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] presented a request for access to the information concerning him registered in INTERPOL's files and its subsequent deletion. On [date], the Commission found the request not admissible as per Rule 30 of its Operating Rules and informed the Applicant thereof, indicating that the request would be closed and archived absent the submission of the necessary documents.

2. On [date], the Applicant lodged a new 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].

3. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureau (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.

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]th session.

II. DATA RECORDED IN INTERPOL'S FILES

5. The Applicant, a national of [Country 1], is the subject of a Diffusion circulated on [date] by the NCB of [Country 1] for the charges of *"Participation in the exploitation of a public official's status to obtain illegitimate benefits for oneself and others, to harm the administration, and to violate applicable regulations governing such operations in order to achieve said benefits and inflict the aforementioned harm; money laundering through the misuse of privileges granted by the nature of the function, professional activity, and social standing; bribery and fraud; maintaining and using fraudulent records; and complicity in all the aforementioned acts "*, on the basis of an arrest warrant issued on [date] by the [Investigating Court].

6. The facts of the case state the following: *"[The Applicant], acting as the agent for the company "[Company A]", systematically completed customs transit declarations for shipments destined for [Country 3], specifically concerning second-hand clothing and used spare parts. However, it was not proven that these goods actually entered [Country 3] territory, contrary to the transit declarations filed by the aforementioned company and by "[Company B]". [Company B] is a one-person limited liability company wholly owned by the suspect [the Applicant], who also serves as its agent. The suspect habitually completed these transit declaration operations throughout the entire period from the beginning of [year] to the end of [year], utilizing the entry offices at the border crossings of "[City 1]" and "[City 2]", and the exit office at the "[Border post]" border crossing. Furthermore, it was established through the file records that the suspect [the Applicant] left [Country 1] territory for [Country 4] on [date]."*

III. THE APPLICANT'S SUBMISSIONS

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

   a) the data lack a clear description of his alleged individual criminal involvement, in violation of Article 83 of INTERPOL's Rules on the Processing of Data (RPD);

   b) The authorities of [Country 2] denied his extradition to [Country 1], after the authorities of [Country 4] and [Country 2] had already denied the extradition of his co-defendant in the same case to [Country 1].

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(4) of the Statute of the Commission.

   8.2. Provisions relating to Diffusions:

   - Articles 10(2)(a), 35(1), 97(1), 97(2), and 99 (2) of INTERPOL's Rules on the Processing of Data (RPD).

   8.3. Clear description of criminal acts:

   - Article 12 and 99(2) of the RPD,
   - IPSG standards for the application of the RPD.

   8.4. Extradition issues:

   - Article 31 of INTERPOL's Constitution,
   - Articles 10, 34(1), 81, 82, 84(b), and 87(b) of the RPD.

V. ANALYSIS OF THE CASE

9. For an appropriate study of the case, the Commission decided to study together under a single point below the claims related to the alleged lack of clear description of the Applicant's criminal activities and the extradition matters, since they both relate to the same legal issues.

Lack of clear description of criminal activities and extradition issues

a) Submissions of the Applicant

10. The Applicant indicated that he has discovered that the authorities of [Country 1] issued an arrest warrant on [date] concerning him, in relation to accusations of abuse of position as a public servant to procure an advantage, money laundering, and complicity to corruption and forgery, in the context of customs declarations he would have filled, as an agent of the [Company A], for the transfer to [Country 3] of second-hand clothing and spare parts. He contended that he was arrested on [date] in [Country 2] and subjected to extradition proceedings on the basis of a Diffusion linked to this arrest warrant. In this context, the authorities of [Country 2] requested additional information from their counterparts in [Country 1] about the facts of the case and the alleged criminal acts, but to no avail.

11. He indicated that the elements submitted by the authorities of [Country 1] remained extremely general, and only mentioned a suspicion that the [Company A] may have been conducting contraband activities, and that as an agent of the company, he was criminally liable and wanted for further interrogation in the context of the investigation. He underlined that the description of the criminal activities attributed personally to him is clearly insufficient and that no elements have been provided to outline his alleged role in the potential criminal scheme. He argued that the absolute lack of detailed information about the accusations may be demonstrative of the possible misuse of the criminal justice system in this case, either in the pursuit of private interests or of ulterior motives.

