



DECISION OF THE COMMISSION

The Commission for the Control of INTERPOL's Files (the Commission) ...

Having deliberated in camera, delivered the following Decision. ...

I. PROCEDURE

1. On ..., the Applicant lodged a complaint before the Commission. Following the submission of all the required documents in accordance with Article 10 of the Operating Rules of the Commission, the request was found admissible, and the Commission informed him on ...
2. The National Central Bureau of INTERPOL (NCB) of Country A was consulted on the authorization to disclose information to the Applicant and on the arguments set forth in the complaint, in accordance with Article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files (RCI).
3. On ..., the NCB of Country A confirmed the validity of the proceedings and of the arrest warrant, and provided answers to the questions raised by the Commission.
4. The Commission informed the Applicant on ... that he is wanted through INTERPOL's channels by the NCB of Country A, for the charges of "*Uttering unfunded cheques*"
5. The Applicant was also informed of the fact that the Commission would study his complaint during the ... session, and invited to share any further information/document he would consider necessary for the study of his file with the Commission.
6. As of 11 March 2017, the Commission continued the study of the Applicant's request under the Statute of the Commission (CCF Statute) which abrogated and replaced the RCI on that date.
7. The Commission further consulted the NCB of Country B on specific issues raised in the Applicant's request.

II. FACTS

8. The Applicant is a national of Country B.
9. He is the subject of a red notice issued at the request of the NCB of Country A for "*Uttering unfunded cheques*", on the basis of an arrest warrant issued on by the Office of the Public Prosecutor in Country A.
10. The summary of the facts, as recorded in the red notice, is the following: "..."
11. On ..., the Applicant was arrested at his home by the authorities of Country B, on the basis of the Red Notice and following the reception of a formal extradition request from Country A. He was later released on conditional bail, pending the outcome of the extradition proceedings. On ..., Country B's courts denied the extradition of the Applicant to Country A.

III. THE APPLICANT'S REQUEST

12. The Applicant previously sought access to the data processed in INTERPOL's files. He now requests the deletion of the data concerning him.
13. He contends in essence that:
 - a) the cases are not of a criminal nature but rather of a civil nature, in contradiction with Article 83 of INTERPOL's Rules on the Processing of Data (RPD),
 - b) Country B's authorities have denied his extradition to Country A, and the authorities of Country A have not demonstrated genuine extradition efforts and diligence,
 - c) As Country B's authorities recognized the risks that his human rights would be violated upon surrender to Country A, the Red Notice contradicts Article 2 of INTERPOL's Constitution and the Universal Declaration of Human Rights to which it refers ;

IV. APPLICABLE LEGAL FRAMEWORK

14. Field of competence of the Commission:
 - Article 36 of INTERPOL's Constitution states that the Commission shall ensure that the processing of personal data by the Organization is in compliance with the regulations the Organization establishes in this matter".
 - Article 3(1)(a) and Article 33(3) of the Statute of the Commission establish that the powers of the Commission are limited to controlling whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements.
15. Offenses for which a Red Notice may not be published:
 - Article 83.1(a,i) of INTERPOL's Rules on the Processing of Data (RPD) states that "red notices may not be published for offences relating to private matters and for offences originating from a violation of laws or regulations of an administrative nature, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime".
16. Extradition issues:
 - Article 31 of INTERPOL's Constitution states that a member country shall do all within its power which is compatible with the legislation of its country to participate diligently in INTERPOL's activities.
 - Article 82 of the RPD states that "Red Notices are published (...) 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."
 - Article 10 of the RPD states that data shall be processed in the INTERPOL Information System for a specific purpose. Article 34(1) requires that processing of data is authorized "pursuant to applicable national laws and international conventions".
 - Article 81 of the RPD states that "the General Secretariat shall cancel a notice if [...] the National Central Bureau or international entity that requested the notice obtains data allowing it to carry out the required action but has not taken any steps to this end and, after being consulted, has not provided reasonable grounds for its lack of action."

