



Open Dialog Foundation

Written submission to INTERPOL's General Secretariat

(within the framework of contribution to the work of the Working Group on the Processing of Information: 1-3 July, 2015, Lyon, France)

The Open Dialog Foundation welcomes the decision of the General Assembly of Interpol to provide a mandate for the Interpol Working Group on the Processing of Information (the GTI) for the implementation of a comprehensive review of Interpol's supervisory mechanisms in the area of data processing.

Given the high level of criminality and terrorism in the world, Interpol is an indispensable tool of police cooperation for the purpose of the investigation into, and arrest of dangerous criminals.

The amount of data that passes through the Interpol system is ever increasing, forcing the organisation to continually improve its policies and procedures in order to maintain the highest possible standards of international police cooperation and compliance with international human rights agreements.

Violation of Article 3 of the Constitution of Interpol contravenes the principle of neutrality of Interpol and has a negative impact on the overall effectiveness of the organisation in fulfilling its basic tasks. It is important that Interpol eliminates dysfunctions in the operation of its bodies, thus minimising the possibility of violation of Article 3 of the Constitution.

The introduction of changes in order to increase the speed of data processing and data protection proved to be insufficient for Interpol authorities to be able to quickly and adequately respond to new challenges. Changes must not only be technical, but also systemic.

Welcoming the willingness for a constructive dialogue with representatives of civil society, expressed by the leadership of Interpol, the Open Dialog Foundation proposes to discuss the main problems of the functioning of Interpol's mechanisms for data processing and their possible improvement.

We also appeal to the General Secretariat with a request that they disseminate this Submission among Member States which participate in the work of the GTI, and to encourage Member States to support the improvement of Interpol's oversight mechanisms and to make appropriate recommendations for the consideration of the General Assembly of Interpol.

I. IMPROVEMENT OF THE WANTED REQUESTS VERIFICATION SYSTEM

Description of the problem:

The wanted requests verification process must comply not only with the rules of Interpol, but also the Universal Declaration of Human Rights and other international human rights treaties. The Open Dialog Foundation welcomes the commitment of Interpol's leadership to bring the organisation's work into line with the criteria. However, the procedures and results of the verifications are not always effective, which confirms the need for changes in the mechanisms of Interpol.

Interpol rules define a methodology of request verification from the point of view of a political component, but they do not prescribe evaluation criteria, based on which a decision could be made on a case-by-case basis.

Human rights defenders find it difficult to obtain information on the activities of the Office of Legal Affairs, which verifies the compliance of requests with the Constitution of Interpol.

Every 'red notice' should be reviewed prior to its publication, taking into account not only the data, contained in the request, but also information from other sources. Experience shows that a significant number of 'red notices' are deleted *after* they have been published on the basis of suspicion of a violation of Article 3 of the Constitution on the inadmissibility of political persecution. This suggests that the issue of wanted requests is *automatic* to some extent. Thus, the authorities of Interpol are not always able to quickly deal with numerous requests and after their publication, they are forced to introduce corrections, rather than respond proactively.

Details of wanted persons are automatically entered into the local database, and can be stored there after Interpol has excluded them from the common database. This happens due to the fact that national offices do not always quickly update their local databases.

Proposals aimed at improving the mechanisms of Interpol:

- Specify the content of Article 3 of the Constitution of Interpol in order to prevent its selective or arbitrary interpretation.
- Develop evaluation criteria and specific mechanisms for decision-making in cases where charges, criminal in their form, are essentially political, as well as in cases where criminal offences are committed as a result of political decisions.
- Ensure greater transparency of the activity of the Office of Legal Affairs in order to inform the public regarding the number of requests which have been considered and the decisions issued in their regard.
- Requests of the 'diffusion' type should be subjected to a systematic review by the supreme bodies of Interpol.
- We suggest that developing a more individual approach to the evaluation of requests from individual Member States should be considered. It is advisable to take into account relevant data of authoritative international ratings of confidence in law enforcement and judicial systems. It should also be taken into account whether the member of Interpol has previously filed requests, which were subsequently rejected due to their non-compliance with Article 3 of the Constitution of Interpol.
- Since a significant amount of work on Interpol data processing is carried out on the territory of the EU, it is necessary to establish closer cooperation with the European Commission, the European Parliament and the European Data Protection Supervisor for the purpose of harmonising procedures in accordance with the legal order of the EU.
- Create a procedure whereby Member States of Interpol would be able to see the names of persons against whom the issuance of a 'red notice' is planned before the issuance of the 'red notice'. Thus, Member States will have an opportunity to submit their comments or remarks not only after the 'red notice' has been issued, but also before the person is officially recognised as wanted.
- Improve and facilitate the data exchange between the General Secretariat and national offices. Local databases should be updated regularly and quickly, in accordance with data from the common database regarding the removal of a person from the wanted list.
- Placement of an individual on the 'closed' (non-public) wanted list must be carefully justified and comply with a clearly defined procedure.

