



**Request concerning [...]**  
(Ref. CCF/[...])

**DECISION OF THE COMMISSION**  
(104<sup>th</sup> session, 24 - 27 April 2018)

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

Vitalie PIRLOG, Chairperson  
Leandro DESPOUY,  
Petr GORODOV,  
Sanna PALO,  
Isaias TRINDADE,  
Members,

Having deliberated in camera during its 104<sup>th</sup> session, on [...], delivered the following Decision.

**I. PROCEDURE**

1. On [...], Mr [...] (the Applicant) lodged a complaint addressed to the Commission, requesting the deletion of the data 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 [...].
2. The Commission considered that the Applicant's claims and arguments raised serious questions as to the compliance of the data challenged with INTERPOL's rules. In accordance with Article 37 of the Statute of the Commission (Statute), it decided that access to the data concerning the Applicant shall be blocked, as a precautionary provisional measure pending further study of the case during a session.
3. Both the Applicant and the National Central Bureau of INTERPOL (NCB) of [...] were informed of the decision of the Commission and of its implementation by INTERPOL General Secretariat.
4. In accordance with Article 34(1) of the Statute, the NCB of [...] and INTERPOL General Secretariat (IPSG) were consulted on the arguments set forth in the complaint.
5. During the study of the Applicant's request, the Commission also consulted the NCB of [...] in accordance with Article 34(2) of the Statute, on specific issues raised in the request.
6. The NCB of [...] confirmed the validity of the proceedings and of the court decisions, and provided answers to the questions raised by the Commission.
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 104<sup>th</sup> session.

**II. FACTS**

8. The Applicant is a national of [...].
9. He is the subject of a red notice issued at the request of the NCB of [...] for [...] on the basis of a court decision [...] handed down by [...] on [...].
10. The summary of the facts, as recorded in the red notice, is the following: [...].
11. On [...], an addendum to the red notice was published at the request of the NCB of [...], indicating that the Applicant had been sentenced *in absentia* by the following decisions :

- [...]
12. On [...], the [...] authorities requested the Applicant's extradition from [...]. However, on [...], the [...] denied the extradition of the Applicant to [...].
13. On [...], the Applicant was arrested in [...], on the basis of the red notice. He was placed under provisional detention, and judicial proceedings concerning his extradition to [...] are still ongoing.

### III. THE APPLICANT'S REQUEST

14. The Applicant requests the deletion of the data concerning him.
15. He contends in essence that:
- a) the criminal proceedings against him in [...] did not respect his fundamental rights;
  - b) the case is of a predominantly political, racial and religious character;
  - c) [...] authorities denied his extradition to [...] fearing he could be subject to torture or death penalty.

### IV. APPLICABLE LEGAL FRAMEWORK

16. 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.
17. Due process and 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 11(1) of the 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".
  - 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".
18. Compliance with Article 3 of INTERPOL's Constitution :
- Article 3 of INTERPOL's Constitution states that it is "strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character."
  - Article 34 of INTERPOL's Rules on the Processing of Data (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 (even if in the requesting country the facts amount to an offence against the ordinary law). It states that “(...) no request for information, notice of persons wanted and, above all, no request for provisional arrest for offences of a predominantly political, military, religious or racial 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 provides guidance on the application of Article 3 of INTERPOL’s Constitution in a variety of circumstances.
- [...]

19. 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 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.”
- 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

20. In reviewing the issues raised, the Commission based its findings on information provided by the Applicant, the NCBs concerned and INTERPOL’s General Secretariat.
21. The Commission treats the Applicant’s contentions in the order in which they are described in paragraph 15 above.

### A. Lack of due process and fair trial guarantees

#### a) *The Applicant*

22. The Applicant claims that the criminal proceedings against him in [...] have repeatedly infringed his right to a fair trial, and that therefore the data provided by the NCB of [...] cannot be processed further to Article 2 of INTERPOL’s Constitution and the Universal Declaration of Human Rights to which it refers.
23. He claims that he has been prosecuted in [...] different cases while all these accusations were grounded on one single charge. He argues that according to [...] criminal law, all counts should have been merged into one single indictment, but that the prosecution authorities divided the criminal case in order to secure a more severe punishment. He further argues that judicial authorities relied predominantly on the testimony of a secret witness, and that other testimonies were not given in court under oath but merely read by the investigators before the court. Moreover he claims that he has been judged and sentenced *in absentia* in all the criminal cases, without having the possibility to present his defence.

