



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 Aaa BBB

(Ref. CCF/xxx)

xxx session

[date]



DECISION CONCERNING AAA BBB

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

xxx,

Members,

xxx, withdrawing based on Rule 2.1(d) of the Operating rules of the Commission,

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

I. PROCEDURE

1. On [date], Mr Aaa BBB (the Applicant) lodged a complaint addressed to the Commission. 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. In accordance with Article 34(1) and (2) of the Statute of the Commission, the National Central Bureaus of INTERPOL (NCB) of CCC (country source) and DDD (third country), and the INTERPOL General Secretariat (IPSG) were consulted on the arguments set forth in the complaint.
3. During its xxx session [date], the Commission studied the request for deletion, and concluded that the data concerning him were compliant with INTERPOL's Rules. The Applicant was informed of the Commission's decision in a letter of [date].
4. On [date], the Applicant presented an application for revision of the Commission's Decision rendered at its xxx session.
5. On [date], the Commission informed the Applicant that his application would be processed as an application for revision under Article 42 of the Statute of the Commission and proceeded in accordance with Article 34 of the Statute of the Commission, by consulting the NCB of country source and IPSG on the arguments set forth in the application.
6. The Applicant, who initially asked for strict confidentiality of his application, authorized the Commission to consult the NCB of CCC on [date] and provided substantial additional information to support his application for revision [date].
7. Both the Applicant and the NCB source of the data challenged were informed of the fact that the Commission would study the case during its xxx session.

II. DATA RECORDED IN INTERPOL'S FILES

8. The Applicant, a national of DDD, is the subject of a Red Notice issued at the request of CCC for [...] on the basis of an arrest warrant issued on [date] by the CCC.
9. The facts of the case state the following: [...]
10. On [date], the Applicant was arrested in EEE, based on the Red Notice. However, the Court of Appeal of EEE decided to extradite the Applicant to DDD based on a concurrent extradition request submitted by the DDD authorities.

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III. THE APPLICATION FOR REVISION

11. In both his original complaint and his application for revision, the Applicant requested the deletion of the data concerning him, contending, in essence that:
 - a) the proceedings do not respect the principle of *ne bis in idem*; and
 - b) the requirement of interest/seriousness of the data for international police cooperation is not met.
12. In his most recent application, the Applicant provided further support for his contentions regarding the lack of respect of the principle of *ne bis in idem*, and on the lack of interest for international police cooperation, in light of new judgements rendered by the DDD judicial authorities.
13. The Applicant also argued that while he was detained in FFF in [date], the CCC authorities took no action to request his extradition.

IV. APPLICABLE LEGAL FRAMEWORK

14. The Commission considers the following applicable legal framework.
 - 14.1. Field of competence of the Commission:
 - Article 36 of INTERPOL's Constitution,
 - Articles 3(1)(a) and 33(3) of the Statute of the Commission.
 - 14.2. Application for revision:
 - Article 42 of the Statute of the Commission.
 - 14.3. Purposes of international police cooperation:
 - Articles 10(1) and 82 of INTERPOL's Rules on the Processing of Data (RPD).
 - 14.4. *Ne bis in idem*:
 - Article 14(7) of the International Covenant on Civil and Political Rights of the United Nations (ICCPR), adopted in 1966 and which entered into force on 23 March 1976 states that "*no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*"
 - 14.5. Interest or seriousness for international police cooperation:
 - Articles 35(1) and 83(1)(a) of the RPD.
 - 14.6. 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

15. For an appropriate study of the case, the Commission first determined whether there were any elements which meet the necessary requirement for a revision and then examined the arguments eligible to revision.

1) APPLICATION FOR REVISION

16. The Commission notes that under Article 42 of the Statute of the Commission: "(1) *Applications for the revision of decisions of the Requests Chamber may be made only when they are based on the discovery of facts which could have led the Requests Chamber to a different conclusion if that fact had been known at the time at which the request was being processed. (2) Applications for revision must be made within six months after the discovery of the fact.*"

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17. It evaluates the Applicant's claims in view of Article 42 of its Statute. Under that article, the party seeking revision of one of the Commission's decisions shall provide a fact which is newly discovered, could have led the Commission to a different conclusion if it had been known at the time at which the request was initially processed, and shall present it to the Commission within six months of its discovery.
18. The Commission considers the two Judgements rendered by the DDD judicial authorities on [date], and more recently on [date], and observes that plaintiff firms mentioned in these judgement are also referred to in the Red Notice issued against the Applicant. It further notes that the Applicant was tried for committing [...].
19. The Commission establishes that the application for revision is based on judgements that were not known at the time the Commission concluded on the original request for deletion on [date], which can be considered as a newly discovered fact, and as being presented within six months of their discovery.
20. The Commission also resolves that subject to verification of certain aspects with the authorities of CCC, this new fact may lead to a different conclusion of the Commission.
21. Therefore, this fact meets the required criteria for revision established in Article 42 of the Statute of the Commission.

