



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) source of data, the Commission informed the Applicant on [date] that he is wanted through INTERPOL's channels at the request of the NCB of CCC, and provided the information described in paragraphs 05 and 06 below.
2. On [date], the Applicant lodged a request for the deletion of the aforementioned information concerning him. Following the submission of all the required documents in accordance with Rule 30, the request was found admissible, and he was informed thereof on [date].
3. During the study of the Applicant's case, the Commission consulted the NCBs of CCC (source country) and DDD (third country), in accordance with Article 34 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.

II. DATA RECORDED IN INTERPOL'S FILES

5. The Applicant, a national of DDD, is the subject of a Diffusion circulated for his arrest and extradition on [date] by the NCB of CCC for [...] on the basis of an arrest warrant issued on [date] by [...] CCC.
6. The facts of the case state the following: [...]

III. THE APPLICANT'S SUBMISSIONS

7. The Applicant requested the deletion of the data concerning him, contending, in essence that:
 - a) the Diffusion lacks purpose; and
 - b) the proceedings do not respect the principle of *ne bis in idem*.

IV. APPLICABLE LEGAL FRAMEWORK

8. The Commission considers the following applicable legal framework.
 - 8.1. 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.

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- 8.2. General provision on interest of data for the purposes of international police cooperation:
 - Articles 35 of INTERPOL's Rules on the Processing of Data (RPD).
- 8.3. Purpose of the data:
 - Articles 10 and 97 of the RPD.
- 8.4. Principle of *non bis in idem*:
 - Article 2 of INTERPOL's Constitution.

V. ANALYSIS OF THE CASE

9. For an appropriate study of the case, the Commission decided to study together below the related issues of whether the challenged data lack purpose or breach the principle of *non bis in idem*, since they are interdependent and rely on the same factual allegations.

The purpose of the data and the principle of *non bis in idem*

a) Submissions of the Applicant

10. The Applicant argued that the Diffusion lacks purpose and harms the interests of the DDD authorities, who hold and continue to exercise primary jurisdiction over this case. He explained that he was located and arrested on [date] in EEE, before being extradited to DDD for the same facts and charges. The DDD authorities launched an investigation against him as a suspect and he remains under their monitoring. He contended that since his location was known and criminal proceedings are underway against him in his home country, there was no purpose for the request by the NCB of CCC for his arrest and extradition again.
11. He added that the CCC authorities have also failed to pursue the purpose of the Diffusion. Although they are aware of his location, they never submitted a request to their DDD counterparts for his prosecution or even interrogation. While DDD law prohibits the extradition of nationals, the most appropriate course of action would be for the CCC authorities to transfer the criminal proceedings to their DDD counterparts. He presented that a transfer of proceedings would ensure respect for the principle of *non bis in idem*, and for the primary jurisdiction of DDD based on his nationality, which is in accordance with the provisions of [...] Convention on Extradition.

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

12. The NCB of CCC explained that the Applicant is wanted as a member of a criminal group with activities in [...] from DDD to CCC, via FFF. The head of the group [...] is a dual national of both CCC and DDD, and the Applicant and two other identified members of the group [...] are DDD nationals. On [date], [...] was apprehended in CCC by the CCC police while driving a truck transporting [...] into the territory of the country.
13. In response to the Applicant's claims, the NCB of CCC clarified that he was arrested upon arrival at EEE on [date] on the basis that he is wanted by the CCC authorities in the underlying case. On [date], the CCC judicial authorities submitted an extradition request to their EEE counterparts. This request was ultimately refused by the Court of EEE on [date] pursuant to a petition from the DDD authorities to have him extradited instead to their country for his criminal prosecution over the same facts and charges. Following this order, he was extradited to DDD where he was subject to criminal proceedings that are based on the materials previously transmitted by the CCC authorities to their DDD counterparts as part of a request for bilateral legal assistance in the case.
14. The DDD authorities, on the other hand, have consistently refrained from answering CCC requests for the results of their investigation, and insisted that the proceedings against him and his DDD

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accomplices, including [...], should be transferred to DDD given their nationality. The NCB of CCC highlighted that its judicial authorities refuse this request for the transfer of proceedings to DDD because [...] is a CCC national, and because separating the proceedings against the Applicant from those of his co-defendants will disadvantage the entire prosecution considering how their actions are interlinked by a shared criminal plan and organizational structure.

c) Information from the NCB of DDD

15. The NCB of DDD confirmed that the Applicant was extradited to its country from EEE on [date] because he was wanted on the accusation of transporting [...] from DDD to CCC. On [date], he was discharged due to a lack of evidence against him.
16. With regards to its authorities' cooperation with their CCC counterparts, the NCB submitted that the Prosecutor General's Office of DDD had received an International Letter of Request (ILOR) for mutual legal assistance from the CCC authorities in [date]. After the DDD authorities answered to this initial request, the CCC authorities transmitted additional requests that went unfulfilled because cooperation between the two countries was limited to the minimum necessary following [...].
17. The NCB of DDD further indicated that the CCC authorities have also failed to cooperate with its authorities' requests concerning this case. Specifically, they refrained from answering a request made by the DDD Prosecutor General's Office on [date] for a transfer of the proceedings against the Applicant and other co-defendants who are DDD nationals; they refused a request from the DDD Prosecutor General's Office on [date] to authorize the latter to use the information contained in the ILOR as evidence in the criminal case against the Applicant; and they continue to refrain from deciding on requests made on [date] and [date] to transmit the evidence against him and to reconsider a transfer of the proceedings to DDD.

