



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)*

**xxx 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), presented a request for access to the information concerning him registered in INTERPOL's files. On [date], the Commission found the request admissible as per Rule 30 of its Operating Rules and informed the Applicant thereof. After being authorized by the INTERPOL National Central Bureau (NCB) of CCC, the Commission informed the Applicant on [date] that he is wanted through INTERPOL's channels by CCC, and provided the information described in paragraphs 6 and 7 below.
2. On [date], the Applicant lodged a request for the deletion of the information concerning him registered in INTERPOL's files, which was found admissible on [date].
3. During the study of the Applicant's case, the Commission consulted the NCBs of CCC and DDD, 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.
4. 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.
5. 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

6. The Applicant, a national of EEE, is the subject of a Red Notice published on [date], at the request of the NCB of CCC for "*Swindling, committed in particularly large amount*" on the basis of an arrest warrant [...], issued on [date] by [...] (CCC).
7. The facts of the case state the following: "[...]."
8. The NCB has not requested the publication of an extract of the Red Notice on the INTERPOL public website.
9. The Applicant is also subject to data registered in the INTERPOL Information System within a Criminal Analysis File (CAF) [date].

### III. THE APPLICANT'S SUBMISSIONS

10. The Applicant requested the deletion of the data concerning him, contending, in essence that:
  - a) the data lack a clear description of criminal involvement and is of a private nature;
  - b) the purpose of the Notice was reached as his extradition was denied from DDD;
  - c) there is a risk of his basic rights being violated if he is returned to CCC; and
  - d) he holds a protective status.

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#### IV. APPLICABLE LEGAL FRAMEWORK

11. The Commission considers the following applicable legal framework.

11.1. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution,
- Article 3(1)(a) and Article 33(3) of the Statute of the Commission.

11.2. Clear description of criminal involvement:

- Article 10(2)(a), 12, 35(1) and 83 of INTERPOL's Rules on the Processing of Data (RPD),
- IPSG standards for the application of the RPD.

11.3. Purpose and Extradition issues:

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

11.4. Compliance with human rights and refugee status:

- Article 2(1) of INTERPOL's Constitution,
- Articles 5(2), 11(1), 34(1), 34(3), and 86 of the RPD,
- The INTERPOL General Assembly Resolution (ref. AGN/2017/86/RES/09) on INTERPOL's policy on refugees,
- Several international and regional human rights instruments establish the right of individuals who hold a protective status to be protected against forcible return or *refoulement to their country of origin, including*:
  - the Universal Declaration of Human Rights ((UDHR) Article 14.1),
  - the 1951 Geneva Convention relating to the Status of Refugee (Article 33.1),
  - the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3),
  - the International Covenant on Civil and Political Rights (Article 7),
  - the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3),
  - the American Convention on Human Rights (Article 22), etc.

#### V. ANALYSIS OF THE CASE

12. For an appropriate study of the case, the Commission decided to study together the Applicant's contentions detailed in Section III, since they are interdependent and rely on the same factual allegations.

##### **Criminal involvement, extradition denial and human rights issues**

###### ***a) Submissions of the Applicant***

13. According to the Applicant, the purpose of the Notice was reached as his extradition to CCC was rejected on [date] by the Court of Appeal in DDD.

14. Relying on this decision, he submitted that the data registered in INTERPOL's files are not accurate, the case is of a private nature and the underlying offence is not an ordinary law crime that could lead to the publication of a Red Notice. Indeed, the DDD court determined that [...] which are the subject of the charges had different and lawful purposes than those mentioned in the Red Notice. It found that [...] there was no mention that the Applicant was a beneficiary.