2) ANALYSIS ON MERITS

22. The Commission then proceeds to examine the compliance of the data in view the new facts provided.
23. The Commission first observes that the Judgement of the Court of Appeal of DDD dated [date] refers to [...] as the plaintiffs, and that the Judgement from the same court dated [date] refers to [...]. The Commission then notes that the summary of facts of the Red Notice issued concerning the Applicant also mentions [...] as plaintiffs.
24. In order to establish if, as argued by the Applicant, the retention of the Red Notice concerning him would not comply with INTERPOL's Rules, because the case has been referred to the DDD judicial authorities which have dismissed the cases for the majority of the facts referred to in the Red Notice, the Commission consulted with the NCB of CCC.
25. The said NCB confirmed the validity of the proceedings against the Applicant in CCC, and of the arrest warrant forming the basis of the Red Notice issued against him. It specified that there has been no transfer of proceedings to the DDD judicial authorities.
26. In view of the above, this case turns on whether *ne bis in idem* applies under the circumstances present here. The Applicant contends that he cannot be prosecuted in CCC because DDD authorities already dismissed the case concerning a majority of the same facts. He thus argues that the data serve no purpose, presumably because no other country would extradite him under these circumstances. The NCB of CCC contends that the principle of *ne bis in idem* is inapplicable because its authorities did not transfer the proceedings to DDD.
27. Article 14(7) of the ICCPR establishes that a person may not be tried, convicted, or acquitted in a country more than once for the same set of facts. While this principle is among the essential guarantees of the defence in national proceedings, it is not equally recognized at the international level except when explicitly accepted by States under bilateral or multilateral agreement, or when the original criminal proceedings were officially transferred in the case from the prosecuting country to the other.
28. Here, it is clear that CCC did not agree to transfer proceedings to DDD, and the Commission has not been provided with any bilateral or multilateral agreement making the *ne bis in idem* principle applicable between these two countries, therefore, this principle may not necessarily bar a

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prosecution by CCC. A country could determine that the principle of *ne bis in idem* is inapplicable and could decide to extradite the Applicant.

29. As to the Applicant's argument relating to the absence of action from the CCC authorities to obtain his extradition, the Commission notes that the NCB of CCC stipulated that an extradition request was sent to the FFF authorities. The NCB of FFF informed to the Commission that its authorities did not receive the appropriate documents to make a substantive decision on the extradition of the Applicant.
30. The Commission highlights that in accordance with Article 10(1) of the RPD, "*the processing of data in the INTERPOL Information System may only be carried out for a given, explicit purpose which is in conformity with the Organization's aims and activities.*" In addition, under Article 82 of the RPD, the purpose of a red notice is to facilitate international police cooperation "*in order to see 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.*"
31. Therefore, the purpose of a red notice is not only to locate a person, but also to request his/her provisional arrest in view of extradition. In addition, 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 or provides reasonable grounds for the lack of action of its country.
32. Here, the Commission establishes that the Applicant is subject of data in the INTERPOL Information System because he is still the subject of a valid arrest warrant issued by the authorities of CCC for charges of [...], which complies with Articles 10(1) and 82 of the RPD.
33. The Commission also takes into consideration the fact that the authorities of CCC previously filed an extradition request when the Applicant was detained in EEE but that the Court of Appeal of EEE complied with an extradition request filed by the DDD authorities.
34. In view of these elements, the Commission resolves that the Applicant's arguments are not sufficient to consider that there is no willingness of the authorities of CCC to respect their obligations under applicable law and to request the extradition of the Applicant, if possible.

FOR THESE REASONS, THE COMMISSION

1. Decides that the conditions for revision have been met.
2. Decides that the data challenged are compliant with INTERPOL's rules applicable to the processing of personal data.

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

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