



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 BBBB

(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 during its xxx session, on [date], delivered the following Decision.

I. PROCEDURE

1. On [date], Mr Aaa BBB (the Applicant), lodged a request for the deletion of the information 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 [date].
2. During the study of the Applicant's case, the Commission consulted the INTERPOL National Central Bureaus (NCB) of CCC (country source), DDD (third country), and the INTERPOL General Secretariat (IPSG) in accordance with Article 34(1) and (2) of the Statute of the Commission, on the arguments set forth in the request.
3. Both the Applicant and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its xxx session.
4. Further to Article 40(3) of its Statute, the Commission also decided that the circumstances of the present request warranted an extension of the standard time limit to decide on a request for correction established in Article 40(2) of the said Statute.
5. Further to Article 35(3) of the Statute of the Commission, restrictions were applied to certain information in the Decision.

II. DATA RECORDED IN INTERPOL'S FILES

6. The Applicant, a national of CCC, is the subject of a Diffusion circulated on [date] by the NCB of CCC for "[...]" on the basis of an arrest warrant issued on [date] by CCC.
7. The facts of the case state the following: "[...]"

III. THE APPLICANT'S SUBMISSIONS

8. The Applicant requested the deletion of the data concerning him, contending, in essence, that the arrest warrant is invalid since it is based on a retroactive application of the [...] law, which is contrary to Article 11(2) of the Universal Declaration of Human Rights, and violates Article 2 of INTERPOL's Constitution.

IV. APPLICABLE LEGAL FRAMEWORK

9. The Commission considers the following applicable legal framework.
 - 9.1. Field of competence of the Commission:
 - Article 36 of INTERPOL's Constitution,

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- Articles 3(1)(a) and 33(3) of the Statute of the Commission.

9.2. Validity of the proceedings and principle of legality:

- Article 2 of INTERPOL's Constitution,
- Article 11 of the Universal Declaration of Human Rights,
- Article 11 of INTERPOL's Rules on the Processing of Data (RPD).

V. ANALYSIS OF THE CASE

A. Validity of the proceedings and principle of legality

a) Submissions of the Applicant

10. The Applicant claimed that he is a dual national of CCC and EEE, and that he was arrested in country DDD in [date] and subjected to extradition proceedings. In this context, he discovered that he was the subject of data registered in INTERPOL's files, and of an international arrest warrant issued by CCC authorities since 2003 for two offences: [...] pursuant to Article [...] of the CCC Criminal Code, and [...] of the same Code.
11. He alleged that these two provisions were introduced in CCC criminal law through the [...] law [...] which entered into force on [...] 2003, but that the facts of the case relate to acts allegedly committed between 2001 and 2002. According to the principle of legality and of non-retroactivity of criminal law, enshrined both in Article 11 of the Universal Declaration of Human Rights, in Article [...] of the Constitution of CCC, and in Article [...] of the CCC Criminal Code, his prosecution on the basis of a legal text which entered into force after the date of the alleged criminal acts is invalid and illegal.
12. He contended that in view of the invalidity of the arrest warrant and of the prosecution, the processing of data related to this case through INTERPOL's channels was a violation of Article 2 of its Constitution, and that such data must be deleted from INTERPOL's files.

b) Submissions of the NCB of CCC (source of the data)

13. The NCB of CCC confirmed the validity of the proceedings and of the arrest warrant underlying the Diffusion, through a note prepared by judicial services. It provided additional elements relating to the procedural history of the case, as well as a copy of the extradition request transmitted to the authorities of country DDD, enclosing extracts of the applicable criminal legislation.
14. The NCB explained that following the [...], the investigation initiated by the judiciary police established that the Applicant was [...]. According to testimonies given by other arrested suspects, the Applicant was [...]. One of the co-defendants indicated that the Applicant had [...]. These actions, committed as part of [...] constitute the crimes under Articles [...] of the CCC Criminal Code.
15. In relation to the Applicant's argument that the law [...] was applied retroactively to facts of the case that are anterior to its entry into force, the NCB indicated that the Applicant travelled to Country FFF in 2001 and that the investigation has established that he has remained there to commit [...] crimes [...] until 2008, when he travelled to country EEE and settled there. The crimes prosecuted are therefore continuous offenses, that may have started before the entry into force of the law [...] 2003 but have been persisting long after and are therefore under the temporal jurisdiction envisioned by CCC criminal legislation.
16. The NCB underlined that as soon as it was informed about the Applicant's arrest in country DDD, it prepared and transmitted an official request for his extradition, transmitted through diplomatic channels, but that the Applicant was later released and allowed to leave the country.