- Article 84(b) of the RPD further states that the requesting National Central Bureau who has asked for the publication of a Red Notice “shall ensure (...) that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties.”
- Article 87(b) also states that “The requesting National Central Bureau shall act immediately once it has been informed that the person has been located in another country and, in particular, shall ensure the swift transmission - within the time limits defined for the case in question - of data and supporting documents requested by the country where the person was located or by the General Secretariat.”
- 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”.

17. Compliance with human rights:

- Article 2(1) of INTERPOL’s Constitution states that the Organisation should “ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights”.
- Article 34(1) of the RPD states that “the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 2 of the Organization’s Constitution”.
- Article 5 of the Universal Declaration of Human Rights (UDHR) states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 10 of the UDHR states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

V. FINDINGS

18. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat.
19. The Commission decided to review the Applicant’s contentions in the order in which they are described in paragraph 13 above.

A. Lack of criminal character

a) *The Applicant*

20. The Applicant explains that the case 1 referred to in the Red Notice is based on the charge of “*Uttering unfunded cheques*”. He claims that allegations of such nature are not generally recognised as criminal allegations in most contemporary justice systems but rather as civil disputes, and that they are rarely prosecuted even in Country A. He contends that maintaining the Red Notice in respect of the case 1 would violate Article 83(1) of the RPD, which prohibits the publication of a Red Notice for offences “originating from a violation of laws or regulations of an administrative nature or deriving from private disputes”.

21. In addition, the Applicant also claims that the case 2, referred to in the “Additional facts” of the Red Notice, arises from a private dispute and contradicts Article 83(1) of the RPD. He contends in this regard that parallel civil proceedings (case 3) based on the exact same facts have culminated in a judgement of Country A’s court dated ..., which has become final, and which concludes that he has no personal liability in this case. He underlines that he cannot be held as criminally liable in the criminal case 2, as Country A’s own national courts have resolved that, when judged against a lower standard of proof, he could not be held civilly liable in respect of the same allegations.
22. In relation to the case 3, referred to in the “Additional facts” of the Red Notice, he argues that the case similarly arises from a commercial dispute with an individual which could only give rise to civil proceedings, and that the offence lacks the criminal character required by Article 83(1) of the RPD.

b) The NCB of Country A (NCB source of the data)

23. In its reply, the NCB of Country A confirmed the validity of the proceedings and of the arrest warrant 1, and explained that the Applicant was wanted in parallel in two other criminal cases (cases 2 and 3).
24. The NCB of Country A also underlined that the offence of “*Uttering unfunded cheques*” is a serious criminal offence in its national legislation. The NCB further indicated that the offence of “*fraud*” related to cases 2 and 3, is also a serious criminal offence in its national legislation.

c) Findings of the Commission

25. The Commission first established that the Red Notice and the arrest warrant supporting it are based on case 1, and that the two other cases 2 and 3 are merely signalled in the “Additional facts” section as supplementary elements without the provision of judicial information or factual elements. Therefore, it decided to focus its review on the charge of “*Uttering unfunded cheques*”, which is the only one mentioned in the arrest warrant provided and the only one for which the NCB of Country A has chosen to use the channels of INTERPOL.
26. Concerning the publication of Red Notices for charges of unfunded cheques, the Commission recalled the General Secretariat’s position in this type of cases, as expressed in its diffusion....
27. The Commission determined that in the present case 1, forming the basis of the Red Notice, the minimum threshold envisioned by the General Secretariat has been reached both in terms of amount and in terms of repetition of the alleged criminal acts.
28. However, the Commission recalled that under Article 35 of the RPD any data recorded in INTERPOL’s files must be “*of interest for the purposes of international police cooperation*”, and that this interest shall be assessed, *inter alia*, in relation to the international nature of the data and the extent to which the data may be used by NCBs other than the source.
29. The Commission found that although the offence of “*uttering unfunded cheques*” is clearly a criminal offence under Country A’s national laws, such acts would probably not be recognized as an extraditable offence in many other national systems, where the lack of dual criminality would prevent national authorities to act upon requests for police cooperation based on this offence.
30. The Commission held that as a large number of INTERPOL Member countries consider the inability to pay a debt or to fulfil a contractual obligation as civil matters by opposition to criminal offences, the publication of Red Notices for the charges of of “*uttering unfunded cheques*” may not, in most instances, lead in practice to actual international police cooperation.