II. CHANGES IN THE PROCEDURE OF APPEALING INTERPOL DECISIONS

Description of the problem:

Despite the fact that every person has an opportunity to appeal against the issuance of a "red notice" free-of-charge, it should be noted that the procedure is complex and lengthy.

In particular, in its resolution of 31 January, 2014, the PACE criticised the work of the Commission for the Control of Files, as its procedures are not adversarial, and its decisions are often unjustified.

Sessions of the Commission for the Control of Interpol Files are held only a few times annually. The appeal procedure regarding the 'red notice' in the Commission may take a year or more. Throughout all this time, individuals are forced to face serious restrictions in the form of lengthy incarceration; remain on the list of the Schengen Information System; be refused a residence permit etc. In many cases, as a result of decisions, issued by the Commission for the Control of Interpol Files or national courts, individuals with international refugee status are removed from the wanted list, which means that long-term restrictions in their regard were groundless.

Frequently, Interpol removes a 'red notice' not based on the decision of the Commission for the Control of Files, but after a Member State closes the criminal case or declares amnesty.

We appreciate the efforts to establish a working group to review the Organisation's control mechanisms, including of the Commission for the Control of Interpol's Files. It is advisable to also consider the question of providing greater efficiency, independence and transparency in the work of the Commission for the control of files.

Proposals aimed at improving the mechanisms of Interpol:

- Decisions of the Commission for the Control of Files should be issued along with a detailed justification.
- It is advisable to consider the possibility of appealing against the Commission's decisions in court and to determine the jurisdiction of the court which could have such powers.
- The Commission should issue decisions on the incoming complaints within prescribed time limits. These time limits must be reasonable so as not to expose individuals to prolonged incarceration or other restrictions.
- Promote more rapid communication between the General Secretariat and the Commission for the Control of Files.
- The work of the Commission for the Control of Files should be carried out with the involvement of independent experts in international law, specialising in matters of asylum, extradition and the protection of human rights.
- Create institutional conditions for closer cooperation of the Commission for the Control of Files with international human rights organisations and UN experts on asylum and extradition, including the possibility of providing expert advice to the Commission on separate cases.

III. THE CREATION OF A MECHANISM FOR THE PROTECTION OF RIGHTS OF PEOPLE WITH INTERNATIONAL REFUGEE STATUS

Description of the problem: Decisions of the United Nations and individual states on the granting of political asylum do not constitute a legitimate argument for Interpol during the issuance of wanted requests. Interpol rules do not duly correspond with international standards and principles of the institution of asylum.

Persons who have been granted international refugee status in the EU, the United States or Canada, may be subject to arrest at a border crossing. This issue was pointed out back in 2008 by the representative of UNHCR.

Each State independently issues decisions on the arrest or extradition of a person. However, the mediating role of Interpol is important due to the fact that it is, in fact, a wanted request that triggers extradition proceedings. All the more so, states often carry out arrests automatically as they trust Interpol notices.

At the moment, the public wanted list of Interpol continues to include a number of persons who have been granted international refugee status in the EU and the United States (the majority of these people are public figures, and their whereabouts are widely known). Many individuals with international refugee status may be included in the non-public part of Interpol's wanted list.

National courts do not allow extradition if it is demanded by the state in respect of which the person has received refugee status. So, the presence of such persons in Interpol's wanted list is unreasonable, especially taking into consideration the serious consequences for the wanted persons.

Persons with international refugee status remain on Interpol's list, even after the courts (including the European Court of Human Rights) issue a decision to refuse extradition.

Even if a person has been excluded from the list of Interpol on the basis of Article 3 of the Constitution, a member of Interpol may make attempts to re-use the 'red notice' mechanism against that person.

Proposals aimed at improving the mechanisms of Interpol:

- International refugee status (status of international protection) should exempt a wanted person from arrest in regard to any request filed by a State from which he or she has fled.
- A person who has been granted international protection in an EU state should not be subjected to arrest in another EU member state. It is suggested that refugees, with regard to whom there is suspicion of violation of Article 3 of the Constitution of Interpol, are obliged to inform the EU authorities about any changes in their place of residence. At the same time, refugees receive a guarantee that there will not be arrested at the border and that they will be granted freedom of movement.
- The granting of international refugee status (international protection) in one member country of Interpol should ensure that other members of Interpol do not render the said person to the State, due to the actions of which he or she has been granted refugee status.
- The granting of refugee status due to persecution suffered in a state which initiates the pursuit of the individual via Interpol, as well as a court decision to refuse extradition on the basis of this status, should form the grounds for the immediate removal of a wanted request from all databases of Interpol Member States and the issuance of a document confirming this fact.
- In cases where a person has been excluded from the Interpol list based on the presence of international refugee status or a court decision to refuse extradition on the basis of the status, the said person cannot be re-included in the Interpol list on the request of the State with regard to which he has been granted international refugee status.
- Since Interpol is working on joint projects with various UN agencies, it is recommended to initiate a more detailed project with the Office of the UN High Commissioner for Refugees. The aim of the project would be to create mechanisms in order to protect the rights of persons who were granted refugee status, but still remain listed as wanted by Interpol.