c) Information provided by the NCB of country DDD

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17. The NCB of country DDD confirmed that the Applicant was arrested on [date] on the basis of the Diffusion, and subjected to extradition proceedings, after receiving an official request through diplomatic channels. On [date], the [...] Court dismissed the Applicant's extradition to CCC and ordered his release [...].

d) Findings of the Commission

18. The Commission recalls that under Article 11 of the RPD, which enshrines the principle of lawfulness of data within INTERPOL's files, the processing of such data should be authorized with due regard for the law applicable to the NCB and should respect the basic rights of the persons who are the subject of the cooperation, in accordance with Article 2 of INTERPOL's Constitution and the Universal Declaration of Human Rights.

19. In the present case, the Applicant argues that the data relating to him are unlawful since the proceedings in CCC are grounded on a retroactive application of criminal law to the alleged acts attributed to him, which occurred prior to the entry into force of the legislation. The Commission notes that the principle of legality in criminal law (often referred to through the latin maxim "*nullum crimen nulla poena sine lege*", no crime or punishment unless prescribed by law) is a paramount principle protecting individual rights against potentially arbitrary prosecution, conviction and punishment. It mainly embodies the principles that only the law can define a crime and prescribe a penalty and that criminal law must not be extensively construed to a defendant's disadvantage, for instance by analogy, and its direct corollary is to prohibit any retroactive application of criminal law (unless the new legislation is more favorable to the defendant).

20. This being said, the Commission underlines that many criminal legislations recognize a category of criminal offences as continuing (or continuous), as they are repeated or extend over time. Such an offence is considered to constitute a single act, whose classification in criminal law has to be assessed under the law in force at the time of completion of the last occurrence of the offence. Analysing the established standards set by international or regional human rights bodies interpreting the principle of legality in relation to continuing offences, as well as the existing practice of member countries, the Commission notes that the application of newly introduced law to continuing offenses which have started prior to its entry into force is seen as not amounting to a retroactive application of a stricter criminal law to the defendant, particularly when the criminalization of the prosecuted behaviour was sufficiently foreseeable.

21. In the present case, the NCB of CCC has convincingly indicated that the criminal acts attributed to the Applicant started in 2001 (prior to the entry into force of the law [...]) but that they continued until 2008 (when the law was fully applicable), and that under CCC criminal law the charged crimes are considered continuing offences and seen as a single criminal punishable act. The Commission notes subsidiarily that in addition, the foreseeability for the Applicant that his alleged conduct [...] appears established in view of the [...] already in 2001 as well as the multiple [...] international conventions to which CCC was a party or a signatory at the material time.

22. In view of all these elements and relying on the confirmation provided by judicial authorities of CCC, as ultimate interpreters of their own national criminal legislation, regarding the validity of the proceedings and the temporal application of the law to the continuing offence, the Commission holds that the data registered in INTERPOL's files are lawful and comply with Article 10 of the RPD and Article 2 of INTERPOL's Constitution.

23. On a separate note, the Commission eventually recalls 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 holds that this resolution applies to the present case, and that country DDD's extradition denial of the Applicant, which has been confirmed by the NCB of country DDD, should be reported in INTERPOL's files.

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B. Remaining contentions

24. The Commission recalls that in studying a request it reviews all of the Applicant's arguments, except when irrelevant. In this case, the Applicant additionally claimed that the information provided by CCC authorities in the request for his extradition transmitted to DDD authorities contained erroneous statements, relating to the nationality of his wife and to his national identity card number.
25. The Commission underlines that its mandate is limited to controlling the compliance of data registered in INTERPOL's files with applicable rules, and that therefore it does not have competence to review the legality or the quality of extradition documents transmitted bilaterally between sovereign judicial authorities of its member countries, outside of INTERPOL's channels. In view of the limits of its competence, the Commission therefore dismisses the Applicant's claims relating to the inaccuracy of information contained in the request for his extradition.

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 DDD authorities is reported in INTERPOL's files: *"In application of INTERPOL General Assembly resolution AGN/53/RES/7 (1984), please note that on [date], the Ministry of Justice of country DDD denied the extradition of Aaa BBB requested by the authorities of CCC."*

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Secretariat to the Commission
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