



## 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 Requesting Party (hereafter “the RP”) lodged a complaint addressed to the Commission. Following 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. In accordance with article 5(e,4) of the Rules on the Control of Information and Access to INTERPOL's files, the National Central Bureau of INTERPOL (NCB) of Country A was consulted on the arguments set forth in the complaint.
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 RP on ... that he is wanted for prosecution through INTERPOL's channels by Country A, for the charges of...
5. The RP was also informed of the fact that the Commission would study his complaint during its ... session, and was invited to share any other information or document with the Commission before ...
6. The Commission also consulted the NCB of Country B, the NCB of the Country C, and the NCB of Country D, on issues raised by the request.

### II. FACTS

7. The RP is a national of Country B.
8. He used to be residing in Country A, and has family connections to the former President .... He has held senior positions in companies linked with the former government of Country A, until he fled the country in ... after the fall of former President ....
9. He is the subject of a Red Notice issued at the request of the NCB of Country A for ..., on the basis of an arrest warrant issued by the General Prosecutor's Office on ....
10. The summary of the facts, as recorded in the Red Notice , is the following: “...”
11. On ..., the RP was arrested upon arrival at the airport in Country C, on the basis of the Red Notice. He was detained shortly, and then released by Country C authorities.
12. On ..., the RP was arrested at the airport in Country D, on the basis of the Red Notice. He was detained shortly, and then released on bail, pending the outcome of the extradition proceedings.

### III. THE RP'S REQUEST

13. The RP requested access to the data concerning him, and its deletion.
14. He contends in essence that 1) the case is of a predominantly political character, 2) Country A authorities have repeatedly failed to request his extradition, despite knowing his whereabouts, and therefore the Red Notice has lost its purpose.

### IV. APPLICABLE LEGAL FRAMEWORK

#### 15. General provisions:

- 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 11(1) of the Rules on the Processing of Data (RPD) provides that "data processing in the INTERPOL Information System should be authorized with due regard for the law applicable to the NCB, national entity or international entity and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of the Organization's Constitution and the Universal Declaration of Human Rights to which the said Article refers".

#### 16. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution provides 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 10(a) of the Rules on the Control of Information establishes 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.

#### 17. Matters of political character :

- Article 3 of INTERPOL's Constitution provides that "[i]t is strictly forbidden for the Organization to undertake any intervention or activities of a political (...) character."
- Article 34 of the RPD states the following:
  - 34(2): "(...) prior to any recording of data in a police database, the National Central Bureau, national entity or international entity shall ensure that the data are in compliance with Article 3 of the Organization's Constitution".
  - 34(3): "To determine whether data comply with Article 3 of the Constitution, all relevant elements shall be examined, such as:
    - (a) nature of the offence, namely the charges and underlying facts;
    - (b) status of the persons concerned;
    - (c) identity of the source of the data;
    - (d) the position expressed by another National Central Bureau or another international entity;
    - (e) obligations under international law;

- (f) implications for the neutrality of the Organization;
- (g) the general context of the case.“

- Resolution ref. AGN/20/RES/11 (1951) requires applying the predominance test. It provides that “(...) no request for information, notice of persons wanted and, above all, no request for provisional arrest for offences of a predominantly political (...) character is ever sent to the International Bureau or the NCBs, even if - in the requesting country - the facts amount to an offence against the ordinary law.”

18. 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 10.1 of the RPD states “*that 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.*”
- Article 82 of the RPD provides 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 81 of the RPD provides 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) of the RPD 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”.

## V. FINDINGS

19. The Commission makes the following findings on the basis of the elements presented by the RP, the NCBs concerned and INTERPOL General Secretariat.
20. The Commission treats the RP’s contentions in the order in which they are described in paragraph 14 above.

## **A. Political character of the case**

### ***a) The RP***

21. The RP claims that the criminal proceedings launched against him have a strong political character, because of his close connection to the former President of Country A ..., who was ousted from power ... and who was later granted asylum in ....
22. The RP adds that the criminal proceedings have been initiated just after the change of regime, and that they are a tool for political revenge by the new government of Country A. Prior to ..., he had never been investigated upon, or accused of any wrongdoings in connection with his companies.
23. This claim raises the question of the political character of the case.

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

24. In its reply, the NCB of Country A explained that the case concerned ordinary law crimes, and that the RP was not wanted for political reasons but merely because he is accused of particularly serious crimes and he caused important financial losses to Country A.
25. The NCB of Country A also provided a copy of a Preventive Detention Order, issued on ..., which contains substantive information arising from investigations, that link the wanted individual to the charges against him. It also presents a clear description of the criminal activities he is accused of, and concrete elements characterizing a possible abuse of the RP's position to obtain personal gains.

### ***c) Findings of the Commission***

26. With respect to the assertion that the matter is of a political character, the Commission applies the predominance test, i.e. it evaluates all relevant information and pertinent elements, as provided by the rules, to determine whether the offense is of a predominantly political character.
27. The rule reflected in RPD Article 34(3) requires analysis of the following key factors:
  - the nature of the offense, namely the charges and underlying facts;
  - the status of the person concerned;
  - the position expressed by another NCB or another international entity;
  - the implications for the neutrality of the Organization ;
  - the general context of the case.
28. In this case, the Commission established the following:
  - the crimes as described are of a common law character, in which NCB of Country A has provided sufficient information concerning the possible effective participation of the RP;
  - while the RP could be assimilated to a former politician due to his close connection with the former president of Country A, the Commission has received comprehensive information from the NCB of Country A highlighting a potential abuse of position by the RP in order to obtain personal gain ;
  - no NCB or international organization has taken the position that Article 3 had been violated;
  - the crimes do not appear to undermine the neutrality of the Organization in the context of this case.
29. Accordingly, even assuming that there may be some political elements surrounding the case, the information provided by the RP is not sufficient to find that the charges against him are predominantly politically motivated, and to establish that the processing of the data concerning the RP is contrary to Article 3 of the Constitution.