d) Findings of the Commission

18. The Commission notes how the Applicant's submission challenges the continued purpose of the Diffusion in view of the parallel proceedings against him over the same facts and charges in DDD, and the refusal of the CCC authorities to officially transfer the proceedings to DDD.
19. As to the purpose of the data, the Commission recalls that under Articles 10 and 97 of the RPD, data in INTERPOL's files must be for a specific, authorized purpose. It considers that the Diffusion has one such purpose, which is to request the arrest and extradition, or surrender, of the Applicant pursuant to valid criminal proceedings against him in CCC. The fact that his location is known does not diminish from this purpose, given that the CCC authorities continue to pursue his arrest and extradition or surrender. This is apparent in the available information on the CCC authorities' transmission of an extradition request to their EEE counterparts on [date], and their repeated requests to their DDD counterparts for investigative actions to be taken concerning him, which is sufficient to demonstrate that the CCC authorities have taken active steps toward achieving the purpose of the Diffusion. Therefore, the Commission is prevented from concluding that the Diffusion may lack a valid purpose.
20. The Commission proceeds to examine whether the conduct of parallel proceedings in the Applicant's country of nationality detracts from the purpose of the Diffusion, or its interest for the purposes of international police cooperation.
21. In the first place, the Commission recalls Article 2(1) of INTERPOL's Constitution, which stipulates that data processed in INTERPOL's files must respect the basic rights of the data subjects in the spirit of the Universal Declaration of Human Rights. Article 14(7) of the International Covenant for Civil and Political Rights states that a person may not be tried, convicted or acquitted in a country more than once for the same set of facts. This principle is among the essential guarantees of the defense in national proceedings; however, it is not equally recognized at the international level except when explicitly accepted by States under bilateral or multilateral agreement, or when the original proceedings were officially transferred from the prosecuting country to the other.

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22. The Commission discerns that the Applicant is the subject of separate criminal prosecutions in two INTERPOL member countries based on the established principles of territorial and national jurisdiction. He has hence yet to be tried for the underlying facts and charges in both countries, and neither has agreed to transfer the proceedings in the case to the other. The Commission takes particular note that in the absence of any acquiescence from either the CCC or DDD authorities to the Applicant's prosecution in the other country, their lack of cooperation has resulted in him being discharged on [date] in the proceedings in DDD due to a lack of evidence-sharing. Under such circumstances, there are no factual grounds to consider that the principle of *non bis in idem* under Article 14(7) of the ICCPR may be engaged in the present instance.
23. In the second, the Commission discusses the interest of the Diffusion for the purposes of international police cooperation in the meaning of Article 35 of the RPD. It here considers how the EEE authorities, after initially arresting the Applicant pursuant to the Diffusion, instead opted to extradite him to DDD. It determines that an INTERPOL member country's response to conflicting extradition requests does not have a substantial impact on the interest of the data under Article 35 of the RPD, in particular because there are no elements in the Applicant's case to suggest that his extradition to CCC, if located and arrested in another country, would be improbable. It underlines that a caveat may be added to his file with information on these parallel proceedings in DDD, which would enable INTERPOL member countries to have sufficient information before and when acting upon the Diffusion.
24. The Commission lastly deliberates the Applicant's contention that the CCC authorities have failed to fulfil the purpose of the Diffusion by refusing to transfer the proceedings to DDD. Taking into account its findings under paragraphs 19 and 22 above, it emphasizes that there is no obligation under INTERPOL's rules for the CCC authorities to forgo their sovereign right to prosecute him under the territorial principle of jurisdiction, in favour of a transfer of proceedings to another country.
25. Based on the above, the Commission concludes that the purpose of the Diffusion remains valid, and the existence of the parallel proceedings in DDD for the same facts and charges raise neither concern for a breach of the *non bis in idem* principle nor for a lack of interest for the purposes of international police cooperation. The Commission finds that information relating to these parallel proceedings should be added to the Applicant's file, thus leaving the issue of conflicting jurisdictions over the case, between CCC and DDD, to the discretion and individual determination of whichever national authorities from whom his extradition would be requested.

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 updates of the Applicant's file:

- the following caveat is added in INTERPOL's files: "*On [date], the subject was extradited from EEE to DDD for his prosecution over the same facts and charges. He was discharged in those proceedings on [date] due to a lack of evidence.*"

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Secretariat to the Commission
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