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], Mr [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 Bureau (NCB) of [Country 1] and the INTERPOL General Secretariat (IPSG) in accordance with Article 34 of the Statute of the Commission, on the arguments set forth in the request.

3. On [date], the NCB of [Country 1] confirmed the validity of the proceedings and of the court decision ordering the Applicant's arrest and provided answers to the questions raised by the Commission.

4. On [date], the Applicant also 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.

5. After being authorized by the NCB source of data [Country 1], the Commission informed the Applicant on [date] that he is wanted through INTERPOL's channels by the authorities of [Country 1], for the charges of " 1) abduction; 2) banditry; 3) murder committed by organized gang connected with abduction" and provided the information described in paragraph 09 below.

6. 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.

7. Further to Article 40(3) of its Statute, the Commission also noted that for reasons including the high volume of submissions, the processing of the file was not decided within the standard time limit set out in Article 40(2) of the said Statute.

## II. DATA RECORDED IN INTERPOL'S FILES

8. The Applicant, a national of [Country 1], is the subject of a Red Notice issued on [date] by the NCB of [Country 1] for " *1) abduction; 2) banditry; 3) murder committed by organized gang connected with abduction* " on the basis of an arrest warrant issued on [date] by [Court].

9. The facts of the case state the following: *"[City], [Country 1], [date]. In [year] [Group leader] organized armed criminal group for committing assaults against citizens and organizations in [Region 1] and [Region 2]. He involved the subject in this criminal group. On [date] in [Region 2] the subject and his accomplices abducted [Victim]., transferred him to [Region 1]. Later [Victim] was murdered by [Group leader]."*

10. An extract of the Notice was published on INTERPOL's website.

## III. THE APPLICANT'S SUBMISSIONS

11. The Applicant requested the deletion of the data concerning him, contending, in essence that:

    a) the proceedings are unlawful;
    b) in the event of extradition he could be subjected to human rights violations; and
    c) the data lack a clear description of his criminal involvement.

## IV. APPLICABLE LEGAL FRAMEWORK

12. The Commission considers the following applicable legal framework.

    12.1. 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.

    12.2. Lawfulness of the proceedings:

    - Articles 5(2), 11(1), 12(2), 34(1), 34(3) and 83(2)(b)(v) of INTERPOL's Rules on the Processing of Data (RPD).

    12.3. Compliance with human rights:

    - Article 2(1) of INTERPOL's Constitution,
    - Articles 11, 12 and 34(1) of the RPD,
    - The INTERPOL Repository of Practice on Articles 2 and 3.

    12.4. Clear description of criminal involvement:

    - Articles 12 and 83(2)(b)(i) of the RPD,
    - IPSG standards for the application of the RPD.

## V. ANALYSIS OF THE CASE

13. For an appropriate study of the case, the Commission decided to study together below the three arguments presented by the Applicant, since they are interdependent and rely on the same factual allegations.

### Lawfulness of the proceedings, respect for human rights and due process principles, and description of criminal involvement

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

14. The Applicant contended that the underlying proceedings are unlawful and violate the principles of due process. He first claimed that the resolution bringing him as an accused did not contain a clear description of his criminal involvement, lacking a description of the time, place, and other legal required circumstances of the facts, which allegedly contravened [Articles] of the Criminal Procedure Code of [Country 1].

15. He further alleged that his right to defence was breached, as during the decision on taking a preventive measure in the form of detention, he was represented by a lawyer not appointed by him, [Attorney 1], who also represented another co-defendant, [Co-defendant 1], whose interests were

contradictory.

16. Finally, he contended that the evidence against him was derived from confessions obtained through torture inflicted upon his co-defendants [Co-defendant 2], [Co-defendant 3], and [Co-defendant 4]. In support of this claim, he submitted the [Regional Human Rights Court] judgment of [date] (Application No. [xxx]), filed by the individuals, in which the Court declared their complaints admissible and found violations of both the substantive and procedural limbs of [Article] of the [Convention] concerning torture and inhuman or degrading treatment. On this basis, he also alleged that, should he be extradited, he would face a risk of torture and, additionally, coercion to participate in military actions against [Country 2]—allegations he claimed constitute a breach of Article 2 of INTERPOL's Constitution.

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

17. The NCB informed the Commission that the Applicant is subject to two criminal proceedings (No. [xxx] and No. [xxx]), which were consolidated with criminal case No. [xxx]. Two indictments were issued against the Applicant: one on [date] (case No. [xxx]) and another on [date] (case No. [xxx]). The NCB also provided a copy of the court decision dated [date] ordering the Applicant's arrest in connection with this Red Notice, following the first indictment, as well as a copy of the second indictment.

18. It further explained that the broader criminal investigation, which includes the Applicant's criminal proceedings, established that in [year] [Group leader] created and took leadership of a criminal group with a view to carrying out joint attacks on citizens in the territory of [Region 1] and [Region 2]. Between [year] and [year], the group included, among others, the Applicant. In the course of the group's operations, the Applicant directly participated in the abduction of [Victim]. On [date], at [time], at [location], armed members of the group, including the Applicant, captured and abducted the [Victim], who was forcibly transported by car from that location to the [District] of [Region 1], where he was shot dead by [Group leader]. To conceal evidence of the crime and dispose of the body, they excavated a grave, deposited the body, and covered it with soil.

