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 [the Applicant]

[xxx] th session
[date]

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

Members,

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

I. PROCEDURE

1. On [date], [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 [Country 1], the NCB of [Country 2], 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]th session.

II. DATA RECORDED IN INTERPOL'S FILES

4. The Applicant, a national of [Country 1], is the subject of a Red Notice issued on [date], at the request of the NCB of [Country 1], to serve a sentence for the offence of " *fraud* ", on the basis of a court decision handed down on [date] by [Court] and an arrest warrant issued on [date] by [Court].

5. The facts of the case state the following: *In [year] in [City], [the Applicant] made the following proposal to [Company A]: He claimed that he was able to supply the electronic ICs needed from [Country 3] for manufacturing car airbags, by much lower price than the market price. The representation was made on the basis of the fact that [the Applicant] owned a company in [Country 3] called [Company B] and during the COVID-19 the market was short of electronic ICs. [The Applicant] intended to deceive the managers of [Company A] since he refused to sign a contract, received [Amount 1] and later sent just 10 percent of the order by much lower quality than expected. Furthermore, in order to evade anti money laundering regulations of [Country 3], he paid back a part of received money, but he still owes [Amount 2], and seemingly took that sum for his own benefit* ".

III. THE APPLICANT'S SUBMISSIONS

6. The Applicant requested the deletion of the data concerning him, contending, in essence that the Red Notice is not compliant with Article 2 of INTERPOL's Constitution and the spirit of the Universal Declaration of Human Rights (UDHR), in view of the serious risks of violations of his fundamental human rights, as established by the decision of [Country 2] authorities to deny his extradition to [Country 1].

IV. APPLICABLE LEGAL FRAMEWORK

7. The Commission considers the following applicable legal framework.

   7.1. Field of competence of the Commission:

   - Article 36 of INTERPOL's Constitution
   - Articles 3(1)(a) and 33(4) of the Statute of the Commission.

7.2. Compliance with fundamental human rights:

- Article 2(1) of INTERPOL's Constitution,
- Articles 5, 7, 9, 10 and 11 of the UDHR,
- Article 11 of the RPD.

V. ANALYSIS OF THE CASE

Respect for the Applicant's human rights and compliance of the data with Article 2 of INTERPOL's Constitution

a) Submissions of the Applicant

8. The Applicant indicated that he is a national of [Country 1], residing in [Country 3]. He added that he was arrested in [Country 2] on [date], on the basis of a Red Notice issued at the request of the NCB of [Country 1], based on vaguely defined accusations of fraud relating to a past commercial dispute involving his company, of which he was never properly notified before. He indicated that on [date], he was released from detention with an obligation to report daily to the police, to hand over his passport, and to remain in [City] pending extradition proceedings.

9. He argued that a formal extradition request was transmitted by [Country 1] authorities to their [Country 2] counterparts on [date]. Later, on [date], the Prosecutor General filed his official observations before the [Court] of [City], requesting the denial of the extradition request submitted by the [Country 1] authorities. Eventually, on [date], the [Court] of [City] issued a decision denying the Applicant's extradition to [Country 1], formally closing the proceedings and lifting the remaining restrictive measures.

10. He contended that [Court] of [City] grounded its decision on its determination that he would be exposed to real risks of serious violations of his fundamental human rights in [Country 1]. After reviewing its own jurisprudence and judicial practice in relation to extradition requests involving [Country 1], the decision of the [Regional Human Rights Court] in ([Case Name]) underlining structural violations of international standards in the judicial and penitentiary system in [Country 1], as well as information from the [Country 2] Ministry of Foreign Affairs and from the United Nations Special Rapporteur on the situation of human rights in [Country 1], the [Court] concluded that the Applicant would be at risk of being denied a fair trial, being subjected to persecution or on discriminatory grounds, and eventually being exposed to cruel, inhuman, or degrading punishment or treatment.