12. He claimed that the judicial authorities of [Country 2] eventually denied his extradition to [Country 1], through a decision of the [Court of Appeal 1] dated [date], underlining the absence of clear and concrete elements describing the alleged criminal acts he was charged with, and the inability of the authorities of [Country 1] to support their extradition request with any substantive or useful clarifications. Additionally, he underlined that the decision also mentions risks that his fundamental human rights may be violated upon extradition to [Country 1].

13. Lastly, he indicated that his co-defendant in the same criminal case ([Co-defendant 1]) was subject to a similar Diffusion based on identical facts and the same arrest warrant, and that his extradition was denied by the authorities of [Country 2] and by the authorities of [Country 4], which both concluded that the facts of the case did not clearly illustrate the existence of criminal conduct. Eventually, the Commission decided that the identical Diffusion concerning [Co-defendant 1] was not compliant with INTERPOL's rules, and it was deleted from INTERPOL's files on [date]. He concluded that the Diffusion circulated by the NCB of [Country 1] concerning him must also be removed from INTERPOL's files, as it fails to comply with basic requirements of data quality and accuracy, and to establish a clear link between him and the serious charges.

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

14. The NCB confirmed that the Diffusion and the underlying arrest warrant issued against the Applicant were still valid, and indicated that the investigations were continuing on this case. It also explained that the Applicant could not be notified locally, due to his status as a fugitive, as indicated by border police records establishing that he left [Country 1] on [date].

15. The NCB explained that the Applicant, in his capacity as an agent for the [Company A], was tasked with completing customs declarations relating to transit operations between [Country 1] and [Country 3], notably concerning used clothing and spare parts. The aforementioned goods were not proven to have entered [Country 3] in accordance with the transit declarations completed by the [Company A], as well as by the [Company B], which is a one-person limited liability company that owns all its shares, and for which the Applicant is also an agent. According to the investigation, the Applicant completed the transit declaration operations throughout the entire period extending from the beginning of [year] to the end of [year], via the entry offices of [City 3], [City 2], and [City 4] and the exit office at the border crossing with the [Border post].

16. The NCB indicated that after being informed of the Applicant's arrest in [Country 2], the judicial authorities of [Country 1] transmitted a formal request for extradition to their counterparts in [Country 2]. However, the extradition request was denied by a judicial decision issued on [date], communicated by the authorities of [Country 2].

c) Information from the NCB of [Country 2]

17. The NCB of [Country 2] was consulted multiple times on the extradition proceedings and on the decision denying the Applicant's extradition adopted by the [Court of Appeal 1] on [date]. Despite four reminder messages over the course of several months, the NCB of [Country 2] has not provided any answers to the Commission's queries.

d) Findings of the Commission

18. The Commission recalls that the provisions of Article 83 of the RPD are not applicable *stricto sensu* to Diffusions but only to Red Notices, and cannot therefore serve as the legal basis under which the Commission may analyse the compliance of the data relating to the Applicant. Nevertheless, in view of the similarity of purposes between Red Notices and wanted person Diffusions, the Commission holds that the requirements of quality of the data found in Articles 12 and 99(2) of the RPD as well as the requirements of relevance and interest for the purposes of international police cooperation found in Article 35 and 37(h) of the RPD imply the need for a clear and coherent description of the alleged criminal activities attributed to the wanted individual for the circulation of a Diffusion.

19. The Commission also considers IPSG's standards and policy on the quality of summary of facts for notices and diffusions requests, notably the IPCQ dated 25 August 2023 entitled "*Quality of summary of facts for Notices and Diffusions requests*", which require that the criminal activity should be described in sufficient detail for the nature of the offence to be determined, and that the role of the individual in the criminal activity described should be specified in sufficient detail, with sufficient facts linking the subject of the data to the charges, to enable an understanding of how the individual committed the offence.

20. In the present case, the Commission notes that the summary of facts reproduced in the Diffusion as well as the elements provided by the NCB of [Country 1] appear extremely vague and general as to the concrete acts attributed to the Applicant, so that it remains impossible to determine whether he is accused of being himself the author of allegedly fraudulent custom declarations or a beneficiary of these acts, through his quality as "agent" of [Company A]. Likewise, from the very limited description of the factual situation, the Commission is unable to clearly understand the acts constituting the *actus reus* of the distinct charges of abuse of position, money laundering, complicity to corruption, bribery, fraud or forgery, mentioned in the documents transmitted by the NCB.