15. He further explained that the alleged fraudulent transactions, were exclusively commercial: [...].

16. This was confirmed by [...]. In his authenticated testimony, he explained that [...].



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17. The Applicant provided the testimony of [...].
18. To support his submissions the Applicant provided the copy of [...]. He also provided a copy of [...].
19. On this matter [...], declared in a written statement signed in front of a notary on [date]: [...].
20. The Applicant then argued that the DDD authorities recognized there is a risk that his basic rights would be violated if returned to CCC and provided a copy of the [date] Decision of the DDD Court of Appeal rejecting his extradition to CCC. The Court found that the overall situation in CCC showed that there are serious violations to the rights to a fair trial and human rights in general, and there are grounds for believing that the Applicant, if extradited to CCC, would be subjected to treatment which would constitute a breach of one of his fundamental rights. It based its findings on reports such as the [...] [date] report on prison conditions in CCC, the [...] Report prepared by the [...] [date], the report of the Working Group on Arbitrary Detention drawn up on behalf of the United Nations following the UN Arbitrary Detention Mission in CCC in [date], the [date] report of Amnesty International on the use of force by the CCC Police and the violations of rights of defense in that country. The court decision mentioned that a note was received from the Embassy of the EEE in DDD, requesting that the Applicant, as an EEE citizen, not be extradited to CCC.
21. He added that on [date], he was recognized as a refugee in DDD, under the Geneva Convention. This decision was based on religious reasons and for impugned political opinions. While he is an EEE national, as far as the non-refoulement clause is concerned, he considered it not only applies to EEE but also to CCC. He raised the general traditionally friendly relations between the two countries (witnessed by the [...] bilateral agreements between the countries), and more specifically the existing bilateral agreements between the two nations regarding extradition and the exchange of prisoners, inmates and convicts. He considered that it is legitimate to believe - as highlighted during the hearing before the DDD Commission - that if he were deported or extradited to CCC, he could then be handed over by the CCC authorities to their EEE counterparts on the basis of the aforementioned agreements as the exchange of prisoners and convicts between the two countries is a common practice that takes place every year. Such an eventuality would end up denying the very protections placed at the foundation of status, and remains as long as the Red Notice is published.
22. He added that if the purpose of the refugee status is to avoid the refoulement of an individual to countries where his fundamental freedoms would be at risk, CCC must be included, considering both the fears expressed in DDD Court of Appeal's decision regarding the risk of violation of his fundamental rights, and the artificial accusations made against him.

### ***b) Submissions of the NCB of CCC (NCB source of the data)***

23. The NCB of CCC confirmed the validity of the proceedings and the arrest warrant. It stated that after the Applicant's arrest in DDD based on the Red Notice, the extradition request was sent to the law-enforcement authorities of DDD. However, on [date], the Court of Appeal in DDD denied the extradition.
24. For additional information on the Applicant's involvement, it referred to the [date] arrest warrant and the [date] decision "*On Involving a Person as an Accused*", of which it provided copies. These decisions describe how the Applicant with [...] abused the trust of [...] beginning of [date]. Under the pretext of [...]. The Applicant and his accomplice then escaped with the money without [...]. The NCB reported that according to CCC legislation, in this case, the time limit for prosecution is of [...] years starting from the date of the crime.

### ***c) Information from the NCB of DDD***

25. The NCB reported that the Applicant was arrested in DDD on [date]. His extradition was requested by CCC on [date]. It was denied by the Court of DDD, on [date]. The extradition denial decision, a copy of which was sent by the NCB, finds "*in particular that there are 6 grounds for believing that the accused, if extradited to CCC, would be subjected to treatment which would constitute a breach of one of the fundamental rights of the person.*" They include the prison conditions, the use of force

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by CCC police, violations of rights of defense in that country and right to a fair trial and human rights being generally violated.