11. On this basis, the Applicant claimed that the Red Notice issued at the request of the NCB of [Country 1] is not compliant with Article 2 of INTERPOL's Constitution and with the "spirit of the UDHR" to which it directly refers, and requested that the data concerning him be deleted from INTERPOL's files, following the unequivocal decision adopted by [Country 2] authorities to deny his extradition on human rights grounds.

b) Submissions of the NCB of [Country 1] (NCB source of the data)

12. The NCB of [Country 1] confirmed the validity of the proceedings against the Applicant and of the Red Notice concerning him, clarifying that the Applicant is now wanted to serve a sentence of [duration] of imprisonment and full reimbursement of the defrauded amounts, after being convicted *in absentia* on [date] by [Court] The NCB added that the Applicant had the right to appeal the sentence, but only during a period of [number] days following its issuance date. On [date], acknowledging the final nature of the sentencing decision, a writ of enforcement of the court decision was issued by the prosecution services, in the form of a new executing arrest warrant.

13. The NCB indicated that the plaintiff in the case, the [Country 1]-based company [Company A], accused the Applicant (as defendant n°1) and his [Country 3]-based company [Company B] (as defendant n°2) of fraud in the context of a commercial transaction involving the delivery of electronic integrated circuits. Specifically, the Applicant through his company, took advantage of the chaotic state of the

integrated circuits market during the COVID-19 outbreak and recurring shortages of electronic equipment, and deceitfully promised to deliver integrated circuits in large quantities and at 10% of the market price. The plaintiff company therefore transferred [Amount 1] to his company, but he only delivered a part of the promised goods. Although he eventually refunded a portion of the funds to [Company A] in the following months, he still misappropriated a remaining amount of [Amount 2] without fulfilling his commercial commitments.

14. The NCB explained that the Applicant was convicted *in absentia* since he was not present in the country, and that he must have been informed of the charges and of the proceedings by his connections in [Country 1]. Moreover, the NCB acknowledged that the Applicant was arrested in [Country 2] on the basis of the Red Notice, and that an extradition request was transmitted to [Country 2] authorities, however it was not informed of the grounds for the eventual denial of extradition.

c) Information from the NCB of [Country 2]

15. The NCB of [Country 2] confirmed that the Applicant was arrested in [date] in [City], on the basis of the Red Notice issued at the request of the NCB of [Country 1]. The NCB further confirmed that following the reception of an official extradition request, the [Court] of [City] eventually denied the Applicant's extradition to [Country 1] on [date], and it provided the Commission with a copy of the judicial decision.

d) Findings of the Commission

16. The Commission recalls that under Articles 3(1)(a) and 33(4) 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 UDHR*". Against this background, the Commission underlines that it does not enter into an inquiry designed to take decisions on the application of national criminal or procedural law, like a domestic appellate court re-examines the legality and the regularity of the actions of a domestic court of first instance. Likewise, in view of its different mandate, it does not conduct a review of the same nature as the ones undertaken by international human rights treaty bodies or regional human rights courts, or with the same degree of scrutiny over the application of domestic law.

17. In order to abide by the "*spirit of the UDHR*" while at the same time respecting the limited role and fact-finding ability of the Commission, the simple assertion of procedural irregularities or legal interpretation of disputes cannot rise to the level of an Article 2 violation. Rather, the Commission considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that flagrant denial of due process took place in the context of the national proceedings underlying the data processed in INTERPOL's files.

18. In the present case, the Commission observes, on the basis of the information submitted by the NCB of [Country 1] itself, that the Applicant was sentenced *in absentia* on [date] by [Country 1] judicial authorities (*i.e.* at the time during which he was actually undergoing extradition proceedings in [Country 2], on the basis of an arrest warrant and to be brought to trial in [Country 1]).

19. The Commission recalls that the right to be promptly informed in detail of criminal charges is a prerequisite for a defendant to be able to effectively exercise his or her rights of the defence, as enshrined in Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR). While there are limits to the efforts which may be expected from a prosecuting State for the notification of an accused, it must demonstrate that it has diligently attempted to establish contact with the defendant regarding the proceedings and particularly in cases where a trial is later held in their absence.