21. At this point, the Commission also underlines that the requirement enshrined in the RPD to provide a clear description of the criminal activities linking the data subject to the charges is not purely formal, but is notably aimed at allowing other member countries to verify their ability cooperate on the basis of the data, for instance through the application of the dual criminality principle, of the statute of limitation, or of exception clauses excluding some type of criminality from cooperation treaties.

22. In this case, it notes that although the Diffusion led to the Applicant's arrest in an INTERPOL member countries and the initiation of extradition proceedings, it was nevertheless not able to result in the fulfilment of its actual ultimate purpose (*i.e*, the Applicant's extradition), notably in relation to the lack of sufficient elements describing the criminal activities in the case. The Commission underlines that although the NCB of [Country 2] did not reply to its queries relating to the denial of extradition, despite multiple reminders, it has no reason to doubt the authenticity of the decision, in view of messages from the NCB of [Country 2] registered in the INTERPOL Criminal Information System, and the acknowledgement of the extradition denial by the NCB of [Country 1] itself.

23. Here, the Commission acknowledges that the mere fact that one of INTERPOL's Member countries has denied the extradition of an individual subject to a Red Notice or a Diffusion does not, in itself, directly affect the compliance of the corresponding data registered in INTERPOL's files. In this regard, it should be noted that INTERPOL General Assembly resolution AGN/53/RES/7 of 1984 states that "*if certain* countries *refuse extradition, this is reported to the other NCBs in an addendum to the original notice*".

24. 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.

25. Yet, the Commission acknowledged that in some cases, national decisions denying the extradition of an individual may be regarded as additional evidence supporting the Applicant's claims, for instance here in relation to the lack of clear description of the criminal acts attributed to him. The Commission pays particular attention in this connection to the following findings of the [Court of Appeal 1] in its decision dated [date]:

> *"In the case at hand, it is observed first and foremost that the documentation transmitted by the authorities of [Country 1] is extremely confusing and lacks clarity in terms of reading and comprehension. The extradition request does not include any precise description of the facts, locations, and methods of the alleged conduct. Therefore this Court finds that the attached documentation, even outside of the issued related to translation from originals, does not allow for a complete understanding of the dynamics of the case.*
>
> *For example, the records include a lengthy report, undated and signed by [Official 1], detailing various export import commercial activities conducted by the Applicant's company named [Company A], where it is unclear what illegal actions are being alleged and what specifically the accused has done. Moreover, this document concludes by indicating the need for further investigative activities to be carried out by the authorities of [Country 1]. […] There is a description of commercial activities undertaken by the Applicant's company related to the import and export, but no illegal conduct attributable to him emerges. Therefore, the requirement of sufficient evidence to justify committal to trial is not met.*
>
> *[…] In addition to the elements already more than sufficient to render an unfavourable decision regarding extradition, it must be noted that the [Court of Appeal 2], studying a similar case concerning a co-defendant, [Co-defendant 1], rejected the extradition request, deeming the evidence provided by the authorities of [Country 1] to be wholly insufficient. Furthermore, the authorities of [Country 4], specifically the [Court of Appeal 3], also rendered an unfavourable opinion on the extradition request concerning [Co-defendant 1].*"

26. At this point, the Commission also recalls its own Decision adopted in relation to [Co-defendant 1] during its [xxx]th session ([date]), who was subject to a virtually identical Diffusion in relation to the same criminal case. After noting that two distinct INTERPOL member countries had denied [Co-defendant 1]'s extradition, and reviewing the information provided by the NCB of [Country 1], the Commission eventually concluded that the data failed to provide a clear description of the criminal acts attributed to the data subject and decided that such Diffusion was not compliant with INTERPOL's rules.

27. In view of all these elements, taking into account the lack of clarity and specificity of the factual elements provided by the NCB of [Country 1], as well as the extradition denial decision adopted by the authorities of [Country 2], and its Decision relating to the Applicant's co-defendant in the same criminal case, the Commission concludes that the data relating to the Applicant submitted by the NCB of [Country 1] are not compliant with INTERPOL's rules and notably with Article 12 and 99(2) of the RPD.

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