19. The NCB further informed the Commission that the charges against the Applicant are supported by the statements of [Co-defendant 4], [Accomplice], and [Co-defendant 2], who stated that the Applicant was an active member of the criminal group and was involved in both the abduction and murder of [Victim]. These statements were confirmed during in-person interrogations and crime scene verifications. Specifically, an identification report shows that [Co-defendant 4] identified the Applicant from photographs as the person who, jointly with him, committed the abduction and subsequent murder of [Victim]. In addition, corroborating evidence was collected in the criminal case, including: on-site inspection reports; statements from victims and witnesses; records of seizures and searches during which weapons were found; expert opinions (medical, ballistic, and other); results of law enforcement intelligence operations; and other materials from the criminal case file.

20. Regarding the Applicant's argument that the proceedings were unlawful due to the alleged absence of a description of his criminal activities in the criminal case file, the NCB explained that his indictment specifies the Applicant's role, the time, place, and methods of the crimes committed. They further confirmed that was issued in accordance with the requirements of the Criminal Procedure Code of [Country 1].

21. Concerning the Applicant's argument that the appointment of a single attorney to represent two suspects in the same case violated criminal procedure legislation, the NCB informed the Commission that, under [Article] of the Criminal Procedure Code of [Country 1], an attorney may defend two suspects or accused persons unless their interests conflict. Given that the Applicant and [Co-defendant 1] fled the investigation and their interests have not conflicted to date, the investigator was entitled to appoint a single attorney to defend both accused persons in order to uphold their defence rights.

22. Furthermore, attorneys [Attorney 2] and [Attorney 1] were present when the Applicant and [Co-defendant 1] were charged and when a preventive measure in the form of detention was imposed on them. No other investigative or criminal proceedings have been conducted involving the

aforementioned attorneys with respect to the Applicant and [Co-defendant 1].

23. Furthermore, the NCB informed the Commission that no information supports the allegations of torture. The statements of [Co-defendant 2], [Co-defendant 3], and [Co-defendant 4] were obtained in compliance with the Criminal Procedure Code of [Country 1]. As the investigation has not substantiated these claims, they are deemed unfounded.

*c) Findings of the Commission*

24. The Commission assesses whether the processing of data in INTERPOL's files complies with Article 2 of the Constitution, and Article 11 of the RPD. Specifically, under Article 2 of the Constitution, data processed in INTERPOL's files must respect the spirit of the Universal Declaration of Human Rights (UDHR). Additionally, Article 11(1) and (3) of the RPD requires that data processing be authorized under applicable national law, and that NCBs ensure they are authorized to record data pursuant to domestic laws before doing so.

25. The Commission's role is not to assess a country's law enforcement or judicial system, but to examine the compliance of the data with INTERPOL's rules on the basis of specific information related to the request. Furthermore, in order to respect the spirit of the UDHR while at the same time respecting the limited role of the Commission, in carrying out an Article 2 analysis, the Commission considers all relevant information to determine whether the Applicant has convincingly demonstrated the likelihood that a flagrant denial of due process took place.

26. The Commission notes that the Applicant challenged the lawfulness of the proceedings on three grounds: (i) reliance on illegal evidence obtained through torture; (ii) assistance by a lawyer not officially appointed during the arrest warrant hearing (who also represented a co-defendant with allegedly conflicting interests); and (iii) insufficient description of his criminal involvement in the decision designating him as an accused. As the third argument raises issues under two legal grounds (lawfulness of the proceedings and description of criminal involvement), the Commission considers it appropriate to examine these arguments jointly.

27. The Commission determines to first analyse the argument concerning the obtaining of illegal evidence through torture.

28. The Commission recalls that it is a norm of international law that statements obtained by torture or in obvious violation of human rights shall not be invoked as evidence in criminal proceedings, as their use would constitute a violation of due process principles. Moreover, under Article 2 of INTERPOL's Constitution and Articles 11(1) and 34(1) of the RPD, the Organization shall ensure that data processing in INTERPOL's Information System respects the fundamental rights of data subjects, including the right not to face a trial tainted by evidence obtained through torture.

29. The Commission further notes that the Applicant supported his claim by providing a decision from the [Regional Human Rights Court]. In that decision, concerning an application filed by the co-defendants, the Court declared their complaints admissible and found violations of both the substantive and procedural limbs of [Article] of the [Convention] regarding torture and inhuman or degrading treatment. The factual allegations in that judgment indicate that the co-defendants claimed that the alleged violations occurred during the investigation of the same criminal proceedings to which the Applicant is subject, and that they were subsequently convicted.

30. Although the decision does not specifically concern the Applicant, it supports his allegation that the evidence against him —namely, the confessions of the co-defendants— was obtained under torture. While the NCB stated that the confessions were not obtained under torture, and that the accusation against the Applicant also relies on other probative elements, the decision submitted by the Applicant provides substantial grounds to support his allegations and indicates the serious risks of being tried based on such evidence. Furthermore, it provides an authoritative assessment not only of the alleged violation of the Applicant's due process rights, but also of the potential human rights violations to which the Applicant could be exposed in the event of extradition. The fact that three co-defendants were found to have been subjected to torture by an independent tribunal raises serious concerns

about potential violations of human rights and due process principles regarding the Applicant should he be extradited and subjected to the criminal proceedings underlying this Red Notice.

31. In light of these observations, the Commission considers that the grounds underlying the decision from the [Regional Human Rights Court] raises serious concerns about the serious risk of human rights violations if the Applicant were to be returned, and finds, therefore, that the retention of the data in INTERPOL's files would not be compliant with Article 2 of INTERPOL's Constitution.

32. Since the Commission could conclusively dispose of the matter in favour of the Applicant on the above basis, it decides not to examine the Applicant's other contentions.

## 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