24. He argues that several international human rights organisations have reported structural shortcomings in the [...] justice system, as well as systemic violations of fair trial guarantees and a lack of judicial independence from the executive power.

**b) The NCB of [...]**

25. In its reply, the NCB of [...] confirmed the validity of the criminal proceedings and of all the different sentencing decisions issued against the Applicant, and transmitted copies of all the decision mentioned in the red notice and the addendum, as well as a copy of the applicable criminal legislation.

26. The NCB insisted that the Applicant was judged *in absentia* because he had absconded from [...] justice, as permissible under the applicable national criminal procedures. The NCB contested the Applicant's contentions regarding procedural irregularities and insisted on the fact that the investigation into the criminal acts concerned were sanctioned and approved by the magistrates who issued the sentencing decisions.

27. Moreover, the NCB explained that upon surrender, the Applicant would be presented before judicial authorities, and will have the right to accept these sentences, appeal or oppose to them as they have been issued in his absence. He will then be afforded the right to present his defence and to be assisted by an attorney of his choice, and provided with all applicable procedural guarantees under [...] legislation.

**c) Findings of the Commission**

28. Under Articles 3(1)(a) and 33(3) of the Statute of the Commission, 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. At the same time, under article 34(1) of the RPD, data must be processed in INTERPOL's files in compliance with Article 2 of the Organization's Constitution *i.e.* notably within the spirit of the Universal Declaration of Human Rights.

29. The Commission first established that most of the Applicant's assertions relating to the fact that he has not received a fair trial in [...] are grounded on general elements relating to alleged flaws of the [...] judicial system, rather than on any specific information regarding his particular prosecution. It is not the Commission's role to assess a country's law enforcement or judicial system *in abstracto* ; 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.

30. In order to respect the spirit of the UDHR while at the same time respecting the role of the Commission, the simple assertion of possible procedural irregularities cannot rise to the level of an Article 2 violation. As a general practice, the Commission does not enter into an inquiry designed to take decisions on application of national procedural law. The Commission does not function in a manner akin to that in which a domestic appellate court re-examines the actions of a domestic court of first instance. In this case, the Commission finds that the information provided by the Applicant does not demonstrate that a flagrant denial of a fair trial may have taken place in the course of his prosecution and his judgement.

31. On the other hand, the Applicant also claims that he was denied a fair trial because he was judged and sentenced *in absentia*. The Commission noted that the NCB of [...] has stated the motives for which such trials *in absentia* were carried out, and has evidenced the fact that they were conducted in accordance with national criminal procedural law. In addition, [...] authorities have given assurances that the Applicant would be entitled to appeal or to obtain a retrial in his presence should he return to [...], which would effectively address the Applicant's claim, absent a comprehensive and convincing argumentation showing to the contrary.

32. On the basis of the above consideration, the Commission held that the data in relation to the criminal proceedings concerning the Applicant were not processed in contravention with Article 2 of INTERPOL's Constitution and the spirit of the Universal Declaration of Human Rights to which it refers.

**B. Compliance with Article 3 of INTERPOL's Constitution :**

**a) The Applicant**

33. The Applicant claims that the criminal case brought by the [...] authorities against him contravenes with Article 3 of INTERPOL's Constitution as it is of a political religious and racial character, and that therefore no data deriving from this case may be processed by INTERPOL.
34. He argues that since [...], [...] has faced continuous sectarian strife between [...]. Over the last few years, he claims that [...] have been persecuted by the [...] authorities, controlled by [...] parties and religious groups. Being himself a [...], he has been the victim of persecution based on his belonging to the rival sect and therefore perception as a political opponent by the government.
35. He claims that the acts for which he was found guilty were all authorized by the [...] government at the time, and are covered by the [...] adopted in [...].
36. He contends that the shortcomings in the criminal proceedings against him demonstrate that his conviction represented a political objective for the government, which has instructed the justice system accordingly. He also refers to several reports by international organizations and non-governmental organizations regarding inter-sectarian violence in [...].