31. The Commission found that this issue raised reservations as to the compliance of the data challenged with INTERPOL's Rules, and that the evaluation of such compliance required a case-by-case analysis in each instance. It decided therefore to study the other claims of the Applicant before reaching a conclusion.

B. Extradition issues

a) The Applicant

32. The Applicant argues that he has been arrested on the basis of the Red Notice, and that Country A's authorities have consequently transmitted an extradition request to Country B's authorities, which has eventually been denied by Country B's courts. He stresses that Country A's authorities have demonstrated a lack of interest in participating in the extradition proceedings, and that their conduct shows their absence of genuine intent to secure his surrender. In this regard, he points to the decision of Country B's court which notes the absence of "evidential riposte" from Country A's authorities and their "disinclination" to engage with the extradition case.

33. The Applicant contends that the Red Notice exists only as the result of a complaint made by a private individual against him several years ago, which has passed through the criminal justice system without proper scrutiny, and which Country A's authorities have no real interest to prosecute. He concludes that the lack of extradition diligence is exemplified by the decision of Country A's authorities not to appeal the decision of Country B's court denying his extradition.

b) The NCB of Country A

34. The NCB of Country A indicated that it transmitted an official extradition request through diplomatic channels to Country B's authorities, and it provided a copy of the request to the Commission, which is centred on the criminal case 3.

c) The NCB of Country B (requested State in the extradition proceedings)

35. The NCB of Country B confirmed the reception of an extradition request from Country A's authorities, and the initiation of extradition proceedings. It also confirmed that Country B's court denied the extradition of the Applicant to Country A on

d) Findings of the Commission

36. The Commission first recalled that the purpose of a Red Notice is not only to locate a person, but also to request his provisional arrest in view of extradition. In this regard, the fact that the Applicant's location is known to the authorities of the NCB source of the data does not undermine as such the lawfulness of the Red Notice. However, INTERPOL's rules require that the requesting NCB takes appropriate step to achieve the purpose for which the red notice was issued, i.e. to seek the arrest in view of extradition of the individual concerned.

37. In the present case, the information and documents provided by the NCB of Country A highlight that their authorities have taken steps to respect their obligations under the applicable law, and to request the extradition of the Applicant from Country B if possible. The fact that they have not presented rebuttals to the defence's arguments during the proceedings or that they have chosen not to appeal the negative decision are not sufficient to indicate that they do not still have a genuine interest in obtaining the extradition of the Applicant.