26. The NCB confirmed that the Applicant obtained refugee status in DDD.

### *d) Findings of the Commission*

27. Under Articles 35 and 83 of the RPD, and other IPSG standards found in paragraph 11.2 above, the publication of the present Red Notice is conditioned by the provision of sufficient elements describing the criminal activity underlying the case, and the personal involvement of the wanted individual that would link him to the charges. In conducting its review, the Commission relies on the elements provided by the parties. This information must be concrete and specific in the sense that it must clearly identify the role of the Applicant, his specific criminal actions, the time and the means to commit the infraction. It should be precise, detailed and demonstrate, when relevant, a benefit or the intention to commit the offense.
28. Here, the Applicant is allegedly involved in a criminal offense (“*swindling, committed in particularly large amount*”), which is defined under the relevant criminal law provisions submitted by the NCB of CCC, and appears *a priori* to be of a common law nature and coherent with the case summary submitted by the same NCB.
29. With respect to the facts of this case, the charging documents set out a narrative of the Applicant’s conduct. The Applicant disputes the factual allegations set out in the charging documents and provides supporting documents and testimonies (paragraphs 14 to 19), and the NCB in turn refers to the judicial documents to assert the Applicant’s involvement (paragraph 24). However, due to the absence of clear elements from the NCB regarding the nature of the offence and the extent of the Applicant’s involvement, there are remaining uncertainties, particularly in view of the testimonies provided by the Applicant as well as the [...].
30. The Commission not being empowered to conduct an investigation, to weigh evidence, nor to make a determination on the facts or merits of a case as such is the function of the competent national authorities, and in view of the contradicting information provided, resolves not to make a definitive pronouncement on this question at this stage, and to continue to study the other elements of the case.
31. It turns to the matter of the purpose of the processing of the data in INTERPOL’s files, which according to Articles 10(1) and 12(1) of the RPD, may only be carried out for a given and explicit purpose. Under the rules detailed in paragraph 11.3, the purpose of this Red Notice is not only to locate the Applicant, but also to request his provisional arrest in view of extradition.
32. The information provided by the NCB of CCC, and confirmed by the NCB of DDD highlights that CCC authorities took steps to request the Applicant’s extradition from DDD. Therefore, there is no reason to doubt that CCC authorities intend to fulfil the purpose of the Red Notice and that it still has a valid purpose in compliance with the said applicable rules.
33. The Applicant holds a protective status in DDD, which should also be studied under the legal framework outlined in paragraph 11.4, and raises the possibility that the purpose of the Red Notice could not be achieved because of *non refoulement* obligations, which prevent such a protected individual’s extradition to his country of origin.
34. In the present case, the protection awarded to the Applicant does not directly protect him from refoulement to CCC, as he is an EEE citizen. He argued the applicability of the *non refoulement* clause to CCC, in addition to EEE, by stating that there are human rights concerns should he be extradited to CCC as explained in the DDD decision. He also explained that both countries have strong ties, and he might be sent to EEE after his extradition to CCC (paragraphs 21 and 22). This is without recalling the principle of specialty, which is designed to protect individuals from being subjected to successive extraditions, and noting that there is no information indicating that CCC has extradited or sent persons to EEE in circumstances such as that presented here. Thus, the refugee policy does not apply

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*stricto sensu* in this case, nevertheless the Commission will take the Applicant's status into account while assessing the other elements of this case.

35. Finally, under Articles 3(1)(a) and 33(3) of the Statute of the Commission, its function is to review whether the processing of data in INTERPOL's files meets the applicable legal requirements in accordance with Article 36 of INTERPOL's Constitution, and notably whether such processing is conducted in compliance with Article 2 of the Constitution and the "*spirit of the Universal Declaration of Human Rights.*"
36. Here, the decision of the DDD authorities to deny the Applicant's extradition to CCC based on [...] (paragraphs 20 and 25) and its finding that "*the Court finds that (...) there are serious reasons to believe that the defendant, if such extradition were granted would be subjected to the conditions violating the fundamental human rights*" and that "*in this specific case, the right to a fair trial and in general the fundamental rights appear to have been violated*" reinforce the Applicant's claims under Article 2 of INTERPOL's Constitution. This is also in view of the information detailed in paragraph 20, confirmed by the NCB of DDD (paragraph 25).
37. As a result, the Commission finds that the elements provided by the NCB of CCC are not sufficient to remove all doubts regarding the compliance of the data with Article 2 of INTERPOL's Constitution. The fact that the Applicant holds a refugee status, and that his participation in a criminal act is not manifest for the Commission, are aggravating factors regarding compliance with Article 2.

### FOR THESE REASONS, THE COMMISSION

Decides 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.

Commission for the Control  
of INTERPOL's Files

Secretariat to the Commission  
for the Control of INTERPOL's Files

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