the message received from the NCB of EEE, it was stated that their judicial authorities refused the extradition of the Applicant to CCC as, according to their legislation, the time limit for prosecution had expired.

c) The NCB of EEE

33. The NCB confirmed that the Applicant was arrested in EEE on [date] based on the Red Notice. The EEE Court refused the extradition, due to the principle *ne bis in idem* and because the criminal prosecution became statute-barred under the EEE law. In view of the above, the conditions for extradition under Articles [...] of the [...] Convention on Extradition, as well as under national legislation were not met.

d) Findings of the Commission

34. Concerning the extradition denial, the Commission considers that 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 and on their interplay with other international obligations (human rights law or refugee law).

35. 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.

36. In this connection, the fact that the EEE authorities refused his extradition on the basis of the application of its own national legislation relating to the statute of limitations, whereas the prosecution is still valid under the laws of the CCC, does not directly affect the possibility for the purpose for which the data are processed (arrest in view of extradition) to be achieved. Indeed, the Applicant may still be located and arrested on the territory of other INTERPOL member countries, which may not be barred by similar national statutes of limitation, and may still initiate extradition proceedings on the basis of the Red Notice for the underlying criminal case under study. In addition, the EEE court decision was also based on the *ne bis in idem* principle, because it accepted the Applicant's submission that the DDD authorities have already issued a final judgement on this case. However, as already stated in paragraphs 26 and 30 above, there was no transfer of proceedings from CCC to DDD, and the NCB of CCC confirmed the validity of the proceedings under their domestic law.

37. Lastly, Article 84(2) of the RPD stipulates that NCB shall ensure that "*the red notice request has been coordinated with the relevant authorities responsible for extradition, and assurances have been given 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) requires the NCB to "*act immediately once it has been informed that the person has been located in another country and, in*



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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.”

38. In this regard, as mentioned in paragraph 32 above, the Commission notes that the NCB of CCC has taken steps to respect their obligations and to request the extradition or surrender of the Applicant from countries where he was located, which is consistent with the requirements of Articles 84(2) and 87(b) of the RPD.
39. As a result, the Commission finds that the information provided by the Applicant does not suffice to demonstrate that the data are not compliant with INTERPOL’s rules.

FOR THESE REASONS, THE COMMISSION

Decides that the data challenged are compliant with INTERPOL’s rules applicable to the processing of personal data, subject to the following update of the Applicant’s file:

- the extradition denial of the Applicant by the EEE authorities is reported in INTERPOL’s files: *“In application of INTERPOL General Assembly resolution AGN/53/RES/7 (1984), please note that on [date], the court of EEE denied the request for extradition of Aaa BBB issued by the authorities of CCC due to ne bis in idem principle and that the proceedings were statute-bared under the EEE law.”*

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Secretariat to the Commission
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