C. Compliance with human rights

a) *The Applicant*

38. The Applicant argues that the decision of Country B's court denying his extradition to Country A recognizes the risks that his human rights would be violated upon surrender to Country A. According to the decision, such extradition would breach his rights under Article 3 of the European Convention on Human Rights (ECHR), in that there are substantial grounds to believe that he would face a real risk of inhuman treatment in Country A's prisons. In addition, such extradition would breach his rights under Article 6 of the ECHR, in that there are substantial grounds to believe that his trial in Country A would amount to a flagrant denial of justice.
39. In addition, the decision does not make general conclusions concerning all prisons and all trials in Country A, but rather specific findings in light of the individual risk factors particular to him. Indeed, the decision of Country B's court holds that he would be prejudiced and discriminatorily punished on account of his race, religion, and nationality.
40. These findings should be considered in the context of the high evidential thresholds that must be satisfied for establishing breaches of the ECHR. In relation to Article 3 of the ECHR, the defense has to establish "*substantial grounds*" for believing that there is a "*real risk*" of inhuman treatment, while in relation to Article 6 of the ECHR, the defense has to establish a "*flagrant denial*" of justice at trial. These high thresholds imply that Country B's extradition courts only find breaches of the ECHR if the supporting evidence is compelling and specific to the requested person, and in this case the evidence in relation to the risk of an unfair trial has been described as "*overwhelming*".
41. Moreover, the prospective human rights violations arise in large part because Country A's judicial system discriminates against people from particular racial backgrounds and religious beliefs. The Applicant states that he is a Country B national, born in Country C, and a practicing ..., and that the judgement indicates that these factors substantially increase the risks faced in Country A notably in view of the societal discrimination against ... and the impossibility to practice any other faith than ... in Country A's prisons.
42. Against this background, the denial of extradition to Country A implies that the Red Notice contradicts Article 2 of INTERPOL's Constitution and the Universal Declaration of Human Rights (notably its Articles 5 and 10) to which it refers. The Applicant underlines that the extradition denial is equally relevant to the three criminal cases mentioned in the Red Notice, as the motives of the decision are not linked to particulars of a single case but rather to the individual risk factors he would face in case of any extradition to Country A.
43. Furthermore, the Applicant stresses that the decision of Country B's court to refuse extradition is built upon a particular provision of Country B's extradition law (...), which mirrors in its language the Convention relating to the Status of Refugees of 1951. He argues the court which denied his extradition on the basis of this provision applied a similar test to that which would have been applied for an asylum claim. Although immigration authorities would not necessarily reach the exact same conclusion as an extradition judge, it should be regarded as a strong evidence that he has a well-founded fear of persecution in case of surrender to Country A. He claims that even if his case does not fall squarely within INTERPOL's policy relating to refugees, in that he is a Country B citizen and was not granted a protective status, the safeguards linked to the principle of *non-refoulement* should be applied to his situation *mutatis mutandis*.

b) *The NCB of Country A*

44. When consulted by the Commission, the NCB of Country A indicated that it was following-up on the extradition proceedings and that it was still awaiting a decision from Country B's authorities on the outcome.

45. The NCB of Country A also indicated that the Applicant would face trial upon surrender, with a possibility to present his defence with a lawyer of his own choosing, and that he would be granted all the procedural rights envisioned under the Constitution and the national laws of Country A.

c) Findings of the Commission

46. The Commission first established 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. 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*".

47. 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).

48. 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.

49. Yet, the Commission acknowledged 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 and with the Universal Declaration of Human Rights. Likewise, national decisions denying the extradition of an individual on the basis of the political character of the case may be taken into account as additional evidence supporting the Applicant's claims of political predominance and non-compliance with Article 3 of INTERPOL's Constitution.

50. In this context, the Commission recalled that it is not its role to assess a Country's law enforcement or judicial system *in abstracto*. Hence, it does not rely on general statements concerning the situation in a country and 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.

51. However in the present case, the decision of Country B's court, authenticated by the NCB of Country B, denies the extradition of the Applicant to Country A, on the basis of the risks that he would be submitted to inhuman/degrading treatment in the context of his detention and that he would face an unfair trial. These fundamental human rights are enshrined in Articles 3 and 6 of the ECHR, to which the decision directly refers, and they are equally protected through Articles 5 and 10 of the UDHR. Moreover, the decision highlights that the Applicant would face heightened individual risks on account of his race, religion, and nationality, due to systemic discriminations towards ... and individuals of ... origin in the justice and prison systems of Country A. The Commission noted that this decision is built upon on a comprehensive analysis of supporting evidence, ...

52. Although this decision is not legally binding on other States, who remain at liberty to decide sovereignly to cooperate on this case and extradite the Applicant should he be later apprehended on their territories, the conclusions drawn by Country B's independent judicial body on the risks faced

by the Applicant in case of extradition cannot be ignored by the Commission in the course of its own review.

53. It contributes to a body of corroborating evidence, which, in addition to the doubts raised earlier concerning the interest of the data for the purposes of international police cooperation, makes the retention of the data concerned in INTERPOL's files not compatible with the Organization's obligation to ensure effective cooperation between police authorities within "the spirit of the Universal Declaration of Human Rights".
54. In light of all of the aforementioned circumstances, the Commission finds that the data challenged are not compliant with Article 2 of INTERPOL's Constitution.

FOR THESE REASONS, THE COMMISSION

1. Decides that the data challenged are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files.