## **B. Lack of extradition request**

### ***a) The RP***

30. The RP asserts that he has been arrested first in Country B, following the publication of the Red Notice, and that he was released shortly. He contends that the Country A authorities never sent any extradition request to the Country B authorities, despite the fact that they knew he was residing there since ... .
31. He further claims that he has been arrested in Country C in ..., and that the Country C authorities have denied his extradition and released him, as the Country A authorities did not provide the required extradition documents as requested.
32. He adds that he has been arrested again in Country D in ..., and put under house arrest until the outcome of the extradition proceedings.
33. He recently transmitted to the Commission a decision by the Country D Public Prosecutor, dated ..., indicating that his extradition to Country A was denied because of statutory limitation on the prosecution of the crimes concerned under Country D legislation.

### ***b) The NCB of Country B***

34. In its reply to the Commission's queries, the NCB of Country B indicated that it could find no record of any arrest of the RP in their databases. It could therefore not conclusively confirm or deny the allegations made by the RP concerning the lack of extradition request.

### ***c) The NCB of Country C***

35. The NCB of Country C confirmed that the RP was arrested at the airport in .... It underlined that the crimes for which he was sought, allegedly committed between ... and ..., were not prosecutable anymore under Country C law due to the expiry of the statute of limitations.
36. Therefore, as the procedural conditions were not met, the RP was released from custody and the extradition was denied.

### ***d) The NCB of Country D***

37. The NCB of Country D was consulted by the Commission, but it did not provide answers within the set deadline, despite being reminded thereof.

### ***e) The NCB of Country A (source of the data)***

38. The NCB of Country A did not provide elements regarding its efforts to obtain the extradition of the RP from Country B or from Country C.
39. However, it communicated the extradition request transmitted to Country D, dated ..., and confirmed that extradition proceedings were underway in this country.

**f) Findings of the Commission**

40. The Commission examined the RP's claim that the NCB of Country A did not request his extradition, despite knowing his location in Country B, and did not undertake genuine efforts to seek his extradition from other countries in the territory of which he was later arrested.
41. The Commission recalled that 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.
42. First, the Commission noted that the answers provided by the NCB of Country B were not conclusive and did not allow to establish if the RP was arrested or not in this country. Yet, the Commission underlined that the mere fact that the Country A authorities did not request the RP's extradition despite knowing his location in Country B is irrelevant, as he is a Country B national and was therefore not extraditable, pursuant to Country B's Constitution.
43. Second, the Commission observed that the NCB of Country C confirmed the decision to refuse extradition. However, this decision did not result from the absence of a formal extradition request, as claimed by the RP. Extradition was refused because it was procedurally barred due to statutes of limitations under Country C law.
44. Third, the Commission took into account the decision of Country D Public Prosecutor denying the RP's extradition to Country A, dated ..., but it was not able to obtain a confirmation on the status of the national extradition proceedings from the NCB of Country D. The Commission underlined that, even assuming that the extradition was refused by the Country D authorities, the documents transmitted by the RP tend to show that a formal request was indeed received from Country A authorities, and that the decision to deny this request was only based on procedural elements linked with national statutory limitations.
45. In view of these elements, the Commission held that although the RP's extradition has been successively denied by Country C and Country D, these national decisions were not grounded on a lack of extradition efforts from the requesting State. It also noted that recent moves by the NCB of Country A, exemplified by the comprehensive extradition request transmitted to Country D (of which the Commission has received a copy) show its willingness to abide by the rules and to seek genuinely the RP's extradition.
46. Finally, the Commission recalled 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 held that this resolution applies to the present case, and that the extradition denial by the authorities of Country C must be reported in INTERPOL's files. It also decided that should the extradition denial be also confirmed by the authorities of Country D, it will be reported as well in INTERPOL's files.

**C. Remaining contentions**

47. The Commission reminded that in studying a request it reviews all of the RP's arguments, except when irrelevant.
48. Relying on Article 13 of the Universal Declaration of Human Rights (UDHR), the RP states that he has a right to travel, which is infringed by the issuance of the Red Notice. The Commission recalled that UDHR Article 13 addresses two separate situations: paragraph 1 establishes a right with respect to movement and residence within a state, while paragraph 2 establishes a right to leave a country, and to return to one's own country.

49. These are general principles, which can be subject to lawful, necessary, and proportionate limitations as envisioned in UDHR Article 29. Sovereign states are therefore not prevented for instance from enacting legal requirements regarding access to their territory or from issuing an order to request the arrest of an individual suspected or convicted of having committed a crime.
50. The purpose of an INTERPOL Red Notice is to facilitate appropriate law enforcement action, based on such an order. Therefore, the Commission finds that the UDHR Article 13 is not infringed by the mere issuance of a valid Red Notice and that the RP's contention is without merit.

### **FOR THESE REASONS, THE COMMISSION**

1. Concludes that the data challenged is compliant with INTERPOL's rules applicable to the processing of personal data, subject to the recommendations below.
2. Recommends that the RP's file and the Red Notice are updated with an addendum on the extradition refusal by the authorities of Country C.
3. Recommends that should the extradition denial be confirmed by the authorities of Country D, the RP's file and the Red Notice will be updated with a relevant addendum.

-----