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]

(Ref. CCF/XXX/XXX)

[xxx]th session

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

Members,

Having deliberated during its [xxx] 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 Bureau (NCB) of [Country 1], the NCB of [Country 2], the NCB of [Country 3], 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.

4. Further to Article 40(3) of its Statute, the Commission noted that for reasons including the high volume of submissions and the necessary consultation of several NCBs, the processing of the file was not decided within the standard time limit set out in Article 40(2) of the Statute

II. DATA RECORDED IN INTERPOL'S FILES

5. The Applicant, a national of [Country 1] and [Country 3], is the subject of a Red Notice issued at the request of the NCB of [Country 1], for the charge of "*Illicit trafficking of narcotics and attempted illicit export of narcotics, offences committed as part of a transnational organised criminal group, and attempted export of prohibited goods*" on the basis of an arrest warrant issued on [Date] by the Tribunal of [Country 1].

6. The facts of the case state the following: *" In [Date], an organised gang including [the Applicant] — plotted to smuggle cannabis from [Country 1] into [Country 2]. [Country 3] police who were listening to interceptions on the gang's phone lines, tracked the whole operation from the planning calls through to the moment [Country 1] customs seized the smugglers. When the net closed, [Person 1] and [Person 2] both picked out [Person 3] in identity parades. [The Applicant] denied everything. He denied recognising anyone in the photographs shown to him. He said he had flown to [Country 2] on [Date], but the [Country 1] border records showed something different. When summoned to appear before the [Country 3] court in [Date], he never showed up. He was declared a fugitive. "*

III. THE APPLICANT'S SUBMISSIONS

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

   a) [Country 2] authorities have denied his extradition to [Country 1], based on statutory limitations applied to the criminal charges against him;

   b) the Red Notice has lost its purpose, as [Country 1] failed to request his extradition from [Country 3], and in view of the passage of time since its issuance.

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. Purposes of the data and extradition issues:

- Article 31 of INTERPOL's Constitution,
- INTERPOL General Assembly Resolution AGN/53/RES/7 of 1984,
- Articles 10, 51, 82, 84(b), and 87 of INTERPOL's Rules on the Processing of Data (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 related issues of the extradition denial decision adopted by [Country 2] authorities and the remaining purpose of the registered data, since they are interdependent and rely on the same factual allegations.

Extradition issues and remaining purpose of the registered data

a) Submissions of the Applicant

10. The Applicant indicated that the [Country 1] police seized a drug shipment in [Country 1] on [Date] in a vehicle belonging to someone designated as [Person 4], who declared that the drug belonged to a trafficking network. Following the investigation, he became subject to an arrest warrant on [Date] issued by the Tribunal of [Country 1] for drug trafficking charges, and later to a Red Notice issued at the request of the NCB of [Country 1].

11. On [Date], he was arrested in [Country 2] on the basis of the Red Notice, and on [Date], [Country 1] authorities transmitted a formal extradition request to [Country 2] authorities. He was released on [Date] under judicial bail, and eventually the [Court] denied his extradition to [Country 1] on [Date]. The [Country 2] court noted that the facts of the case could reasonably be interpreted as minor offences not causing serious damages under [Country 2] law and were alleged to have occurred in [Date], so it concluded that the charges were barred by a [xxx]-year statute of limitations under [Country 2] law.

12. He further explained that he is residing in [Country 3], and that as a [Country 3] national, he cannot be extradited to [Country 1] under the applicable bilateral treaty linking the two countries. In this connection, he also underlined that [Country 3] judicial authorities have collaborated with the criminal proceedings in [Country 1] and that investigative acts have been executed in [Country 3] in the framework of an international rogatory letter. He contended that he has never been accused or suspected by [Country 3] judicial authorities, and that the investigation has long be closed and archived in [Country 3].

13. In view of this context, he contended that the retention of the Red Notice would not be compliant with INTERPOL's rules since it cannot serve its stated original purpose under Article 82, and that it is no longer necessary to maintain it in INTERPOL's files, in view of its impact on his rights.

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

14. The NCB confirmed the validity of the Red Notice and of the underlying arrest warrant issued on [Date] by the [Country 1] Criminal Court and provided copies of the arrest warrant and of the applicable criminal law provisions. The NCB explained that investigations into the attempted export of cannabis

resin revealed the existence of a group of individuals of various nationalities specializing in international drug trafficking, managed by an individual known as [Person 5] residing in [Country 4].

15. On [Date], customs seized significant quantity of drugs in [xxx] vehicles of the same make ([xxx]), preparing to leave via the Port of [Country 1] towards [Country 2] aboard the ship [xxx]. According to statements by one of the arrested individuals (to whom one of the vehicles was registered), the Applicant's personal role consisted of recruiting individuals to act as drug mules to smuggle drugs. According to the same statements, this person had met the Applicant in [Country 3] and they conspired to organize a transport operation in exchange for a sum of [xxx].