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- We suggest that Interpol's leadership ensures consultations and cooperation with the European Parliament and the European Commission regarding the development of a common asylum system in the EU and the general policy of recognition of refugee status.

IV. ENFORCEMENT OF SANCTIONS OF VIOLATORS OF INTERPOL'S RULES

Description of the problem:

Welcoming the efforts to improve and update Interpol's Rules on the Processing of Data, we wish to emphasise that the problem also consists in non-compliance with the existing rules. In particular, Articles 130 and 131 of Interpol's Rules on the Processing of Data provide for restrictions in the use of databases or suspension of access to the databases for those members of Interpol who do not fulfil their obligations within the organisation.

Individual members of Interpol have repeatedly violated Interpol's rules, in particular, Article 3 of the Constitution, thus showing a lack of respect for the organisation and abusing the trust of its other members. However, cases of application of Articles 130 and 131 of Interpol's Rules on the Processing of Data are not known.

Proposals aimed at improving the mechanisms of Interpol:

- Develop an effective mechanism for the implementation of the existing rules on sanctions for violators of Interpol's rules.
- Rules on sanctions for those who violate the rules of Interpol should be provided for in the Constitution of Interpol.
- Increase sanctions for Interpol Members who do not fulfill their obligations within the organisation, providing for the possibility of exclusion of a member from the organisation for repeated flagrant violations.

V. OPENNESS OF INTERPOL

Description of the problem:

We highly appreciate Interpol's attempts to defend the independence of the organisation in order to respect human rights. However, independence should not be tantamount to a lack of transparency and non-publicity, as in practice, it propagates a lack of accountability and vulnerability of the organisation to abuse by individual Member States. In terms of strict compliance with international agreements on human rights, it is ineffective that rules and decisions of other institutions (e.g. the institution of refugee, the UNHCR institution) have no binding effect for Interpol.

Decisions issued by Interpol produce serious consequences. In particular, on the basis of Interpol's wanted requests, States issue decisions which restrict the freedom of individual persons. Therefore, given the important functions of Interpol, it seems inadequate to regulate its activity only through internal documents.

Since, according to the PACE resolution of 31 January, 2014, international organisations are subject to obligations regarding respect for human rights in accordance with international law, the question of Interpol's liability for violations remains open.

Proposals aimed at improving the mechanisms of Interpol:

- Promote a greater openness of the organisation and strengthen cooperation with human rights organisations, the UN, OSCE, PACE and the European Parliament.
- Maintain statistics and regularly make available to the public, updated data in absolute numbers about the number of requests that have been rejected by the supervisory bodies of Interpol due to their non-compliance with Article 3 of the Constitution of Interpol; to provide data on the number of requests that have passed through the system of Interpol but have been removed following the adoption of judicial decisions to refuse extradition on the basis of refugee status or non-compliance with Article 3 of the Constitution of Interpol.
- Carry out consultations with the European Police Office (Europol) and the European Union's Judicial Cooperation Unit (Eurojust) for the purpose of exchanging information, expertise and the development of agreed decisions regarding the improvement of oversight mechanisms of Interpol.
- Official statements issued by UN agencies, including the UN Agency for Refugees, should constitute the basis for the revision of Interpol's wanted requests.
- Develop and launch the mechanism for concluding an international agreement to regulate the activities of Interpol, as well as to reflect these activities in EU legislation, and individual Member States.
- Procedures for the restriction of freedom on the basis of Interpol requests must be clearly resolved at the legislative level.
- Interpol as one of the biggest international organisations should establish mechanisms of accountability for violations committed on its part, which will allow better identification of dysfunctions in the work of Interpol bodies and fulfil commitments regarding the observance of human rights.

The Open Dialog Foundation hereby expresses hope that close cooperation between the Interpol leadership and the international community will enhance the effectiveness of the oversight mechanisms of the organisation and strengthen human rights guarantees, including the rights of refugees.

We hereby request that our recommendations regarding the improvement of the mechanisms of data processing be considered in detail, and that these recommendations be raised for discussion at the General Assembly of Interpol. It is advisable to introduce corresponding changes not only to Interpol regulations, but also to the Constitution of the organisation.

For more detailed information, please contact:

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