



## **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 (RCI), the National Central Bureau of INTERPOL (NCB) of Country A. was consulted on the arguments set forth in the complaint.
3. The Commission informed the RP on ... that he is wanted through INTERPOL's channels by Country A., as described in paragraphs 5 and 6 below. The RP was also informed of the fact that the Commission should study his complaint during its ... session and invited him to share any other information or document with the Commission before ..., which he did by a letter dated ....

### **II. FACTS**

4. The RP is a national of Country A and Country B. He has been residing in Country B, since ....
5. He is wanted by Country A for ..., on the basis of an arrest warrant issued on ... by the judicial authorities of Country A.
6. The summary of the facts, as recorded in the Diffusion, is the following: “...”
7. On ..., the request for his extradition to Country A was denied by the authorities of Country B.

### **III. THE RP'S REQUEST**

8. The RP requested access to the data concerning him, as well as its deletion.
9. He contends in essence that 1) the case is politically motivated; 2) he would not receive a fair trial if extradited.

### **IV. APPLICABLE LEGAL FRAMEWORK**

10. 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”.

#### 11. 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) 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."
- INTERPOL's Repository of Practice on Article 3 states that "cases involving former politicians wanted by their own countries, the "NCB source may be required to provide evidence, such as personal gain, that the offence comes under ordinary law".

#### 12. 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 provides that "When the Commission receives a request, it shall check that any personal information about a requesting party, or about the person he represents, that may be stored by the Organization complies with the information processing conditions which must be respected by the Organization."

#### 13. Effective participation of an individual to the acts he/she is accused of:

- Article 83.2(b,i) of the RPD requires that "red notices may be published only when sufficient judicial data has been provided. Sufficient judicial data will be considered to include at least summary of facts of the case, which shall provide a succinct and clear description of the criminal activities of the wanted person, including the time and location of the alleged criminal activity

## V. FINDINGS

14. In reviewing the issues raised, the Commission based its findings on elements provided by the RP, the NCBs concerned and INTERPOL's General Secretariat.

### A. Political character of the suits

#### a) *The RP*

15. The RP states that he was a business associate of.... He contends that he is accused not primarily for the aim of prosecution of criminal offences but for political reasons, and for being the business associate of....
16. The RP supports his above mentioned contentions by referring to ....
17. He further refers to the fact that Mr X's extradition to Country A was denied by country B on the grounds that it was politically motivated.
18. Finally he adds that prosecution in Country A. lack any evidential basis and are an abuse of process...

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

19. In addition to providing additional elements of the RP's effective participation, the NCB of Country A. explained that the RP is not part of any political campaign, and the proceedings are carried out in compliance with national laws.
20. The NCB provides that the crime was committed in Country A. and that documents and evidence of the RP's involvement in the criminal were found...
21. The NCB highlighted that .... Regarding ... the RP referred to, the NCB provided that this ... was fabricated and aimed at ....
22. An inquiry into ....

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

23. Under RCI Article 10(2), the function of the Commission is to review whether the processing of data in INTERPOL's files meets INTERPOL's applicable legal requirements in accordance with Article 36 of INTERPOL's Constitution. The Commission is not empowered to conduct an investigation, weigh evidence, or make a determination on the merits of a case. That is the function of the competent national authorities.
24. In determining whether a matter is of a political character, the Organization 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.
25. The rule reflected in RPD Article 34(3) requires analysis of all relevant factors, as to which the following appear to the Commission to be key:
  - the nature of the offense, namely the charges and underlying facts;
  - the status of the person concerned;
  - the general context of the case.
26. The general context of the case reveals that the RP is ...
27. Here the offense charged is of a common law character in which the materials provided by NCB of Country A set forth sufficient information concerning the possible effective participation of the RP, and, as described above, provide a sufficient explanation that the arrest warrant was issued lawfully according to the national procedures, and their jurisdictional competence.
28. Therefore, the Commission found that even though there may be some political elements surrounding the case, the information provided was not sufficient to conclude that these political elements were predominant over the ordinary criminal law elements of the case.

**B. Extradition denial and potential unfair trial**

***a) The RP***

29. The RP referred to the refusal of Country B to extradite him to Country A, whereby it was accepted that there was in fact no criminal conduct within the extradition request, and dual criminality requirements could not be satisfied.

30. The RP also referred to the several extradition denials of various courts for the associates and other wanted persons in this case. He contends these decisions support his contention that the charges upon which the data is based were fabricated to obtain ..., and that he would be at risk of not receiving a fair trial if extradited to Country A.

**b) The NCB of Country A**

31. The request for extradition of the RP from Country B was withdrawn by Country A's authorities, which would explain the decision of .... The decision of this Court is not final and does not prevent a new request for extradition from Country A's authorities.

32. Country A authorities are in the process of further elaborating on the RP's criminal actions and correlating them with Country B's. criminal law in order to present a new request for extradition.

**c) Findings of the Commission**

33. Regarding the extradition proceedings of the RP, the purpose of a Red Notice is not only to locate a person, but also to request his provisional arrest in view of extradition. The fact that the RP's location is known to Country A's authorities does not undermine as such the lawfulness of the Red Notice.

34. However, INTERPOL's rules require that the requesting NCB takes appropriate steps 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.

35. The Commission found that the actions undertaken by the authorities of Country A. highlight its willingness to respect its obligations under applicable law and to request extradition or the surrender of the RP from Country B., if possible. The NCB of Country A. also provided a reasonable explanation justifying the initial discharge in extradition proceedings initiated with Country B.

36. 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 Country B's extradition denial of the RP should be reported in INTERPOL's files.

37. The documents provided by the RP regarding extradition denials of other persons who are wanted in relation to the same case, or the general reports which tend to point out issues of the judicial system in Country A, do not provide any specific information regarding this particular prosecution. It is not the Commission's role to assess a country's law enforcement or judicial system; it must make its determinations on the basis of specific information that sheds light on whether or not INTERPOL's legal framework has been complied with in a particular case.

**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 the following information is added to the individual's file: "*This case was studied by the Commission for the Control of INTERPOL's Files in .... The Commission considered that there are political elements surrounding the case, but was not able to establish that they are predominant over the common law crime elements of the case.*"

3. Recommends that should extradition be denied by the authorities of Country B, it is reported in INTERPOL's files.

-----