20. From the judicial decision dated [date] and provided by the NCB, it appears that the Applicant was absent from his trial and not represented by any counsel, but simply declared as a fugitive for being

abroad and "untraceable". Likewise, the Commission notes the NCB's indication that the Applicant was convicted *in absentia* due to his absence from the country, and that he must have been informed of the proceedings "through his connections in [Country 1]". The Commission further notes that the Applicant (defendant n°1) is mentioned in judicial documents as residing in [Country 3] and as the owner of [Company B] (defendant n°2, as a legal entity), a company incorporated in [Country 3] with publicly accessible contact details. In addition, the NCB confirmed that the Applicant had the right to lodge an appeal against his conviction within [number] days following the issuance of the *in absentia* verdict, and that the sentence is now considered final, as acknowledged by the writ of enforcement dated [date].

21. Despite renewed consultations of the NCB of [Country 1] on the specific notification efforts undertaken towards the Applicant, particularly in view of the *in absentia* proceedings and the impossibility to further appeal or oppose the sentence, the NCB source of the data has not provided any additional clarifications. The Commission further observes that the NCB of [Country 1] only updated the Red Notice in [date] to reflect the fact that the Applicant was no longer wanted "to be prosecuted" on the basis of the arrest warrant issued on [date], but rather wanted "to serve a sentence" handed down *in absentia* on [date]. The Commission finds that the inaccuracy of the data for an extended period of time, coupled with serious concerns as to the existence of efforts to notify the Applicant of the proceedings, and the absolute inability to further appeal the conviction handed down in his absence, raise doubts with regard to the overall compliance of the challenged data, and notably with Article 2 of INTERPOL's Constitution. It nevertheless resolves to continue studying the other claims submitted by the Applicant, in view of their connection and relevance for the compliance review.

22. At this point, the Commission turns to the Applicant's principal claim that the data are not compliant with Article 2 of INTERPOL's Constitution in view of [Country 2]'s decision to deny his extradition on human rights grounds. The Commission first recalls 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, necessarily affect the compliance of the corresponding data registered in INTERPOL's files. 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). 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.

23. Yet, the Commission acknowledges 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. In this context, the Commission underlines that it is not its role to assess a country's law enforcement or judicial system *in abstracto* and that it 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.

24. In the present case, the decision of the [Court] of [City] dated [date] explicitly outlines real risks that the Applicant be directly exposed to fair trial rights violations and detained in conditions not compliant with international standards. In this extradition denial decision, the Commission pays particular attention to the following findings of the Court concerning the specific situation of the Applicant, after reviewing available information from the casefile:

> *"These are entirely reliable pieces of evidence, which, more importantly, remain uncontested by the requesting State. Despite being informed of these proceedings by the [Country 2] Ministry of Justice, the requesting State has not exercised its right to participate in the present proceedings pursuant to [Article] of the Code of Criminal Procedure. […] It is therefore evident that the conditions required by the Code of Criminal Procedure for the extradition of the [Country 1] citizen to his*

country are not met, as it is clear from the evidence that the criminal proceedings and subsequent sanctions do not ensure respect for fundamental human rights. The evidence presented indicates that it is uncertain whether [the Applicant] has been or will be subjected to a fair trial that guarantees fundamental human rights for the offence for which extradition is sought. Furthermore, there are well-founded reasons to believe that the extraditable person will be subjected to persecution or discrimination on grounds of race, religion, gender, nationality, language, political opinions […] which would constitute a violation of fundamental human rights".

25. In view of these findings, as well as all the elements analysed above in relation to the *in absentia* proceedings and the Applicant's inability to participate and to appeal his conviction, the Commission finds that the data registered by the NCB of [Country 1] in relation to the Applicant are not compliant with Article 2 of INTERPOL's Constitution and with "*the spirit of the UDHR*".

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