**b) The NCB of [...]**

37. The NCB of [...] contested the Applicant's claims that the criminal cases involving him were linked to any political, religious or racial considerations, and insisted on the serious nature of the ordinary-law offences concerned.

**c) Findings of the Commission**

38. With respect to the assertion that the matter is of a political, religious or racial 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, religious, or racial character over its ordinary-law character.
39. 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 in the present case:
  - the nature of the offense, namely the charges and underlying facts;
  - the status of the person concerned;
  - the position expressed by another NCB or international entity;
  - the general context of the case;
  - and the implications for the neutrality of the Organization.
40. In reviewing the applicable criteria under the predominance test, the Commission established that the offenses as described in the red notice and judicial documents of a common law character, for which NCB of [...] has provided forth sufficient information concerning the possible effective participation of the Applicant. The specific charge ("embezzlement") is coherent with the underlying facts provided in the summary submitted by the NCB of [...].
41. The Commission considered that the Applicant was not *per se* a politician or former politician, but that he has held several high-ranking positions within [...]. The acts the Applicant is accused of were not committed during the exercise of a political mandate but they were undertaken in his capacity within the [...]. Yet, the elements provided by the NCB of [...] correctly highlight the possible abuse of the Applicant's official powers, without knowledge by the government, in order to obtain personal gain and benefits.
42. The Commission established that no NCB or international entity has taken the position that Article 3 had been violated, or that the case presented political, religious or racial elements.
43. The general context of the case, although factually disputed, reveals that [...]. According to open-source information, [...].
44. The Commission also considered the arguments by the Applicant that the case would be tainted by religious or racial elements and that he would be subject to criminal prosecutions based on his religious affiliation as a [...]. The Commission could not identify any discriminatory elements in the particular prosecution of the Applicant, and held that the very broad information provided in the

reports submitted by the Applicant regarding inter-sectarian violence between [...] in [...] was too general and remote from his individual situation to have a direct impact on his particular case.

45. Finally, the offenses do not appear to undermine the neutrality of the Organization in the circumstances of this case. On the basis of the above elements, the Commission found that the data concerning the Applicant are not of a predominantly political, religious or racial character, and that therefore they are compliant with Article 3 of INTERPOL's Constitution.

### **C. Denial of extradition and risks upon return :**

#### ***a) The Applicant***

46. The Applicant indicates that he may be submitted to death penalty upon return to [...], which is permissible under [...] law even for financial crimes, and that he will be subject to torture while in custody, as evidenced by several international reports on conditions of detention in the [...] system.
47. He argues that the request presented by [...] authorities for his extradition was rejected by [...] authorities, following a decision of the [...], which recognized he could be subjected to death penalty and torture upon return to [...].

#### ***b) The NCB of [...]***

48. The NCB of [...] acknowledged that the Applicant's extradition was refused by [...] based on the dual [...] citizenship of the Applicant, and it communicated the relevant diplomatic note informing the [...] authorities thereof.
49. After this refusal, the NCB of [...] was able to cooperate with the NCB of [...] to request the provisional arrest of the Applicant in [...]. A full extradition request was transmitted through diplomatic channels to [...] authorities, and extradition proceedings are still ongoing.
50. The NCB of [...] transmitted assurances from its judicial authorities indicating that the Applicant would not be subject to death penalty and that the maximum penalty applicable for the Applicant upon return would be life imprisonment. In addition, the NCB indicated if the Applicant appeals the judgements handed down *in absentia* against him, the [...] legislation provides that the new trials in his present cannot result in harsher sentences than the one previously decided.

#### ***c) The NCB of [...]***

51. According to messages registered in INTERPOL's files, the NCB of [...] officially informed the NCB of [...] and INTERPOL's General Secretariat about the decision of [...] authorities not to extradite the Applicant.
52. [...]

#### ***d) The NCB of [...]***

53. The NCB of [...] has been contacted several times by the Commission, but has never provided any answers concerning the status of the Applicant's extradition proceedings, despite reminders.