16. According to the NCB, they travelled together to [City] in [Country 3] where they purchased a car and moved to [City] in [Country 2]. Three weeks later, the Applicant delivered the vehicle, loaded with drugs, in the outskirts of [City] in [Country 1]. Through judicial investigations, law enforcement officers were able to confirm the identity of the Applicant.

17. The NCB indicated that a request for the Applicant's extradition was sent to the [Country 2] judicial authorities after the Applicant was arrested on the basis of the Red Notice. However, the [Country 2] authorities later issued a decision denying the extradition due to the application of statute of limitations under current [Country 2] legislation. The NCB reiterated its interest in obtaining the Applicant's arrest and extradition from any country where he would be located in the future and where extradition would be a legally available option, underlining that he is considered as a fugitive from the criminal process.

c) Information from the NCB of [Country 2]

18. The NCB of [Country 2] confirmed that the Applicant was arrested on the basis of the Red Notice, and that the [Country 2] Court decided on [Date] to deny his extradition request presented by [Country 1] authorities, on the grounds that the prosecution of the crimes were time-barred under [Country 2] legislation.

d) Information from the NCB of [Country 3]

19. The NCB of [Country 3] confirmed that after the Applicant's arrest, [Country 3] judicial authorities were consulted by [Country 2] authorities in [Date], to inquire whether they wanted to initiate any prosecution or issue a European Arrest Warrant for their own national, further to the European Union Court of Justice jurisprudence "*Petruhhin*". On [Date], [Country 3] authorities replied negatively to their [Country 2] counterparts and have not been informed about the final outcome of the extradition proceedings in [Country 2].

e) Findings of the Commission

20. The Commission recalls that under Article 82 of INTERPOL's Rules on the Processing of Data (RPD), the purpose of a red notice is to facilitate international police cooperation "*in order to seek the location of a wanted person and his/her detention, arrest, or restriction of movement for the purpose of extradition, surrender, or similar lawful action.*" Furthermore, the Commission underlines 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, directly affect the compliance of the corresponding data registered in INTERPOL's files.

21. In the present case, the Commission establishes that the Applicant was arrested on the basis of the Red Notice in [Country 2], and subject to extradition proceedings, based on a formal request submitted promptly by the authorities of [Country 1]. Eventually, after determining that the equivalent prosecution of the same acts covered by the extradition request in [Country 2] would be time-barred under the national statute of limitation, [Country 2] authorities denied his extradition on [Date], in application of Article [xxx] of the extradition treaty between the two countries.

22. The Commission notes that such denial of the Applicant's extradition was grounded on a technical matter which is country-specific and linked with this bilateral situation, but which does not affect the

possibility for other INTERPOL member countries to potentially cooperate on this case, being bound by different national statutes of limitation.

23. Additionally, the Commission takes note of the Applicant's arguments that [Country 1] authorities have not requested his extradition from [Country 3] for an extended period of time since the issuance of the Red Notice, being aware of his residency. Yet, the Commission also finds that since the Applicant himself is a [Country 3] national, his extradition would be legally impossible from [Country 3], a country which does not extradite its own nationals.

24. Therefore, the [Country 1] authorities had no ability to request his extradition and rather chose to resort to mutual legal assistance channels to advance their investigation. Overall, the Commission also establishes that the swift transmission of an extradition request to [Country 2] by [Country 1] authorities, as well as the renewed assurances provided by the NCB of [Country 1], tend to illustrate a genuine interest and reasonable efforts deployed by the authorities of the country source of the data. In view of these elements, the Commission finds that the data can still serve its stated purpose and lead to the Applicant's arrest and extradition from other INTERPOL member countries, in compliance with Article 82 the RPD.

25. Lastly, the Commission recalls 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*". The Commission holds that this resolution applies to the present case and that, in order to inform other NCBs comprehensively about the case, the extradition denial decision adopted by the [Country 2] authorities with regard to the Applicant should be reported in INTERPOL's files.

FOR THESE REASONS, THE COMMISSION

Decides that the challenged data are compliant with INTERPOL's rules applicable to the processing of personal data, subject to the following update of the Applicant's file:

- ⇨ the extradition denial of the Applicant by [Country 2] authorities is reported in INTERPOL's files: "*In application of INTERPOL General Assembly resolution AGN/53/RES/7 (1984), please note that on [Date], the judicial authorities of [Country 2] have denied a request for the Applicant's extradition to [Country 1], on the basis that the charges were time-barred under the [Country 2] national statute of limitations.*"

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