#### ***e) Findings of the Commission***

54. The Commission carefully studied the Applicant's claims that he may be submitted to death penalty upon return. It underlined that further to international human rights standards, as expressed for instance in the General Comment No. 6 of the United Nations Human Rights Committee on the right to life, death penalty may be applied by non-abolitionist states only for the most serious crimes and may never be applied to minor defendants, pregnant women, mentally retarded persons. Moreover, extradition should not take place from a country that abolished the death penalty to a country that still applies it, unless assurances have been given by the requesting country that such penalty will not be implemented.
55. In the present case, the Commission noted that none of the [...] criminal cases which are referred to in the red notice and its addendum, and in which the Applicant has been sentenced, has resulted in

condemnation to death but rather to different quantum of years of imprisonment. The maximum penalty given to the Applicant, in case [...] is a penalty of life imprisonment.

56. The Commission also noted, as indicated above, that the Applicant will have the right to appeal the judgements handed down *in absentia*, and that the [...] legislation prohibits the infliction of a more severe punishment in such case. In view of the information available to it, the Commission concluded that in view of the assurances provided by [...] judicial authorities, the Applicant may not be submitted to death penalty upon return to [...].
57. The Commission also analysed the Applicant's contentions that he could be subject to ill-treatment or torture in detention, and that being a [...] he would be exposed to inter-sectarian violence. The Commission established that the Applicant's arguments in this regard are grounded on very general elements relating to the current security situation in [...], and to the conditions of detention within the [...] prison system. As indicated above in relation to fair trial guarantees, it is not the Commission's role to assess a country's detention system *in abstracto* and it can only make determinations on the basis of specific information linked to individual situations, which would support a claim of non-compliance with Article 2 of INTERPOL's Constitution. Moreover, the Commission cannot substitute itself to national asylum authorities or extradition courts in assessing the reasonableness of the risks of harm upon return linked to the general security situation in [...].
58. Finally, the Commission then 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 connection, 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.
59. The Commission established that [...] authorities have indeed denied the Applicant's extradition in 2015, based on his [...] dual nationality and on the risks he may be subject to if returned to [...]. Yet in the present case, the information provided by the NCB of [...] and the messages registered in INTERPOL's files highlight that the authorities of [...] have taken diligent steps to respect their obligations under applicable law, and to request the extradition or surrender of the Applicant from countries where he would later be located, where this would be a possible legal avenue.
60. In this regard, the Commission noted that, despite knowledge of the previous extradition denial by [...], the [...] authorities have subsequently decided to arrest the Applicant on the basis of the Red Notice and to launch extradition proceedings. The Commission found that the purpose for which the data was registered can still be achieved, either through the proceedings in [...], or in another country the Applicant could be later arrested in.
61. 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 denial of extradition of the Applicant by [...] should be reported in INTERPOL's files.

#### **D. Remaining contentions**

62. On several occasions throughout the study of his request, the Applicant has urged the Commission to take immediate measures and to contact directly the NCB of [...] to block his extradition from [...].
63. The Commission underlined that under Articles 3(1)(a) and 33(3) of the Statute, its function is to review whether the processing of data in INTERPOL's files meets the applicable legal requirements. It is not competent with regard to extradition proceedings and bilateral cooperation between sovereign states, and therefore cannot impose on any member country to put on hold its national judicial processes while it studies the request of an Applicant subject to data processed in INTERPOL's Information System.
64. Very shortly after the reception of the Applicant's request, the Commission adopted a provisional measure further to Article 37 of its Statute, and blocked access to the data concerning the Applicant by INTERPOL's member countries pending a final decision on its compliance. This decision was circulated by INTERPOL's General Secretariat to all NCBs.

65. In the course of its review, the Commission also contacted several times the NCB of [...] to inquire about the Applicant's extradition proceedings, and on each occasion restated the provisional measure it had adopted prohibiting the use of INTERPOL's channels for further exchanges on this case until the adoption of a decision on the compliance of the data challenged.
66. In conclusion, the Commission held that due to the limits of its competence, it is not the appropriate forum to request immediate measures regarding national extradition proceedings, especially from the authorities of a member country which is not the source of the data challenged, and therefore dismissed the applicant's contentions on this matter.

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

Decides that the data challenged 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 [...] authorities is reported in INTERPOL's files:

[...]

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